

## **IAG COVER SHEET**

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 10  
AND THE  
WASHINGTON STATE DEPARTMENT OF ECOLOGY  
AND THE  
UNITED STATES ARMY

IN THE MATTER OF: )  
 )  
The U.S. Department of Defense, ) FEDERAL FACILITY AGREEMENT  
United States Army, Fort Lewis, ) UNDER CERCLA SECTION 120  
 )  
Fort Lewis, Washington ) Administrative Docket Nos.:  
 ) 1088-06-16-120 and  
 ) 1089-09-23-120

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

I.

JURISDICTION

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

1.1 The United States Environmental Protection Agency ("U.S. EPA") enters into those portions of this Agreement that relate to the Remedial Investigation/Feasibility Study ("RI/FS") pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. 99-499 (hereinafter referred to as ("CERCLA") and Executive Order 12580.

1.2 U.S. EPA enters into those portions of this Agreement that relate to interim remedial actions and final remedial actions pursuant to Section 120(e)(2) of CERCLA, 42 U.S.C. § 9620(e)(2), and Executive Order 12580.

1.3 The United States Army ("Army") enters into those portions of this Agreement that relate to the RI/FS pursuant to Section 120(e)(1) of CERCLA, 42 U.S.C. § 9620(e)(1), 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.

1.4 The Army enters into those portions of this Agreement that relate to interim remedial actions and final remedial actions pursuant to Section 120(e)(2) of CERCLA,

1 42 U.S.C. § 9620(e)(2), Executive Order 12580, and the DERP.

2 1.5 The State of Washington Department of  
3 Ecology ("Ecology") enters into this Agreement pursuant to  
4 Sections 107, 120(e)(2), 120(f), and 121(f) of CERCLA, 42 U.S.C.  
5 §§ 9607, 9620(e)(2), 9620(f), and 9621(f), and Titles 70 and 43  
6 of the Revised Code of Washington.

7  
8 II.

9 DEFINITIONS

10 2.1 The terms used in this Agreement shall have  
11 the same meaning as defined in Section 101 of CERCLA, 42 U.S.C.  
12 § 4601, and the NCP, 40 CFR Part 300, and Section 1004 of RCRA,  
13 42 U.S.C. § 6903. In addition:

14 (a) "Agreement" shall mean this document and  
15 shall include all Attachments to this document. All such  
16 Attachments shall be incorporated by reference and are an  
17 integral part of this document, and enforceable pursuant to this  
18 Agreement and applicable law and regulations;

19 (b) "ARAR" or "Applicable or Relevant and  
20 Appropriate Requirements" shall mean any standard, requirement,  
21 criterion, or limitation as provided in Section 121(d)(2) of  
22 CERCLA, 42 U.S.C. § 9621(d)(2);

23 (c) "Army" shall mean the United States Army,  
24 its successors, assigns, and authorized representatives;

25 (d) "CERCLA" shall mean the Comprehensive  
26 Environmental Response, Compensation, and Liability Act,

1 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments  
2 and Reauthorization Act of 1986 ("SARA"), Pub. L. 99-499;

3 (e) "Days" shall mean calendar days, unless  
4 otherwise specified. If a due date falls on a Saturday, Sunday,  
5 or Federal holiday, the due date shall be extended to the  
6 following business day;

7 (f) "Ecology" shall mean the State of Washington  
8 Department of Ecology, its employees, and authorized  
9 representatives;

10 (g) "Interim Remedial Actions" or "IRA" shall  
11 mean all discrete response actions implemented prior to a final  
12 remedial action which are taken to prevent or minimize the  
13 release of hazardous substances, pollutants, or contaminants so  
14 that they do not migrate or endanger public health, welfare, or  
15 the environment. All interim remedial actions shall be  
16 undertaken in accordance with with the NCP, 40 C.F.R. Part 300,  
17 as amended, and with the requirements of CERCLA. Application of  
18 this definition will not preclude the Army from taking such  
19 emergency actions as it deems appropriate;

20 (h) "NCP" shall mean the National Oil and  
21 Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part  
22 300, as amended;

23 (i) "Paragraph" shall mean a numbered paragraph  
24 of this Agreement;

25 (j) "Part" shall mean one of the thirty-six (36)  
26 subdivisions of this Agreement;

(k) "Parties" shall mean the Army, U.S. EPA, and Ecology;

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

(m) "Site" shall mean Fort Lewis Military Reservation which covers about eighty-six thousand (86,000) acres on the southeastern shore of Puget Sound near Tacoma, in Pierce and Thurston Counties, Washington.

(n) "U.S. EPA" shall mean the United States Environmental Protection Agency, including Region 10, its employees, and authorized representatives;

(o) "Work Plan" shall mean the Management Plan (includes RI/FS Work Plan) or RD/RA Work Plans, incorporated herein by reference, which are prepared in accordance with Office of Solid Waste and Emergency Response ("OSWER") Directives 9355.3-01 (October 1988) and 9355.0-4A (June 1986), and the NCP.

### III.

#### PURPOSE

3.1 The general purposes of this Agreement are to:

(a) Ensure that the environmental impacts associated with past and present activities at the Site are thoroughly investigated and appropriate removal and remedial

1 action(s) taken as necessary to protect the public health,  
2 welfare, and the environment;

3 (b) Establish a procedural framework and  
4 schedule for developing, implementing, and monitoring appropriate  
5 response actions at the Site in accordance with CERCLA, the NCP,  
6 Superfund guidance and policy, RCRA, RCRA guidance and policy;  
7 and

8 (c) Facilitate cooperation, exchange of  
9 information, and participation of the Parties in such actions.

10 3.2 Specifically, the purposes of this Agreement  
11 are to:

12 (a) Identify removal and Interim Remedial Action  
13 ("IRA") alternatives which are appropriate at the Site prior to  
14 the implementation of final remedial action(s) for the Site. IRA  
15 alternatives shall be identified and proposed to the Parties as  
16 early as possible prior to formal proposal of IRA(s) to U.S. EPA  
17 pursuant to CERCLA. This process is designed to promote  
18 cooperation among the Parties in identifying IRA alternatives  
19 prior to selection of final IRA(s);

20 (b) Establish requirements for the performance  
21 of an RI to determine fully the nature and extent of the threat  
22 to the public health or welfare or the environment caused by the  
23 release and threatened release of hazardous substances,  
24 pollutants, or contaminants at the Site and to establish  
25 requirements for the performance of an FS for the Site to  
26 identify, evaluate, and select alternatives for the appropriate



1 remedial action(s) to prevent, mitigate, or abate the release or  
2 threatened release of hazardous substances, pollutants, or  
3 contaminants at the Site in accordance with CERCLA;

4 (c) Identify the nature, objective, and schedule  
5 of response actions to be taken at the Site. Response actions at  
6 the Site shall attain that degree of cleanup of hazardous  
7 substances, pollutants, or contaminants mandated by CERCLA;

8 (d) Implement the selected interim and final  
9 remedial action(s) in accordance with CERCLA and meet the  
10 requirements of Section 120(e)(2) of CERCLA, 42 U.S.C.  
11 § 9620(e)(2), for an interagency agreement between U.S. EPA and  
12 the Army;

13 (e) Assure compliance, through this Agreement,  
14 with other federal and state hazardous waste laws and regulations  
15 for matters covered herein;

16 (f) Coordinate response actions at the Site with  
17 the mission and support activities at Fort Lewis; and

18 (g) Expedite the cleanup process to the extent  
19 consistent with protection of human health and the environment.

20  
21 IV.

22 PARTIES BOUND

23 4.1 This Agreement shall apply to and be binding  
24 upon the Army, U.S. EPA, and Ecology. This Agreement shall also  
25 apply to subsequent owners and operators of any portion of the  
26 Site. The Army agrees to include notice of this Agreement in any

1 document transferring ownership to any subsequent owners and  
2 operators of any portion of the Site in accordance with Section  
3 120(h) of CERCLA, 42 U.S.C. § 9620(h), 40 C.F.R. §§ 264.119 and  
4 264.120, and Part XXXII of this Agreement.

5 4.2 The Army will notify U.S. EPA and Ecology of  
6 the identity of its contractors performing work under this  
7 Agreement. The Army shall provide copies of this Agreement to  
8 all contractors performing any work pursuant to this Agreement.

9 4.3 The Deputy Assistant Secretary of the Army,  
10 the Director of the Washington Department of Ecology, an  
11 Authorized Representative of the Office of the Attorney General  
12 of the State of Washington, and the Assistant Administrator of  
13 U.S. EPA shall each certify that he or she is fully authorized to  
14 enter into the terms and conditions of this Agreement and to  
15 legally bind such Party to this Agreement.

16 4.4 Under no condition shall a Party under this  
17 Agreement utilize the services of any consultant, prime  
18 contractor, or subcontractor who has been suspended, debarred, or  
19 voluntarily excluded within the scope of 40 C.F.R. Part 32 or  
20 Federal Acquisition Regulation at 48 C.F.R. Subpart 9.4.

21 V.

22 STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

23 5.1 The Parties intend to integrate Army's  
24 CERCLA response obligations and RCRA corrective action  
25 obligations of other statutes which relate to the release(s) of  
26  
27

1 hazardous substances, hazardous wastes, pollutants, or  
2 contaminants covered by this Agreement into this comprehensive  
3 Agreement. Therefore, the Parties intend that activities covered  
4 by this Agreement will achieve compliance with CERCLA, 42 U.S.C.  
5 9601 et seq.; to satisfy the corrective action requirements of  
6 Section 3004(u) and (v), 42 U.S.C. § 6924(u) and (v), for a RCRA  
7 permit, and Section 3008(h), 42 U.S.C. § 6928(h), for interim  
8 status facilities; and to meet or exceed all applicable or  
9 relevant and appropriate federal and state laws and regulations,  
10 to the extent required by Section 121 of CERCLA, 42 U.S.C. §  
11 9621, and applicable state law.

12           5.2.           Based upon the foregoing, the Parties intend  
13 that any remedial action selected, implemented, and completed  
14 under this Agreement will be protective of human health and the  
15 environment such that remediation of releases covered by this  
16 Agreement shall obviate the need for further corrective action.  
17 The Parties agree that with respect to releases of hazardous  
18 waste covered by this Agreement that have occurred on a site,  
19 RCRA and Ch. 70.105 et seq. of the Revised Code of Washington  
20 ("RCW") shall be considered ARARs pursuant to Section 121 of  
21 CERCLA, 42 U.S.C. § 9621. If RCRA or RCW Ch. 70.105 et seq.  
22 ARARs are waived by the Record of Decision ("ROD") pursuant to  
23 Section 121 of CERCLA, 42 U.S.C. § 9621, Ecology shall have the  
24 right to withdraw from this Agreement within sixty (60) days  
25 following the effective date of the ROD and exercise any legal  
26 rights and remedies available under law. If Ecology exercises

1 its right to withdraw from this Agreement, Army expressly  
2 preserves its ability to assert any defense that it may have  
3 under the law in regard to the legal right or remedies pursued by  
4 Ecology. Releases or other hazardous waste activities not  
5 covered by this Agreement remain subject to all applicable state  
6 and federal environmental requirements.

7           5.3           The Parties recognize that the requirement  
8 to obtain permits for response actions undertaken pursuant to  
9 this Agreement shall be as provided for in CERCLA and the NCP.

10           5.4           Nothing in this Agreement shall alter Army's  
11 authority with respect to removal actions conducted pursuant to  
12 Section 104 of CERCLA, 42 U.S.C. § 9604.

13  
14                               VI.

15                               FINDINGS OF FACT

16           6.1           The Army neither admits nor denies the  
17 following Findings by the Regulatory Parties:

18           (a) Fort Lewis is located near Tacoma in Pierce and  
19 Thurston Counties, Washington, on the southeastern shore of Puget  
20 Sound. It has been an Army facility since 1917. Industrial  
21 operations at Fort Lewis have included maintenance of aircraft  
22 and vehicles, repair and refurbishing of weapons, and  
23 neutralization of caustic paint stripping waste and battery  
24 acids. Prior to the mid-1970s, wastes were disposed of at  
25 on-site landfills covering two hundred and twenty-five (225)  
26 acres. These disposal sites may have received hazardous wastes

1 such as spent solvents, plating wastes, pesticides, and PCB;

2 (b) The Army completed an Installation Assessment at  
3 Fort Lewis during September 1983. The purpose of the Assessment  
4 was to identify and assess sites on Fort Lewis and its outlying  
5 areas that posed a potential threat to human health or the  
6 environment, caused by the release or threatened release of  
7 hazardous substances, pollutants, or contaminants;

8 (c) Landfill No. 5 was proposed for listing on the  
9 National Priorities List ("NPL") during October 1984 and was  
10 listed on the NPL on August 21, 1987.

11 (d) The Logistics Center was proposed for listing on  
12 the NPL on July 14, 1989. 54 Fed. Reg. 29,820 (July 14, 1989).

13  
14 VII.

15 REGULATORY DETERMINATIONS

16 7.1 On the basis of the results of the testing  
17 and analysis described in the Findings of Fact, U.S. EPA and  
18 Ecology have determined that:

19 (a) Fort Lewis Military Reservation ("Site") is a  
20 facility within the meaning of Sections 3008 of RCRA and 101(9)  
21 of CERCLA, 42 U.S.C. §§ 6928 and 9601(9);

22 (b) Hazardous substances, pollutants, or contaminants  
23 within the meaning of Sections 1004(5) and 3001 of RCRA, and  
24 Sections 101(14) and 104(a)(2) of CERCLA, 42 U.S.C. §§ 6903(5),  
25 6921, 9601(14) and 9604(a)(2), have been disposed of at the Site;

26 (c) There have been releases and there continue to be

1 releases and threatened releases of hazardous substances,  
2 pollutants, or contaminants into the environment within the  
3 meaning of Sections 101, 104, 106, and 107 of CERCLA, 42 U.S.C.  
4 §§ 9601(22), 9604, 9606, and 9607, at and from the Site and  
5 vicinity;

6 (d) With respect to those releases and threatened  
7 releases, the Army is a responsible person within the meaning of  
8 Sections 1004(15) of RCRA and 107 of CERCLA, 42 U.S.C.  
9 §§ 6903(15) and 9607;

10 (e) The actions to be taken pursuant to this  
11 Agreement are reasonable and necessary to protect the public  
12 health or welfare or the environment; and

13 (f) A reasonable time for beginning and/or completing  
14 the actions required has been provided.

15  
16 VIII. SCOPE OF AGREEMENT

17 A. Work to be Performed

18 8.1 In addition to Landfill No. 5 and the  
19 Logistics Center, the following hazardous waste units shall be  
20 covered by this Agreement:

- 21 (a) Landfill No. 1
- 22 (b) Landfill No. 2
- 23 (c) Landfill No. 6
- 24 (d) Fire Training Pit
- 25 (e) Industrial Wastewater Treatment Plant
- 26 (f) Battery Acid Pit
- 27 (g) Pesticide Rinse Area
- 28 (h) Illicit PCB Dump
- (i) PCB Spill at DPDO Yard
- (j) EOD Site 62
- (k) Storm Water Outfalls
- (l) Solvent Refined Coal Plant

- (m) Landfill No. 4
- (n) Park Marsh

8.2 The Army will conduct and finance the cost of the RI/FS consultant study and implement the RD/RA Work Plan at the Site in accordance with the incorporated Work Plans, and all relevant statutes, regulations, policies, guidance, and criteria.

8.3 All work performed pursuant to this Agreement shall be under the direction and supervision, or in consultation with a qualified engineer, geologist, or equivalent expert with expertise in hazardous substances site investigation and remediation.

8.4 The Army shall perform the tasks and submit plans, reports, and other documents as required by those provisions of the Work Plan.

8.5 These matters are set forth in more detail below and in the RI/FS and RD/RA Work Plans. This Agreement fully incorporates the provisions of the Work Plans which relate to the implementation of this Agreement, including but not limited to, definitions and procedures for submission, review, and approval of documents.

#### B. Interim Remedial Actions

8.6 The Army shall develop and implement Interim Remedial Actions ("IRAs") as required by U.S. EPA or Ecology pursuant to this Agreement, and as set forth in the RI/FS Work Plan. The IRA(s) shall be consistent with the purposes set forth

1 in Part III of this Agreement. The U.S. EPA, in consultation  
2 with the Army and Ecology, shall make the selection of the IRA(s)  
3 for the Site. IRA(s) shall, to the greatest extent practicable,  
4 attain ARARs and be consistent with and contribute to the  
5 efficient performance of final response actions.

6                   C. Remedial Investigations

7           8.7           The Army shall develop, conduct, and report  
8 upon remedial investigations of the Site which comply with  
9 applicable requirements of CERCLA, the NCP, and pertinent written  
10 guidance and established written U.S. EPA policy, and which is in  
11 accordance with the requirements and time schedules set forth in  
12 this Agreement.

13                   D. Feasibility Studies

14           8.8           The Army shall design and report upon  
15 feasibility studies for the Site which comply with applicable  
16 requirements of CERCLA, the NCP, and relevant guidance and  
17 established U.S. EPA policy, and which is in accordance with the  
18 requirements and time schedules set forth in this Agreement.

19                   E. Remedial Actions

20           8.9           The Army shall develop and submit its  
21 proposed remedial action alternative following completion and  
22 approval of an RI and FS. Ecology may recommend the remedial  
23 action alternative it deems appropriate to U.S. EPA. Pursuant to  
24 Part XX, the U.S. EPA Administrator, in consultation with the  
25 Army and Ecology, shall select the remedial action(s) for the  
26 Site. Notwithstanding this Part, or any other Part of this



1 Agreement, Ecology does not waive any right to seek judicial  
2 review of an interim or final remedial action in accordance with  
3 Sections 113 and 121 of CERCLA, 42 U.S.C. §§ 9613 and 9621.

4 F. Implementation of Remedial Actions

5 8.10 Following selection by U.S. EPA, the Army  
6 shall design, propose, and submit a detailed Work Plan for  
7 implementation of each selected remedial action(s), which will  
8 include appropriate timetables and schedules to U.S. EPA and  
9 Ecology. Following review by Ecology and U.S. EPA and subject to  
10 the U.S. EPA Administrator's final approval, the Army shall  
11 implement the remedial action(s) in accordance with the  
12 requirements and time schedules set forth in the Work Plan.

13 IX.

14 PROJECT MANAGERS

15 9.1 Not later than five (5) days after the  
16 effective date of this Agreement, the Army, Ecology, and U.S. EPA  
17 shall each designate a Project Manager and alternate. Each  
18 Project Manager shall be responsible for overseeing his  
19 principal's duties concerning the implementation of this  
20 Agreement. All written communications between the Army and the  
21 regulatory agencies (including communication by letter, reports,  
22 notices, etc.), concerning activities related to this Agreement  
23 shall be directed or a copy sent to the appropriate Project  
24 Manager(s).

25 9.2 Each Project Manager shall be, or rely upon,  
26 a qualified and competent person with experience in hazardous  
27

1 substances site investigations and remedial actions and having  
2 the skills necessary to implement this Agreement.

3           9.3           The Army, Ecology, and U.S. EPA may change  
4 their respective Project Manager(s) by sending a written  
5 notification to the other Parties no later than five (5) days  
6 before the date of such change.

7           9.4           The Project Managers may, in accordance with  
8 Part XX(J) of this Agreement, make modifications to the work to  
9 be performed pursuant to this Agreement, or in techniques,  
10 procedures, or design utilized in carrying out this Agreement,  
11 which are necessary to the completion of the project.

12           9.5           The Project Managers for the Army shall be  
13 present at Ft. Lewis or reasonably available to supervise work  
14 performed at the Site during implementation of the work performed  
15 pursuant to this Agreement and be reasonably available to the  
16 U.S. EPA and Ecology Project Managers for the pendency of this  
17 Agreement. The absence of the regulatory agency Project Managers  
18 from the Site shall not be cause for work stoppage or delay.

19  
20                           X.

21                           ACCESS

22           10.1           Without limitation on any authority  
23 conferred on U.S. EPA and Ecology by statute or regulation,  
24 U.S. EPA, Ecology, or their authorized representatives, shall  
25 have the authority to enter Fort Lewis at all reasonable times  
26 for purposes consistent with the provisions of this Agreement,

1 subject to any statutory and regulatory requirements as may be  
2 necessary to protect national security or mission-essential  
3 activities. Such authority shall include, but not be limited to:  
4 inspecting records, operating logs, or contracts related to the  
5 investigative and remedial work at Fort Lewis; reviewing the  
6 progress of the Army in carrying out the terms of this Agreement;  
7 conducting such tests as U.S. EPA, Ecology, or the Project  
8 Managers deem necessary; and verifying the data submitted to  
9 U.S. EPA and Ecology. The Army shall provide an escort whenever  
10 U.S. EPA or Ecology requires access to restricted areas of Fort  
11 Lewis for purposes consistent with the provisions of this  
12 Agreement.

13           10.2           The rights to access by U.S. EPA and  
14 Ecology, granted in Paragraph 10.1 of this Section, shall be  
15 subject to those regulations as may be necessary to protect  
16 national security or mission-essential activities. Upon denying  
17 any aspect of access the Army shall provide an explanation within  
18 forty-eight (48) hours of the reason for the denial and, to the  
19 extent possible, provide a recommendation for accommodating the  
20 requested access in an alternate manner.

21           10.3           All Parties with access to Fort Lewis  
22 pursuant to this section shall comply with all applicable health  
23 and safety plans.

24           10.4           To the extent that this Agreement requires  
25 access to property not owned and controlled by the Army, the Army  
26 shall exercise its authorities to obtain access pursuant to

1 Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and shall make  
2 every reasonable effort to obtain signed access agreements for  
3 itself, its contractors and agents, and U.S. EPA and Ecology with  
4 copies of such agreements. With respect to non-Army property  
5 upon which monitoring wells, pumping wells, treatment facilities,  
6 or other response actions are to be located, the access  
7 agreements to the extent possible shall also provide that no  
8 conveyance of title, easement, or other interest in the property  
9 shall be consummated without provisions for the continued  
10 operation of such wells, treatment facilities, or other response  
11 actions on the property. The access agreements shall also  
12 provide to the extent possible that the owners of any property  
13 where monitoring wells, pumping wells, treatment facilities, or  
14 other response actions are located shall notify the Army,  
15 Ecology, and the U.S. EPA by certified mail, at least thirty (30)  
16 days prior to any conveyance, of the property owner's intent to  
17 convey any interest in the property and of the provisions made  
18 for the continued operation of the monitoring wells, treatment  
19 facilities, or other response actions installed pursuant to this  
20 Agreement.

21  
22 XI.

23 SAMPLING AND DATA/DOCUMENT AVAILABILITY

24 11.1 The Parties shall make available to each  
25 other quality assured results of sampling, tests, or other data  
26 generated by any Party, or on their behalf, with respect to the

1 implementation of this Agreement within seventy (70) days of  
2 their collection or field testing. If quality assurance is not  
3 completed within seventy (70) days, preliminary data or results  
4 shall be made available within the seventy (70) day period and  
5 quality assured data or results shall be submitted as they become  
6 available, but in no event later than ninety-five (95) days after  
7 the sampling or testing. These periods can be extended upon  
8 mutual agreement of the Project Managers.

9           11.2       At the request of either the Ecology or  
10 U.S. EPA Project Manager, the Army shall allow split or duplicate  
11 samples to be taken by Ecology or U.S. EPA during sample  
12 collection conducted during the implementation of this Agreement.  
13 The Army's Project Manager shall provide prior notice to the  
14 U.S. EPA and Ecology Project Managers as soon as possible, but  
15 normally not less than fourteen (14) business days in advance of  
16 any well drilling, sample collection, or other significant  
17 monitoring activity conducted pursuant to this Agreement.

18           11.3       If preliminary results of analyses indicate  
19 an imminent and substantial endangerment to the public health,  
20 all Project Managers shall be immediately notified.  
21

## 22                           XII.

### 23                           QUALITY ASSURANCE

24           12.1       Throughout all sample collection,  
25 transportation, and analyses activities conducted in connection  
26 with this Agreement, the Army shall use procedures for quality  
27

1 assurance, and for quality control, and for chain of custody in  
2 accordance with approved U.S. EPA methods, including "Interim  
3 Guidelines and Specifications for Preparing Quality Assurance  
4 Project Plans," QAMS-005/80, "Data Quality Objective Guidance",  
5 U.S. EPA 1540/687/003 and 004, and subsequent amendments to such  
6 guidelines. The Army shall require each laboratory it uses to  
7 perform any analysis according to approved U.S. EPA methods and  
8 to participate in a quality assurance/quality control program  
9 equivalent to that which is followed by U.S. EPA and which is  
10 consistent with U.S. EPA document QAMS-005/80.

11 XIII.

12 REPORTING

13 13.1 The Army shall submit to Ecology and the  
14 U.S. EPA quarterly or more frequent written progress reports  
15 which describe the actions which the Army has taken during the  
16 previous quarter to implement the requirements of this Agreement.  
17 Progress reports shall also describe the activities scheduled to  
18 be taken during the upcoming quarter. Progress reports shall be  
19 prepared and submitted in accordance with the Work Plans.

20  
21 XIV.

22 NOTICE TO THE PARTIES

23 14.1 Unless otherwise agreed, any report or  
24 submittal provided by the Army pursuant to a schedule or deadline  
25 identified in or developed under this Agreement shall be sent by  
26 certified mail, return receipt requested, or hand-delivered to

the U.S. EPA or Ecology Project Managers. Documents sent to the Army by U.S. EPA or Ecology which require a response or activity by the Army pursuant to this Agreement shall be sent by certified mail, return receipt requested, or hand-delivered to the Army Project Manager.

14.2 Notice to the individual Parties shall be provided under this Agreement to the following addresses:

- (a) For the Army (non-courier mail):  
Randy Hanna  
HQ I Corps  
AFZH-DEQ  
Fort Lewis, Washington 98433-5000
- (b) For the Army (courier mail):  
Randy Hanna  
Directorate of Engineering and Housing  
Building 4301, Room 24  
Fort Lewis, Washington 98438-5000
- (c) For U.S. EPA:  
Mary Jane Nearman  
Fort Lewis Project Manager  
Region 10  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, HW-074  
Seattle, Washington 98101
- (d) For the State of Washington:  
Fred J. Gardner  
Washington State Department of Ecology  
Mail Stop PV-11  
Olympia, Washington 98504-8711

XV.

PERMITS

15.1 The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to

1 this Agreement shall be as provided for in CERCLA and the NCP.  
2 The Parties further recognize ongoing hazardous waste management  
3 activities at the Site may require the issuance of permits under  
4 Federal and State laws. This Agreement does not affect the  
5 requirements, if any, to obtain such permits. However, if a  
6 permit is issued for ongoing hazardous waste management  
7 activities at the Site, U.S. EPA shall reference and incorporate  
8 any appropriate provisions, including appropriate schedules (and  
9 the provisions for extension of such schedules) of this Agreement  
10 into such permit. The Parties intend that the judicial review of  
11 any permit conditions which reference this Agreement shall, to  
12 the extent authorized by law, only be reviewed under the  
13 provisions of CERCLA.

14           15.2       If a permit which is necessary for  
15 implementation of this Agreement is not issued, or is issued or  
16 renewed in a manner which is materially inconsistent with the  
17 requirements of this Agreement, the Army agrees it shall notify  
18 Ecology and U.S EPA of its intention to propose necessary  
19 modifications to this Agreement to obtain conformance with the  
20 permit (or lack thereof). Notification by the Army of its  
21 intention to propose modifications shall be submitted within  
22 seven (7) calendar days of receipt by the Army of written  
23 notification that: (1) a permit will not be issued; (2) a permit  
24 has been issued or reissued; or (3) a final determination with  
25 respect to any appeal related to the issuance of a permit has  
26 been entered. Within thirty (30) days from the date it submits



1 its notice of intention to propose modifications, the Army shall  
2 submit to Ecology and U.S. EPA its proposed modifications to this  
3 Agreement with an explanation of its reasons in support thereof.

4           15.3           Ecology and U.S. EPA shall review the Army's  
5 proposed modifications to this Agreement made pursuant to this  
6 Part. If the Army submits proposed modifications prior to a  
7 final determination of any appeal taken on a permit needed to  
8 implement this Agreement, Ecology and U.S. EPA may elect to delay  
9 review of the proposed modifications until after such final  
10 determination is entered. If Ecology and U.S. EPA elect to delay  
11 review, the Army shall continue implementation of this Agreement  
12 which can be reasonably implemented pending final resolution of  
13 the permit issue(s).

14           15.4           During any appeal of any permit required to  
15 implement this Agreement or during review of any of the Army's  
16 proposed modifications as provided in Paragraph 15.2 above, the  
17 Army shall continue to implement those portions of this Agreement  
18 which can be reasonably implemented pending final resolution of  
19 the permit issue(s).

20  
21                           XVI.

22                           RETENTION OF RECORDS

23           16.1           Despite any document retention policy to the  
24 contrary, the Parties shall preserve, during the pendency of this  
25 Agreement and for a minimum of seven (7) years after its  
26 termination, all records and documents in their possession which

1 relate to the actions carried out pursuant to this Agreement.  
2 After this seven (7) year period, each Party shall notify the  
3 other Parties at least thirty (30) days prior to destruction of  
4 any such documents. Upon request by any Party, the requested  
5 Party shall make available such records or copies of any such  
6 records, unless withholding is authorized and determined  
7 appropriate by law.

8 XVII.

9 PUBLIC PARTICIPATION AND ADMINISTRATIVE RECORD

10 17.1 The parties agree that any subsequent  
11 proposed plan considered for remedial action at the Site arising  
12 out of this Agreement shall comply with public participation  
13 requirements of Section 117 of CERCLA, 42 U.S.C. § 9617.

14 17.2 The Army agrees it shall establish and  
15 maintain an Administrative Record at or near the Site in  
16 accordance with Section 113(k) of CERCLA, 42 U.S.C. § 9613, and  
17 that a copy of this Agreement will be placed in the  
18 Administrative Record. The Administrative Record developed by  
19 the Army shall be periodically updated and a copy of each  
20 document included in the Administrative Record will be provided  
21 to U.S. EPA and Ecology.

22 XVIII.

23 CREATION OF DANGER/EMERGENCY ACTION

24 18.1 In the event U.S. EPA or Ecology determine  
25 that activities conducted pursuant to this Agreement, or any  
26

1 other circumstances or activities, are creating an imminent and  
2 substantial endangerment to the health or welfare of the people  
3 on the Site or in the surrounding area or to the environment,  
4 U.S. EPA and Ecology may require or order the Army to stop  
5 further implementation of this Agreement for twenty-four (24)  
6 hours or, upon agreement of the Parties, such period of time as  
7 needed to abate the danger. Any unilateral work stoppage for  
8 longer than twenty-four (24) hours requires the concurrence of  
9 the U.S. EPA Division Director or Ecology Program Manager.

10           18.2           In the event the Army determines that  
11 activities undertaken in furtherance of this Agreement or any  
12 other circumstances or activities at the Site are creating an  
13 imminent and substantial endangerment to the people on the Site  
14 or in the surrounding area or to the environment, the Army may  
15 stop implementation of this Agreement for such periods of time  
16 necessary for U.S. EPA to evaluate the situation and determine  
17 whether the Army should proceed with implementation of the  
18 Agreement or whether the work stoppage should be continued until  
19 the danger is abated. The Army shall notify the Project Manager  
20 as soon as is possible, but not later than twenty-four (24) hours  
21 after such stoppage of work, and provide U.S. EPA with  
22 documentation of its analysis in reaching this determination. If  
23 U.S. EPA disagrees with the Army determination, it may require  
24 the Army to resume implementation of this Agreement.

25           18.3           If U.S. EPA concurs in the work stoppage by  
26 the Army pursuant to Paragraph 18.2, or if U.S. EPA or Ecology

1 require or order a work stoppage pursuant to Paragraph 18.1, the  
2 Army's obligations shall be suspended and the time periods for  
3 performance of that work, as well as the time period for any  
4 other work dependent upon the work which was stopped, shall be  
5 extended, pursuant to Part XXV of this Agreement, for such period  
6 of time as the U.S. EPA determines is reasonable under the  
7 circumstances. Any disagreements pursuant to this Part shall be  
8 resolved through the dispute resolution procedures in Part XXI of  
9 the Agreement by referral directly to the DRC committee.

10 18.4 Any work stoppage ordered by U.S. EPA or  
11 Ecology shall be certified subsequently in writing.

12  
13 XIX.

14 PERIODIC REVIEW

15 19.1 The Army shall conduct a periodic review of  
16 any final and supplemental response action taken at the Site to  
17 determine whether and to what extent any additional remedial  
18 action is necessary. The periodic review shall be conducted in  
19 accordance with Section 121(c) of CERCLA, 42 U.S.C. § 9621(c),  
20 and any pertinent regulation or guidance issued by U.S. EPA or  
21 Ecology that is not inconsistent with CERCLA and the NCP. Upon  
22 completion, the Army shall provide the assessment report to the  
23 Parties.

24 19.2 The periodic review for each operable unit  
25 shall be conducted not less often than every five (5) years after  
26 initiation of the final response action for that operable unit,

1 as long as hazardous substances, pollutants, or contaminants  
2 remain within the area covered by that operable unit.

4 XX.

5 CONSULTATION WITH U.S. EPA AND ECOLOGY

6 A. Applicability

7 20.1 The provisions of this Part establish the  
8 procedures that shall be used by the Army, U.S. EPA, and Ecology  
9 to provide the Parties with appropriate notice, review, comment,  
10 and response to comments regarding RI/FS and RD/RA documents,  
11 specified herein as either primary or secondary documents. In  
12 accordance with Section 120 of CERCLA, 42 U.S.C. § 9620, and  
13 10 U.S.C. § 2705, the Army will normally be responsible for  
14 issuing primary and secondary documents to U.S. EPA and Ecology.  
15 As of the effective date of this Agreement, all draft and final  
16 reports for any deliverable document identified herein shall be  
17 prepared, distributed, and subject to dispute in accordance with  
18 Paragraphs 20.3 through 20.24.

19 20.2 The designation of a document as "draft" or  
20 "final" is solely for purposes of consultation with U.S. EPA and  
21 Ecology in accordance with this Part. Such designation does not  
22 affect the obligation of the Parties to issue documents, which  
23 may be referred to herein as "final", to the public for review  
24 and comment as appropriate and as required by law.

25 B. General Process for RI/FS and RD/RA Documents

26 20.3 Primary documents include those reports that

1 are major, discrete portions of RI/FS or RD/RA activities.  
2 Primary documents are initially issued by the Army in draft  
3 subject to review and comment by U.S. EPA and Ecology. Following  
4 receipt of comments on a particular draft primary document, the  
5 Army will respond to the comments received and issue a draft  
6 final primary document subject to dispute resolution. The draft  
7 final primary document will become the final primary document  
8 either thirty (30) days after the period established for review  
9 of a draft final document if dispute resolution is not invoked,  
10 or as modified by decision of the dispute resolution process.

11           20.4           Secondary documents include those reports  
12 that are discrete portions of the primary documents and are  
13 typically input or feeder documents. Secondary documents are  
14 issued by the Army in draft subject to review and comment by  
15 U.S. EPA and Ecology. Although the Army will respond to comments  
16 received, the draft secondary documents may be finalized in the  
17 context of the corresponding primary documents. A secondary  
18 document may be disputed at the time the corresponding draft  
19 final primary document is issued.

20                           C. Primary Reports

21           20.5           The Army shall complete and transmit draft  
22 reports for the following primary documents to U.S. EPA and  
23 Ecology for review and comment in accordance with the provisions  
24 of this Part:

25                   (a) Hazardous Waste Evaluation Report

26                   (b) Scope of Work

- (c) RI/FS Management Plan or Work Plan, which includes the RI/FS Work Plan, Sampling and Analysis Plan, QAPP, Community Relations Plan, Data Management Plan, and Health and Safety Plan
- (d) Risk Assessment
- (e) RI Report
- (f) Initial Screening of Alternatives
- (g) FS Report
- (h) ROD
- (i) RD Report
- (j) RA Work Plan

20.6 Only the draft final reports for the primary documents identified above shall be subject to dispute resolution. The Army shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Part XXIV of this Agreement.

#### D. Secondary Documents

20.7 The Army shall complete and transmit draft reports for the following secondary documents to U.S. EPA and Ecology for review and comment in accordance with the provisions of this Part:

- (a) Initial Remedial Action
- (b) Data Quality Objectives
- (c) Site Characterization Summary
- (d) Detailed Analysis of Alternatives
- (e) Post-screening Investigation Work Plan
- (f) Treatability Studies
- (g) Sampling and Data Results

1 (h) Proposed Plan

2 (i) Conceptual Remedial Design

3 (j) Thirty-Five (35) % Completion Remedial Design

4 20.8 Although U.S. EPA and Ecology may comment on  
5 the draft reports for the secondary documents listed above, such  
6 documents shall not be subject to dispute resolution except as  
7 provided by paragraph 20.3 thereof. Target dates shall be  
8 established for the completion and transmission of draft  
9 secondary reports pursuant to Part XXIV of this Agreement.

10 E. Meetings of the Project Managers on Development of Reports

11 20.9 The Project Managers shall meet.  
12 approximately every thirty (30) days, except as otherwise agreed  
13 by the Parties, to review and discuss the progress of work being  
14 performed at the Site on the primary and secondary documents.  
15 Prior to preparing any draft report specified in Paragraphs 20.5  
16 and 20.7 above, the Project Managers shall meet to discuss the  
17 report results in an effort to reach a common understanding, to  
18 the maximum extent practicable, with respect to the results to be  
19 presented in the draft report.

20 F. Identification and Determination of Potential ARARs

21 20.10 For those primary reports or secondary  
22 documents that consist of or include ARAR determinations, prior  
23 to the issuance of a draft report, the Project Managers shall  
24 meet to identify and propose, to the best of their ability, all  
25 potential ARARs pertinent to the report being addressed. Draft  
26 ARAR determinations shall be prepared by the Army in accordance



1 with Section 121(d)(2) of CERCLA, 42 U.S.C. § 9621(d)(2), the  
2 NCP, and pertinent written guidance issued by U.S. EPA and  
3 Ecology, which is not inconsistent with CERCLA and the NCP.

4           20.11       In identifying potential ARARs, the Parties  
5 recognize that actual ARARs can be identified only on a  
6 site-specific basis and that ARARs depend on the specific  
7 hazardous substances, pollutants, and contaminants at a site, the  
8 particular actions proposed as a remedy, and the characteristics  
9 of a site. The Parties recognize that ARAR identification is  
10 necessarily an iterative process and that potential ARARs must be  
11 re-examined throughout the RI/FS process until a ROD is issued.

12           G.   Review and Comment on Draft Reports

13           20.12       The Army shall complete and transmit each  
14 draft primary report to U.S. EPA and Ecology on or before the  
15 corresponding deadline established for the issuance of the  
16 report. The Army shall complete and transmit the draft secondary  
17 document in accordance with the target dates established for the  
18 issuance of such reports established pursuant to Part XXIV of  
19 this Agreement.

20           20.13       Unless the Parties mutually agree to another  
21 time period, all draft reports shall be subject to a thirty (30)  
22 day period for review and comment. Review of any document by  
23 U.S. EPA or Ecology may concern all aspects of the report  
24 (including completeness) and should include, but is not limited  
25 to, technical evaluation of any aspect of the document, and  
26 consistency with CERCLA, the NCP, and any pertinent written

1 guidance or policy issued by U.S. EPA or Ecology. Comments by  
2 U.S. EPA and Ecology shall be provided with adequate specificity  
3 so that the Army may respond to the comments and, if appropriate,  
4 make changes to the draft report. Comments shall refer to any  
5 pertinent sources of authority or references upon which the  
6 comments are based, and, upon request of the Army, U.S. EPA and  
7 Ecology shall provide a copy of the cited authority or reference.  
8 In cases involving complex or unusually lengthy reports, U.S. EPA  
9 and Ecology may extend the thirty (30) day comment period for an  
10 additional twenty (20) days by written notice to the Army prior  
11 to the end of the thirty (30) day period. On or before the close  
12 of the comment period, U.S. EPA and Ecology shall transmit by  
13 next day mail their written comments to the Army.

14           20.14       Representatives of the Army shall make  
15 themselves readily available to U.S. EPA and Ecology during the  
16 comment period for purposes of informally responding to questions  
17 and comments on draft reports. Oral comments made during such  
18 discussions need not be the subject of a written response by the  
19 Army on the close of the comment period.

20           20.15       In commenting on a draft report which  
21 contains a proposed ARAR determination, U.S. EPA and Ecology  
22 shall include a reasoned statement of whether they object to any  
23 portion of the proposed ARAR determination. To the extent that  
24 U.S. EPA and Ecology do object, they shall explain the basis for  
25 their objection in detail and shall identify any ARARs which they  
26 believe were not properly addressed in the proposed ARAR

1 determination.

2           20.16       Following the close of the comment period  
3 for a draft report, the Army shall give full consideration to all  
4 written comments on the draft report submitted during the comment  
5 period. Within thirty (30) days of the close of the comment  
6 period on a draft secondary report, the Army shall transmit to  
7 U.S. EPA and Ecology its written response to comments received  
8 within the comment period. Within thirty (30) days of the close  
9 of the comment period on a draft primary report, the Army shall  
10 transmit to U.S. EPA and Ecology a draft final primary report,  
11 which shall include the Army's response to all written comments  
12 received within the comment period. While the resulting draft  
13 final report shall be the responsibility of the Army, it shall be  
14 the product of consensus to the maximum extent possible.

15           20.17       The Army may extend the thirty (30) day  
16 period for either responding to comments on a draft report or for  
17 issuing the draft final primary report for an additional twenty  
18 (20) days by providing notice to U.S. EPA and Ecology. In  
19 appropriate circumstances, this time period may be further  
20 extended in accordance with Part XXV.

21           H.   Availability of Dispute Resolution for

22                   Draft Final Primary Documents

23           20.18       Dispute resolution shall be available to the  
24 Parties for draft final primary reports as set forth in Part XXI.

25           20.19       When dispute resolution is invoked on a  
26 draft primary report, work may be stopped in accordance with the

1 procedures set forth in Part XXI regarding dispute resolution.

2 I. Finalization of Reports

3 20.20 The draft final primary report shall serve  
4 as the final primary report if no Party invokes dispute  
5 resolution regarding the document or, if invoked, at completion  
6 of the dispute resolution process should the Army's position be  
7 sustained. If the Army's determination is not sustained in the  
8 dispute resolution process, the Army shall prepare, within not  
9 more than thirty-five (35) days, a revision of the draft final  
10 report which conforms to the results of dispute resolution. In  
11 appropriate circumstances, the time period for this revision  
12 period may be extended in accordance with Part XXV hereof.

13 J. Subsequent Modifications of Final Reports

14 20.21 Following finalization of any primary report  
15 pursuant to Paragraph 20.20 above, U.S. EPA, Ecology, or the Army  
16 may seek to modify the report, including seeking additional field  
17 work, pilot studies, computer modeling, or other supporting  
18 technical work, only as provided in Paragraphs 20.22 and 20.23.

19 20.22 U.S. EPA, Ecology, or the Army may seek to  
20 modify a report after finalization if it determines, based on new  
21 information (i.e., information that became available, or  
22 conditions that became known, after the report was finalized)  
23 that the requested modification is necessary. U.S. EPA, Ecology,  
24 or the Army may seek such a modification by submitting a concise  
25 written request to the Project Managers of the other Parties.  
26 The request shall specify the nature of the requested

1 modification and how the request is based on new information.

2           20.23       In the event that a consensus among the  
3 Parties is reached, the modification shall be incorporated by  
4 reference and become fully enforceable under the Agreement  
5 pursuant to Part XXXIII. In the event that a consensus is not  
6 reached by the Project Managers on the need for a modification,  
7 either U.S. EPA, Ecology, or the Army may invoke dispute  
8 resolution as provided in Part XXI to determine if such  
9 modification shall be conducted. Modification of a report shall  
10 be required only upon a showing that: (1) the requested  
11 modification is based on significant new information, and (2) the  
12 requested modification could be of significant assistance in  
13 evaluating impacts on the public health or the environment, in  
14 evaluating the selection of remedial alternatives, or in  
15 protecting human health and the environment.

16           20.24       Nothing in this Subpart shall alter  
17 U.S. EPA's or Ecology's ability to request the performance of  
18 additional work which was not contemplated by this Agreement.  
19 The Army's obligation to perform such work must be established by  
20 either a modification of a report or document or by amendment to  
21 this Agreement.

22                               XXI.

23                               RESOLUTION OF DISPUTES

24           21.1       Except as specifically set forth elsewhere  
25 in this Agreement, if a dispute arises under this Agreement, the  
26 procedures of this Part shall apply. All Parties to this

1 Agreement shall make reasonable efforts to informally resolve  
2 disputes at the Project Manager or immediate supervisor level.  
3 If resolution cannot be achieved informally, the procedures of  
4 this Part shall be implemented to resolve a dispute.

5           21.2           Within thirty (30) days after: (1) the  
6 period established for review of a draft final primary document  
7 pursuant to this Agreement, or (2) any action which leads to or  
8 generates a dispute, the disputing Party shall submit to the  
9 Dispute Resolution Committee ("DRC") a written statement of  
10 dispute setting forth the nature of the dispute, the work  
11 affected by the dispute, the disputing Party's position with  
12 respect to the dispute and the technical, legal, or factual  
13 information the disputing Party is relying upon to support its  
14 position.

15           21.3           Prior to any Party's issuance of a written  
16 statement of dispute, the disputing Party shall engage the other  
17 Party in informal dispute resolution among the Project Managers  
18 and/or their immediate supervisors. During this informal dispute  
19 resolution period the Parties shall meet as many times as are  
20 necessary to discuss and attempt resolution of the dispute.

21           21.4           The DRC will serve as a forum for resolution  
22 of disputes for which agreement has not been reached through  
23 informal dispute resolution. The Parties shall each designate  
24 one individual and an alternate to serve on the DRC. The  
25 individuals designated to serve on the DRC shall be employed at  
26 the policy level (SES or equivalent) or be delegated the

1 authority to participate on the DRC for the purposes of dispute  
2 resolution under this Agreement. The U.S. EPA representative on  
3 the DRC is the Hazardous Waste Division Director ("Division  
4 Director") of U.S. EPA's Region 10. The Army's designated member  
5 is the Garrison Commander. Ecology's designated member is the  
6 Hazardous Waste Investigation and Cleanup Program Manager of the  
7 Washington Department of Ecology. Written notice of any  
8 delegation of authority from a Party's designated representative  
9 on the DRC shall be provided to all other Parties.

10           21.5           Following elevation of a dispute to the DRC,  
11 the DRC shall have twenty-one (21) days to unanimously resolve  
12 the dispute and issue a written decision. If the DRC is unable to  
13 unanimously resolve the dispute within this twenty-one (21) day  
14 period, the written statement of dispute shall be forwarded to  
15 the Senior Executive Committee (SEC) for resolution within seven  
16 (7) days after the close of the twenty-one (21) day resolution  
17 period.

18           21.6           The SEC will serve as the forum for  
19 resolution of disputes for which agreement has not been reached  
20 by the DRC. The U.S. EPA representative on the SEC is the  
21 Regional Administrator of U.S. EPA's Region 10. The Army's  
22 representative on the SEC is the Deputy for Environment, Safety  
23 and Occupational Health, Assistant Secretary of the Army  
24 (Installation and Logistics) ["DESOH, ASA (I&L)"]. Ecology's  
25 representative on the SEC is the Director of the Washington  
26 Department of Ecology. The SEC members shall, as appropriate,

1 confer, meet, and exert their best efforts to resolve the dispute  
2 and issue a written decision. If unanimous resolution of the  
3 dispute is not reached within twenty-one (21) days, U.S. EPA's  
4 Regional Administrator shall issue a written position on the  
5 dispute. The Army or Ecology may, within fourteen (14) days of  
6 the Regional Administrator's issuance of U.S. EPA's position,  
7 issue a written notice elevating the dispute to the Administrator  
8 of U.S. EPA for resolution in accordance with all applicable laws  
9 and procedures. In the event that the Army or Ecology elect not  
10 to elevate the dispute to the Administrator within the designated  
11 fourteen (14) day escalation period, the Army and/or Ecology  
12 shall be deemed to have agreed with the Regional Administrator's  
13 written position with respect to the dispute.

14           21.7           Upon escalation of a dispute to the  
15 Administrator of U.S. EPA pursuant to Paragraph 21.6, the  
16 Administrator will review and resolve the dispute within  
17 twenty-one (21) days. Upon request, and prior to resolving the  
18 dispute, the U.S. EPA Administrator shall meet and confer with  
19 the Army's Secretariat Representative and a representative from  
20 Ecology to discuss the issue(s) under dispute. The Administrator  
21 will provide notice to all Parties of any Party's request to meet  
22 or confer with respect to any such dispute and will provide an  
23 adequate opportunity for all Parties to participate in any  
24 meeting or conference convened to resolve such dispute. Upon  
25 resolution, the Administrator shall provide the Army and Ecology  
26 with a written final decision setting forth resolution of the



1 dispute. The duties of the Administrator set forth in this Part  
2 shall not be delegated.

3           21.8           The pendency of any dispute under this Part  
4 shall not affect the Army's responsibility for timely performance  
5 of the work required by this Agreement, except that the time  
6 period for completion of work affected by such dispute shall be  
7 extended for a period of time usually not to exceed the actual  
8 time taken to resolve any good faith dispute in accordance with  
9 the procedures specified herein. All elements of the work  
10 required by this Agreement which are not affected by the dispute  
11 shall continue and be completed in accordance with the applicable  
12 schedule.

13           21.9           When dispute resolution is in progress, work  
14 affected by the dispute will immediately be discontinued if the  
15 Division Director for U.S. EPA's Region 10 or the Ecology Program  
16 Manager request, in writing, that work related to the dispute be  
17 stopped because, in U.S. EPA's or Ecology's opinion, such work is  
18 inadequate or defective, and such inadequacy or defect is likely  
19 to yield an adverse effect on human health or the environment, or  
20 is likely to have a substantial adverse effect on the remedy  
21 selection or implementation process. To the extent possible,  
22 U.S. EPA and Ecology shall consult with all Parties prior to  
23 initiating a work stoppage request. After stoppage of work, if  
24 the Army believes that the work stoppage is inappropriate or may  
25 have potential significant adverse impacts, the U.S. Army may  
26 meet with the U.S. EPA Division Director and Ecology equivalent

1 to discuss the work stoppage. Following this meeting, and  
2 further consideration of the issues, the U.S. EPA Division  
3 Director will issue, in writing, a final decision with respect to  
4 the work stoppage. The final written decision of the U.S. EPA  
5 Division Director may immediately be subjected to formal dispute  
6 resolution. Such dispute may be brought directly to either the  
7 DRC or the SEC, at the discretion of the Army or Ecology.

8           21.10       Within twenty-one (21) days of resolution of  
9 a dispute pursuant to the procedures specified in this Part, the  
10 Army shall incorporate the resolution and final determination  
11 into the appropriate plan, schedule, or procedures and proceed to  
12 implement this Agreement according to the amended plan, schedule,  
13 or procedures.

14           21.11       Resolution of a dispute pursuant to this  
15 Part of the Agreement constitutes a final resolution of that  
16 dispute arising under this Agreement. All Parties shall abide by  
17 all terms and conditions of any final resolution of dispute  
18 obtained pursuant to this Part of this Agreement.

19  
20                           XXII.

21                           ENFORCEABILITY

22           22.1       The Parties agree that:

23           (a) Upon its effective date, this Agreement is  
24 enforceable by any person pursuant to Section 310 of CERCLA,  
25 42 U.S.C. § 9659, and any violation of such standard, regulation,  
26 condition, requirement, or order will be subject to civil

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

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

(c) All terms and conditions of this Agreement which relate to interim or final remedial actions, including corresponding timetables, deadlines, or schedules, and all work associated with the interim or final remedial actions, shall be enforceable by any person pursuant to Section 310(c) of CERCLA, 42 U.S.C. § 9659(c), and any violation of such terms or conditions will be subject to civil penalties under Sections 310(c) and 109 of CERCLA, 42 U.S.C. §§ 9659 and 9609; and

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

22.2 Nothing in this Agreement shall be construed as authorizing any person to seek judicial review of any action or work where review is barred by any provision of CERCLA, including Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

1           22.3       The Parties agree that all Parties shall  
2 have the right to enforce the terms of this Agreement.

3  
4                               XXIII.

5                               STIPULATED PENALTIES

6           23.1       In the event that the Army fails to submit a  
7 primary document to U.S. EPA and Ecology pursuant to the  
8 appropriate timetable or deadline in accordance with the  
9 requirements of this Agreement, or fails to comply with a term or  
10 condition of this Agreement which relates to an interim or final  
11 remedial action, U.S. EPA may assess, after consultation with  
12 Ecology, a stipulated penalty against the Army. A stipulated  
13 penalty may be assessed in an amount not to exceed five thousand  
14 dollars (\$5,000) for the first week (or part thereof), and ten  
15 thousand dollars (\$10,000) for each additional week (or part  
16 thereof) for which a failure set forth in this Paragraph occurs.

17           23.2       Upon determining that the Army has failed in  
18 a manner set forth in Paragraph 23.1, U.S. EPA shall so notify  
19 the Army in writing. If the failure in question is not already  
20 subject to dispute resolution at the time such notice is  
21 received, the Army shall have fifteen (15) days after receipt of  
22 the notice to invoke dispute resolution on the question of  
23 whether the failure did, in fact, occur. The Army shall not be  
24 liable for the stipulated penalty assessed by U.S. EPA if the  
25 failure is determined, through the dispute resolution process,  
26 not to have occurred. No assessment of a stipulated penalty

1 shall be final until the conclusion of dispute resolution  
2 procedures related to the assessment of the stipulated penalty.

3           23.3           The annual reports required by Section  
4 120(e)(5) of CERCLA, 42 U.S.C. § 9620(e)(5), shall include, with  
5 respect to each final assessment of a stipulated penalty against  
6 the Army under this Agreement, each of the following:

- 7           a.   The facility responsible for the failure;
- 8           b.   A statement of the facts and circumstances giving  
9               rise to the failure;
- 10          c.   A statement of any administrative or other  
11               corrective action taken at the relevant facility,  
12               or a statement of why such measures were  
13               determined to be inappropriate;
- 14          d.   A statement of any additional action taken by or  
15               at the facility to prevent recurrence of the same  
16               type of failure; and
- 17          e.   The total dollar amount of the stipulated penalty  
18               assessed for the particular failure.

19           23.4           Stipulated penalties assessed pursuant to  
20 this Part shall be payable to the Hazardous Substances Response  
21 Trust Fund only in the manner and to the extent expressly  
22 provided for in Acts authorizing funds for, and appropriations  
23 to, the Department of Defense.

24           23.5           In no event shall this Part give rise to a  
25 stipulated penalty in excess of the amount set forth in Section  
26 109 of CERCLA, 42 U.S.C. § 9609.

1           23.6           This Part shall not affect the Army's  
2 ability to obtain an extension of a timetable, deadline, or  
3 schedule pursuant to Part XIII of this Agreement.

4           23.7           Nothing in this Agreement shall be construed  
5 to render any officer or employee of the Army personally liable  
6 for the payment of any stipulated penalty assessed pursuant to  
7 this Part.

8                           XXIV.

9                           DEADLINES

10           24.1           With regard to the operable units known as  
11 Landfill No. 5 and the Logistics Center, the deadlines have been  
12 met for the submittal of the Scope of Work and the RI/FS Work  
13 Plan, including Sampling and Analysis Plan, QAPP, Community  
14 Relations Plan, Data Management Plan, and Health and Safety Plan  
15 pursuant to this Agreement.

16           24.2           Within six (6) months of the effective date  
17 of this Agreement, the Army shall submit a Hazardous Waste  
18 Evaluation Report to allow U.S. EPA and Ecology to determine  
19 which hazardous waste units qualify as operable units. Hazardous  
20 waste units which do not qualify as operable units shall not be  
21 remediated under the terms of this Agreement.

22           24.3           Within twenty-one (21) days of the effective  
23 date of this Agreement, the Army shall propose target dates for  
24 completion of the draft secondary documents identified in  
25 Paragraph 20.7(d)-(h), and deadlines for completion of the  
26 following draft primary documents with respect to Landfill No. 5

1 and the Logistics Center:

2 (a) Risk Assessment

3 (b) RI Report

4 (c) Initial Screening of Alternatives

5 (d) FS Report

6 (e) ROD

7 24.4 Within twenty-one (21) days of the final  
8 determination that an operable unit qualifies for remediation  
9 under the terms of this Agreement, the Army shall propose target  
10 dates for completion of the draft secondary documents identified  
11 in Paragraph 20.7(a)-(h), and deadlines for completion of the  
12 draft primary documents identified in Paragraph 20.5(b)-(h).

13 24.5 Within fifteen (15) days of receipt,  
14 U.S. EPA, in conjunction with Ecology, shall review and provide  
15 comments to the Army regarding the proposed deadlines. Within  
16 fifteen (15) days following receipt of the comments the Army  
17 shall, as appropriate, make revisions and reissue the proposal.  
18 The Parties shall meet as necessary to discuss and finalize the  
19 proposed deadlines. If the Parties agree on proposed deadlines,  
20 the finalized deadlines shall be incorporated into the  
21 appropriate Work Plans. If the Parties fail to agree within  
22 thirty (30) days on the proposed deadlines, the matter shall  
23 immediately be submitted for dispute resolution pursuant to  
24 Part XXI of this Agreement. The final deadlines established  
25 pursuant to this paragraph shall be published by U.S. EPA, in  
26 conjunction with Ecology.

1           24.6           Within twenty-one (21) days of issuance of  
2 the Record of Decision, the Army shall propose target dates for  
3 completion of the draft secondary documents identified in  
4 Paragraph 20.7(i)-(j), and deadlines for completion of the  
5 following draft primary documents:

6           (a) Remedial Design

7           (b) Remedial Action Work Plan

8 These deadlines shall be proposed, finalized, and published  
9 utilizing the same procedures set forth in Paragraph 24.5.

10           24.7           The deadlines set forth in this Part, or to  
11 be established as set forth in this Part, may be extended  
12 pursuant to Part XXV of this Agreement. The Parties recognize  
13 that one possible basis for extension of the deadlines for  
14 completion of the Remedial Investigation and Feasibility Study  
15 Reports is the identification of significant new Site conditions  
16 during the performance of the Remedial Investigation.

17  
18                           XXV.

19                           EXTENSIONS

20           25.1           Either a timetable and deadline or a  
21 schedule shall be extended upon receipt of a timely request for  
22 extension and when good cause exists for the requested extension.  
23 Any request for extension by the Army shall be submitted in  
24 writing to the Project Managers and shall specify:

25  
26           (a) The timetable and deadline or the schedule that  
27 is sought to be extended;



- (b) The length of the extension sought;
- (c) The good cause(s) for the extension; and
- (d) Any related timetable and deadline or schedule 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 which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule; and
- (e) Any other event or series of events mutually agreed to by the Parties as constituting good cause.

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

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

1 nonconcurrence an explanation of the basis for its position.

2           25.4       If there is consensus among the Parties that  
3 the requested extension is warranted, the Army shall extend the  
4 affected timetable and deadline or schedule accordingly. If  
5 there is no consensus among the Parties as to whether all or part  
6 of the requested extension is warranted, the timetable and  
7 deadline or schedule shall not be extended except in accordance  
8 with a determination resulting from the dispute resolution  
9 process.

10           25.5       Within seven (7) days of receipt of a  
11 statement of nonconcurrence with the requested extension, the  
12 Army may invoke dispute resolution.

13           25.6       A timely and good faith request for an  
14 extension shall toll any assessment of stipulated penalties or  
15 application for judicial enforcement of the affected timetable  
16 and deadline or schedule until a decision is reached on whether  
17 the requested extension will be approved. If dispute resolution  
18 is invoked and the requested extension is denied, stipulated  
19 penalties may be assessed and may accrue from the date of the  
20 original timetable and deadline or schedule. Following the grant  
21 of an extension, an assessment of stipulated penalties or an  
22 application for judicial enforcement may be sought only to compel  
23 compliance with the timetable and deadline or schedule as most  
24 recently extended.

1 XXVI.

2 FORCE MAJEURE

3 26.1 Force Majeure shall mean any event arising  
4 from causes beyond the control of a Party that causes a delay in  
5 or prevents the performance of any obligation under this  
6 Agreement, including, but not limited to:

7 (a) acts of God; fire, war; insurrection; civil  
8 disturbance; or explosion;

9 (b) unanticipated breakage or accident to machinery,  
10 equipment, or lines of pipe despite reasonably diligent  
11 maintenance;

12 (c) adverse weather conditions that could not be  
13 reasonably anticipated, or unusual delay in transportation;

14 (d) restraint by court order or order of public  
15 authority;

16 (e) inability to obtain, at a reasonable cost and  
17 after exercise of reasonable diligence, any necessary  
18 authorizations, approvals, permits, or licenses due to action or  
19 inaction of any governmental agency or authority other than the  
20 Army;

21 (f) delays caused by compliance with applicable  
22 statutes or regulations governing contracting, procurement, or  
23 acquisition procedures, despite the exercise of reasonable  
24 diligence; and

25 (g) insufficient availability of appropriated funds,  
26 if Army shall have made timely request for such funds as part of

1 the budgetary process as set forth in Section XXVIII of this  
2 Agreement. If such an event occurs, Ecology may exercise its  
3 rights as provided in Paragraph 27.6, but U.S. EPA shall be bound  
4 by this force majeure and shall not assess stipulated penalties.

5 26.2 Force Majeure shall also include any strike  
6 or other labor dispute, whether or not within the control of the  
7 Parties affected thereby. Force Majeure shall not include  
8 increased costs or expenses of response actions, whether or not  
9 anticipated at the time such response actions were initiated.

10 26.3 Any claim of Force Majeure shall be subject  
11 to dispute resolution and, where applicable, to the limitations  
12 of Paragraph 27.6.

13 XVII.

14 FUNDING

15 27.1 It is the expectation of the Parties to this  
16 Agreement that all obligations of the Army arising under this  
17 Agreement will be fully funded. The Army agrees to seek  
18 sufficient funding through the Department of Defense budgetary  
19 process to fulfill its obligations under this Agreement.

20 27.2 In accordance with Section 120(e)(5)(B) of  
21 CERCLA, 42 U.S.C. § 9620(e)(5)(B), the Army shall include in its  
22 annual report to Congress the specific cost estimates and  
23 budgetary proposals associated with the implementation of this  
24 Agreement.

25 27.3 Funds authorized and appropriated annually  
26 by Congress under the "Environmental Restoration, Defense"

1 appropriation in the Department of Defense Appropriation Act and  
2 allocated by the DASD(E) to the Army will be the source of funds  
3 for activities required by this Agreement consistent with Section  
4 211 of SARA, 10 U.S.C. Chapter 160. However, should the  
5 Environmental Restoration, Defense appropriation be inadequate in  
6 any year to meet the total Army CERCLA implementation  
7 requirements, the Department of Defense shall employ and the Army  
8 shall follow a standardized Department of Defense prioritization  
9 process which allocates that year's appropriations in a manner  
10 which maximizes the protection of human health and the  
11 environment. A standardized Department of Defense prioritization  
12 model shall be developed and utilized with the assistance of  
13 U.S. EPA and Ecology.

14 27.4 Any requirement for the payment or  
15 obligation of funds, including stipulated penalties, by Army  
16 established by the terms of this Agreement shall be subject to  
17 the availability of appropriated funds, and no provision herein  
18 shall be interpreted to required obligation or payment of funds  
19 in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. In  
20 cases where payment or obligation of funds, including stipulated  
21 penalties, would constitute a violation of the Anti-Deficiency  
22 Act, the dates established requiring the payment or obligation of  
23 such funds shall be appropriately adjusted.

24 27.5 If appropriated funds are not available to  
25 fulfill the Army's obligations under this Agreement, U.S. EPA and  
26 Ecology reserve the right to initiate an action against any other

1 person or to take any response action which would be appropriate  
2 absent this Agreement.

3           27.6           Army maintains that any requirement for the  
4 payment or obligation of funds under this Agreement is subject to  
5 the availability of appropriated funds, and that the  
6 unavailability of such funds constitutes a valid defense to any  
7 judicial action that might be brought to enforce the terms of  
8 this Agreement. Notwithstanding Paragraphs 27.1, 27.2, 27.3,  
9 27.4, and 27.5 above, Ecology does not agree that lack of  
10 appropriation or funding constitutes a valid defense to  
11 performance by the Army. However, the Parties agree and  
12 stipulate that it is premature to raise and adjudicate the  
13 validity of such a defense at this time. If sufficient funds are  
14 not available to fulfill Army's obligations under this Agreement,  
15 the Parties shall meet to discuss the funding shortfall, the ways  
16 of resolving it, and whether it is appropriate to adjust the  
17 deadlines set forth pursuant to Part XXIV affected by the funding  
18 shortfall. Any Party may elevate the issue(s) directly to the  
19 SEC for resolution. Six (6) months following the failure of Army  
20 to meet a deadline because of lack of funding, Ecology shall have  
21 the right to seek judicial enforcement of this Agreement. This  
22 Paragraph is not subject to Part XXI, but does not exclude the  
23 consensual use of Part XXV. Acceptance of this Paragraph 27.6  
24 does not constitute a waiver by the Army of the applicability of  
25 any appropriate provisions of the Anti-Deficiency Act, 31 U.S.C.  
26 § 1341, to the terms of this Agreement.

XXVIII.

RECOVERY OF EXPENSES

28.1 Army and U.S. EPA agree to amend this Part at a later date in accordance with any subsequent resolution of the currently contested issue of cost reimbursement.

28.2 Army agrees to request funding and reimburse Ecology, subject to the conditions and limitations set forth in this Part; and subject to Section XXVII, for all reasonable costs it incurs in providing services in direct support of Army's environmental restoration activities at the Site pursuant to this Agreement.

28.3 Reimbursable expenses shall consist only of actual expenditures required to be made and actually made by Ecology in providing the following assistance to Army:

(a) Timely technical review and substantive comment on reports or studies which Army prepares in support of its response actions and submits to Ecology;

(b) Identification and explanation of unique state requirements applicable to military installations in performing response actions, especially state ARARs;

(c) Field visits to ensure cleanup activities are implemented in accordance with appropriate state requirements, or in accordance with agreed upon conditions between Ecology and Army that are established in the framework of this Agreement;

(d) Support and assistance to Army in the conduct of public participation activities in accordance with federal and

1 state requirements for public involvement;

2 (e) Participation in the review and comment functions  
3 of Army Technical Review Committees; and

4 (f) Other services specified in this Agreement.

5 28.4 Within ninety (90) days after the end of  
6 each quarter of the federal fiscal year, Ecology shall submit to  
7 Army an accounting of all state costs actually incurred during  
8 that quarter in providing direct support services under this  
9 Part. Such accounting shall be accompanied by cost summaries and  
10 be supported by documentation which meets federal auditing  
11 requirements. The summaries will set forth employee hours and  
12 other expenses by major type of support service. All costs  
13 submitted must be for work directly related to implementation of  
14 this Agreement and not inconsistent with either the NCP or the  
15 requirements described in OMB Circulars A-87 (Cost Principles for  
16 State and Local Governments) and A-128 (Audits for State and  
17 Local Cooperative Agreements with State and Local Governments)  
18 and Standard Forms 424 and 270. Army has the right to audit cost  
19 reports used by the State to develop the cost summaries. Before  
20 the beginning of each fiscal year, the State shall supply a  
21 budget estimate of what it plans to do in the next year in the  
22 same level of detail as the billing documents.

23 28.5 Except as allowed pursuant to Paragraphs  
24 28.6 and 28.7, within ninety (90) days of receipt of the  
25 accounting provided pursuant to Paragraph 28.4, Army shall  
26 reimburse the State in the amount set forth in the accounting.



1           28.6           In the event Army contends that any of the  
2 costs set forth in the accounting provided pursuant to Paragraph  
3 28.4 are not properly payable, the matter shall be resolved  
4 through a bilateral dispute resolution process set forth in  
5 Paragraph 28.9.

6           28.7           The amount of reimbursement from Army to  
7 Ecology for oversight activities associated with Landfill No. 5  
8 and the Logistics Center shall not exceed THREE HUNDRED THOUSAND  
9 (\$300,000.00) dollars during the lifetime of this Agreement and  
10 not more than SEVENTY-FIVE THOUSAND (\$75,000.00) dollars during  
11 any single fiscal year. Within thirty (30) days of the approval  
12 by U.S. EPA and Ecology of the Army Hazardous Waste Evaluation  
13 Report, this Agreement shall be amended to include the amount  
14 required for oversight activities associated with the remaining  
15 operable units. Either Army or Ecology may request, on the basis  
16 of significant upward or downward revisions in the Army estimate  
17 of its total lifetime costs through construction used above, a  
18 renegotiation of the Cap. Failing an agreement, either Army or  
19 Ecology may initiate dispute resolution in accordance with  
20 Paragraph 28.9. Circumstances could arise whereby fluctuations  
21 in Army estimates or actual final costs through the construction  
22 of the final remedial action creates a situation where Ecology  
23 receives reimbursement in excess of the estimated amount of these  
24 costs. Under these circumstances, the State remains entitled to  
25 payment for services rendered prior to the completion of a new  
26 estimate if the services are within the ceiling applicable under

1 the previous estimate. This negotiated reimbursement amount  
2 reflects the judgment of Army and Ecology that:

3 (a) Funding of support services must be constrained  
4 so as to avoid unnecessary diversion of the limited Defense  
5 Environmental Restoration Account funds available for the overall  
6 cleanup; and

7 (b) Support services should not be disproportionate  
8 to overall project costs and budget.

9 28.8 Ecology agrees to seek reimbursement for its  
10 expenses solely through the mechanisms established in this Part,  
11 and reimbursement provided under this Section shall be in  
12 settlement of any claims for state response costs relative to  
13 Army's environmental restoration activities at the Site.

14 28.9 Part XXI notwithstanding, this Paragraph  
15 shall govern any dispute between Army and Ecology regarding the  
16 application of this Part or any matter controlled by this Part  
17 including, but not limited to, allowability of expenses and  
18 limits on reimbursement. While it is the intent of Army and  
19 Ecology that these procedures shall govern resolution of disputes  
20 concerning Ecology reimbursement, informal dispute resolution is  
21 encouraged.

22 (a) Army and Ecology Project Managers shall be the  
23 initial points of contact for coordination of dispute resolution  
24 under Paragraph 28.9.

25 (b) If Army and Ecology Project Managers are unable  
26 to resolve a dispute, the matter shall be referred to the

1 Installation Commander or his duly designated representative, and  
2 the Assistant Director, Waste Management, Washington Department  
3 of Ecology, as soon as practicable, but in any event within five  
4 (5) working days after the dispute is elevated by the Project  
5 Managers.

6 (c) If the Installation Commander or his duly  
7 designated representative, and the Assistant Director, Waste  
8 Management, Washington Department of Ecology, are unable to  
9 resolve the dispute within ten (10) working days, the matter  
10 shall be elevated to the Director, Washington Department of  
11 Ecology, and the Deputy Assistant Secretary of the Army (I,L&E).

12 (d) In the event that the Director, Washington  
13 Department of Ecology, and the Deputy Assistant Secretary of the  
14 Army (I,L&E), are unable to resolve a dispute, Ecology retains  
15 any legal and equitable remedies it may have to recover its  
16 expenses. In addition, Ecology may withdraw from this Agreement  
17 by giving ninety (90) days notice to the other Parties.

18 28.10 Nothing herein shall be construed to limit  
19 the ability of Army to contract with Ecology for technical  
20 services that could otherwise be provided by a private contractor  
21 including, but not limited to:

- 22 (a) Identification, investigation, and cleanup of any  
23 contamination beyond the boundaries of the Site;
  - 24 (b) Laboratory analysis; or
  - 25 (c) Data collection for field studies.
- 26  
27

1           28.11       Army and Ecology agree that the terms and  
2 conditions of this Part shall become null and void when Ecology  
3 enters into a Defense/State Memorandum of Agreement ("DSMOA")  
4 with the U.S. Department of Defense ("DOD") which addresses  
5 Ecology reimbursement.

6  
7                               XXIX.

8                               OTHER CLAIMS

9           29.1       Nothing in this Agreement shall constitute  
10 or be construed as a bar or release from any claim, cause of  
11 action, or demand in law or equity by or against any persons,  
12 firm, partnership, or corporation not a signatory to this  
13 Agreement for any liability it may have arising out of or  
14 relating in any way to this Agreement or the generation, storage,  
15 treatment, handling, transportation, release, or disposal of any  
16 hazardous substances, hazardous wastes, hazardous constituents,  
17 pollutants, or contaminants found at, taken to, or taken from  
18 Fort Lewis.

19           29.2       Unless otherwise expressly agreed, U.S. EPA  
20 and Ecology shall not be held as a Party to any contract entered  
21 into by the Army to implement the requirements of this Agreement.

22           29.3       The Army shall notify the appropriate  
23 federal and state natural resource trustees as required by  
24 Section 104(b)(2) of CERCLA, 42 U.S.C. § 9604(e), and Section  
25 2(e)(2) of Executive Order 12580. Except as provided herein, the  
26 Army is not released from any liability which they may have

1 pursuant to any provisions of state and federal law, including  
2 any claim for damages for liability to destruction or loss of  
3 natural resources.

4           29.4       This Agreement shall not restrict the  
5 Parties from taking any legal or response action or asserting any  
6 defense for any matter not specifically part of the work covered  
7 by this Agreement.

8  
9                   XXX.

10                   OTHER APPLICABLE LAWS

11           30.1       All actions required to be taken pursuant to  
12 this Agreement shall be undertaken in accordance with the  
13 requirements of all applicable state and federal laws and  
14 regulations unless an exemption from such requirements is  
15 specifically provided in this Agreement, CERCLA, RCRA, or the  
16 NCP.

17                   XXXI.

18                   CONFIDENTIAL INFORMATION

19           31.1       The Army may assert on its own behalf or on  
20 behalf of a contractor, subcontractor, or consultant a  
21 confidentiality claim covering all or part of the information  
22 requested by this Agreement pursuant to Section 104(e) of CERCLA,  
23 42 U.S.C. § 9604(e), and 40 C.F.R. Part 2, Subpart B. Analytical  
24 data shall not be claimed as confidential by the Army.  
25 Information determined to be confidential by U.S. EPA pursuant to  
26 40 C.F.R. Part 2 shall be afforded the protection specified

1 therein and such information shall be treated by Ecology as  
2 confidential, to the extent permitted by state law. If Ecology  
3 is unable to afford the confidentiality protection, the Army is  
4 not required to submit the data to Ecology. If no claim of  
5 confidentiality accompanies the information when it is submitted  
6 to either regulatory agency, the information may be made  
7 available to the public without further notice to the Army.

8  
9 XXXII.

10 TRANSFER OF PROPERTY

11 32.1 Conveyance of title, easement, or other  
12 interest in this Site shall be in accordance with Section 120 of  
13 CERCLA, 42 U.S.C. § 9620, and applicable regulations.

14 XXXIII.

15 AMENDMENT OF AGREEMENT

16 33.1 This Agreement may be amended by unanimous  
17 agreement of the Army, Ecology, and U.S. EPA. Any such amendment  
18 shall be in writing, shall have as the effective date that date  
19 on which it is signed by all the Parties, and shall be  
20 incorporated into and modify this Agreement.

21  
22 XXXIV.

23 SEVERABILITY

24 34.1 If any provision of this Agreement is ruled  
25 invalid, illegal, or unconstitutional, the remainder of the  
26 Agreement shall not be affected by such ruling.

1 XXXV.

2 TERMINATION AND SATISFACTION

3 35.1 The provisions of this Agreement shall be  
4 deemed satisfied upon a consensus of the Parties that the Army  
5 has completed its obligations under the terms of this Agreement.  
6 Any Party may propose in writing the termination of this  
7 Agreement upon a showing that the requirements of this Agreement  
8 have been satisfied. A Party opposing termination of this  
9 Agreement shall serve its objection upon the proposing Party  
10 within thirty (30) days of receipt of the proposal. Any  
11 objection shall describe in detail the additional work needed to  
12 satisfy the requirements of the Agreement. Any Party may invoke  
13 dispute resolution as to the request for, or objection to, a  
14 proposal to terminate.

15  
16 XXVI.

17 EFFECTIVE DATE

18 36.1 This Agreement is effective upon signature  
19 by all the Parties to this Agreement.  
20  
21  
22  
23  
24  
25  
26  
27

Signature sheet for the foregoing Federal Facility  
Agreement for the Fort Lewis Military Reservation among the  
U.S. Environmental Protection Agency, the Department of the Army,  
and the Washington Department of Ecology.

*Lewis D. Walker*

*2/7/90*

LEWIS D. WALKER Approved January 26, 1990 Date  
Deputy Assistant Secretary of the Army (I,L,&E)  
Environment, Safety and Occupational Health

*C. A. H. Waller*

January 26, 1990

LIEUTENANT GENERAL C. A. H. WALLER Date  
Commander, I Corps and Fort Lewis

Represented by:

Richard D. McCurdy, Esq.



Signature sheet for the foregoing Federal Facility  
Agreement for the Fort Lewis Military Reservation among the  
U.S. Environmental Protection Agency, the Department of the Army,  
and the Washington Department of Ecology.

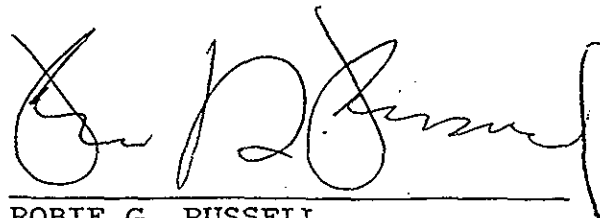
Christine O. Gregoire 1/25/90  
CHRISTINE O. GREGOIRE Date  
Director, Washington State Department of Ecology

Kenneth O. Eikenberry 1/29/90  
KENNETH O. EIKENBERRY Date  
Attorney General  
State of Washington

Represented by:

Jerry Ackerman, Esq.

Signature sheet for the foregoing Federal Facility  
Agreement for the Fort Lewis Military Reservation among the  
U.S. Environmental Protection Agency, the Department of the Army,  
and the Washington Department of Ecology.



Jan 29, 1990

ROBIE G. RUSSELL  
Regional Administrator, Region 10  
United States Environmental Protection Agency

Date

Represented by:

Monica Kirk, Esq.