

## **IAG COVER SHEET**

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Subject: Region 10, X

Author: DoD, Army, Oregon, OR, Department of Environmental Quality

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November 15, 1989

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Reply To  
Attn. Of: SO-125

Kurt Burkholder, Esq.  
1515 S.W. Fifth Avenue, Suite 410  
Portland, Oregon 97205

Roger Corman, Esq.  
Legal Office  
Tooele Army Depot  
Tooele, Utah 84074

Re: Interagency Agreement (IAG) for UMDA

Dear Kurt and Roger:

Please find enclosed a certified true copy of the UMDA IAG, dated September 19, 1989, for your files. By this letter, I also transmit the IAG to your Project Managers.

As provided in Paragraph 38.1, the Agreement became effective on October 31, 1989, the date by which all Parties had signed. Therefore, the Paragraph 24.2 submissions shall be mailed to the Project Managers by November 21, 1989. I assume UMDA provided timely public notice of the IAG as required in Paragraph 37.1.

Gentlemen, thank you and congratulations.

Sincerely,

A handwritten signature in cursive script, appearing to read "Monica".

Monica Kirk  
Assistant Regional Counsel

Enclosure

cc (w/encl.): Harry Craig, OOO  
Bill Dana, ODEQ  
Joan Jackson, USATHAMA  
George Hofer, EPA  
Chip Landman, EPA HQ  
Barbara Lithier, ORC  
Bub Loiselle, EPA  
J. Patrick Ritchie, UMDA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 10  
 AND  
 OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY  
 AND  
 UNITED STATES ARMY

IN THE MATTER OF: )  
 )  
 U.S. DEPARTMENT OF DEFENSE, ) FEDERAL FACILITY AGREEMENT  
 ) UNDER CERCLA SECTION 120  
 THE U.S. ARMY DEPOT )  
 ACTIVITY, UMATILLA )  
 HERMISTON, OREGON. )  
 ) ADMINISTRATIVE DOCKET  
 ) NUMBER: 1088-06-19-120  
 )

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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"), Region 10, 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 jointly referred to as "CERCLA/SARA" or "CERCLA") and Sections 6001, 3008(h), and 3004(u) and (v) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6961, 6928(h), 6924(u) and (v), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter jointly referred to as "RCRA/HSWA" or "RCRA") and Executive Order 12580;

1.2 U.S. EPA, Region 10 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, Sections 6001, 3008(h), and 3004(u) and (v) of RCRA, and Executive Order 12580;

1.3 The United States Army, Umatilla Depot Activity ("UMDA") enters into those portions of this Agreement that relate to the RI/FS pursuant to Section 120(e)(1) of

1 CERCLA, Sections 6001, 3008(h), and 3004(u) and (v) of RCRA,  
2 Executive Order 12580, the National Environmental Policy Act,  
3 42 U.S.C. § 4321, and the Defense Environmental Restoration  
4 Program ("DERP"), 10 U.S.C. § 2701 et seq.;

5 1.4 UMDA enters into those portions of this  
6 Agreement that relate to interim remedial actions and final  
7 remedial actions pursuant to Section 120(e)(2) of CERCLA,  
8 Sections 6001, 3004(u) and 3008(h) of RCRA, Executive Order  
9 12580 and the DERP; and

10 1.5 The Oregon Department of Environmental  
11 Quality ("ODEQ") enters this Agreement pursuant to Sections  
12 120(a)(4), (f), and (i), and 121(f) of CERCLA; Sections 3006 and  
13 6001 of RCRA; Oregon Revised Statutes ("ORS") 466.005 through  
14 466.225 and 466.880 of the state hazardous waste law; and ORS  
15 466.540 through 466.590 and 466.900 of the state superfund  
16 statute.

## 17 II.

### 18 DEFINITIONS

19 2.1 The terms used in this Agreement shall have  
20 the same meaning as defined in Section 101 of CERCLA, 42 U.S.C.  
21 § 4601, Section 1004 of RCRA, 42 U.S.C. § 6903, and the NCP,  
22 40 C.F.R. Part 300. In the event terms defined in RCRA conflict  
23 with terms defined in CERCLA or the NCP, the definitions in  
24 CERCLA shall control. In addition:

25 (A) "Agreement" shall mean this document and shall  
26

1 include all attachments, addenda, and modifications to this  
2 document. All such attachments, addenda, and modifications  
3 shall be incorporated herein by reference as an integral part of  
4 this document;

5 (B) "ARAR" or "Applicable or Relevant and Appropriate  
6 Requirements" shall mean any standard, requirement, criterion,  
7 or limitation as provided in Section 121(d)(2) of CERCLA,  
8 42 U.S.C. § 9621(d)(2);

9 (C) "Authorized representative" may include a Party's  
10 contractors or any other designee;

11 (D) "CERCLA" or "CERCLA/SARA" shall mean the  
12 Comprehensive Environmental Response, Compensation, and  
13 Liability Act, 42 U.S.C. § 9601 et seq., as amended by the  
14 Superfund Amendments and Reauthorization Act of 1986, Pub. L.  
15 99-499;

16 (E) "Days" shall mean calendar days, unless otherwise  
17 specified. Any submittal that under the terms of this Agreement  
18 would be due on a Saturday, Sunday, or a federal or state  
19 holiday shall be due on the following business day;

20 (F) "HSWA" shall mean the Hazardous and Solid Waste  
21 Amendments of 1984, P.L. 98-616;

22 (G) "Interim Remedial Actions" or "IRA" shall mean  
23 all discrete response actions implemented prior to a final  
24 remedial action which are taken to prevent or minimize the  
25 release of hazardous substances, pollutants, or contaminants so  
26 that they do not migrate or endanger public health, welfare, or  
27

1 the environment;

2 (H) "NCP" shall mean the National Oil and Hazardous  
3 Substances Pollution Contingency Plan, 40 C.F.R. Part 300, as  
4 amended;

5 (I) "ODEQ" shall mean the State of Oregon Department  
6 of Environmental Quality, its employees, and authorized  
7 representatives;

8 (J) "Operable Unit" or "Unit" shall mean a discrete  
9 portion of the UMDA Site, designated pursuant to this Agreement  
10 for the purpose of investigation and response action;

11 (K) "Paragraph" shall mean a numbered Paragraph of  
12 this Agreement;

13 (L) "Part" shall mean one of the thirty-eight (38)  
14 subdivisions of this Agreement, designated by a Roman numeral;

15 (M) "Parties" shall mean UMDA, U.S. EPA, and the  
16 State of Oregon, by and through ODEQ;

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

20 (O) "Site" shall mean the United States Army, Depot  
21 Activity, Umatilla, which is located in Umatilla and Morrow  
22 Counties in northeastern Oregon, approximately four (4) miles  
23 west of Hermiston, Oregon, and any off-post area contaminated by  
24 the migration of hazardous substances, pollutants, or  
25 contaminants from UMDA;

26 (P) "UMDA" shall mean the United States Army, Depot  
27



1 Activity, Umatilla, its employees, contractors, agents,  
2 successors, assigns, and authorized representatives;

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

6 (R) "Work Plan" shall mean the Remedial  
7 Investigation/Feasibility Study ("RI/FS") or Remedial  
8 Design/Remedial Action ("RD/RA") Work Plans, as defined in the  
9 NCP and incorporated herein by reference, which are prepared in  
10 accordance with Office of Solid Waste and Emergency Response  
11 (OSWER) Directive 9355.3.-01 (March 1988) and the NCP.  
12

### 13 III.

#### 14 PURPOSE

15 3.1 The general purposes of this Agreement are  
16 to:

17 (A) Ensure that the environmental impacts associated  
18 with past and present activities at the Site are thoroughly  
19 investigated and appropriate removal and remedial action(s)  
20 taken as necessary to protect the public health, welfare, and  
21 the environment;

22 (B) Establish a procedural framework and schedule for  
23 developing, implementing, and monitoring appropriate response  
24 actions at the Site in accordance with CERCLA, the NCP,  
25 Superfund guidance and policy, RCRA, RCRA guidance and policy;  
26 and applicable state law; and  
27

1 (C) Facilitate cooperation, exchange of information,  
2 and participation of the Parties in such actions.

3 3.2 Specifically, the purposes of this Agreement  
4 are to:

5 (A) Identify Interim Remedial Action ("IRA")  
6 alternatives which are appropriate at the Site prior to the  
7 implementation of final remedial action(s) for the Site. IRA  
8 alternatives shall be identified and proposed to the Parties as  
9 early as possible prior to formal proposal of IRA(s) to U.S. EPA  
10 and ODEQ pursuant to CERCLA and applicable state law. This  
11 process is designed to promote cooperation among the Parties in  
12 identifying IRA alternatives prior to selection of final IRA(s);

13 (B) Establish requirements for the performance of an  
14 RI to determine fully the nature and extent of the threat to the  
15 public health, welfare, or the environment caused by the release  
16 and threatened release of hazardous substances, pollutants, or  
17 contaminants at the Site and to establish requirements for the  
18 performance of an FS for the Site to identify, evaluate, and  
19 select alternatives for the appropriate remedial action(s) to  
20 prevent, mitigate, or abate the release or threatened release of  
21 hazardous substances, pollutants, or contaminants at the Site in  
22 accordance with CERCLA and applicable state law;

23 (C) Identify the nature, objective, and schedule of  
24 response actions to be taken at the Site. Response actions at  
25 the Site shall attain that degree of cleanup of hazardous  
26 substances, pollutants, or contaminants mandated by CERCLA and  
27

1 applicable state law;

2 (D) Implement the selected interim and final remedial  
3 action(s) in accordance with CERCLA and applicable state law,  
4 and meet the requirements of Section 120(e)(2) of CERCLA,  
5 42 U.S.C. § 9620(e)(2), for an interagency agreement between the  
6 Parties;

7 (E) Assure compliance with RCRA and other applicable  
8 federal and state hazardous waste laws;

9 (F) Coordinate response actions at the Site with the  
10 mission and support activities at UMDA;

11 (G) Expedite the cleanup process to the extent  
12 consistent with protection of human health and the environment;

13 (H) Provide ODEQ involvement in the initiation,  
14 development, selection, and enforcement of remedial actions to  
15 be undertaken at UMDA, including the review of all applicable  
16 data as it becomes available and the development of studies,  
17 reports, and action plans; and to identify and integrate state  
18 ARARs into the remedial action process; and

19 (I) Provide for operation and maintenance of any  
20 remedial action selected and implemented pursuant to this  
21 Agreement.

22  
23 IV.

24 PARTIES BOUND

25 4.1 This Agreement shall apply to and be binding  
26 upon the UMDA, U.S. EPA, and the State of Oregon. This  
27

Agreement shall also apply to subsequent owners and operators of any portion of the Site. UMDA agrees to include notice of this Agreement in any document transferring ownership and/or operation to any subsequent owners and operators of any portion of the Site in accordance with Section 120(h) of CERCLA, 42 U.S.C. § 9620(h), 40 C.F.R. §§ 264.119 and 264.120, and Part XXXII of this Agreement.

4.2 Each party shall notify the other parties of the identity of its contractors performing work under this Agreement. Each party shall provide copies of this Agreement to their primary contractors performing any work pursuant to this Agreement.

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

V.

## STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

5.1 The Parties intend to integrate UMDA's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, pollutants, or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. § 9601

1 et seq.; satisfy the corrective action requirements of Sections  
2 3004(u) and (v) of RCRA, 42 U.S.C. § 6924(u) and (v), for a RCRA  
3 permit, and Section 3008(h), 42 U.S.C. § 6928(h), for interim  
4 status facilities; and meet or exceed all applicable or relevant  
5 and appropriate federal and state laws and regulations, to the  
6 extent required by Section 121 of CERCLA, 42 U.S.C. § 9621, and  
7 applicable state law.

8           5.2           Based upon the foregoing, the Parties intend  
9 that any remedial action selected, implemented, and completed  
10 under this Agreement will be protective of human health and the  
11 environment such that remediation of releases covered by this  
12 Agreement shall obviate the need for further corrective action  
13 under RCRA (i.e., no further corrective action shall be  
14 required). The Parties agree that, with respect to releases of  
15 hazardous waste at or from operable units covered by this  
16 Agreement, RCRA shall be considered an applicable or relevant  
17 and appropriate requirement pursuant to Section 121 of CERCLA,  
18 42 U.S.C. § 9621. Releases or other hazardous waste activities  
19 not covered by this Agreement remain subject to all applicable  
20 state and federal requirements.

21           5.3           The Parties recognize that the requirement  
22 to obtain permits for response actions undertaken pursuant to  
23 this Agreement shall be as provided for in CERCLA and the NCP.  
24 The Parties further recognize that ongoing hazardous waste  
25 management activities at UMDA may require the issuance of  
26 permits under federal and state laws. This Agreement does not  
27

1 affect the requirements, if any, to obtain such permits or the  
2 authority of U.S. EPA or ODEQ to enforce compliance with such  
3 permits or interim status standards. However, if a permit is  
4 issued to UMDA for ongoing hazardous waste management activities  
5 at the Site, U.S. EPA and/or ODEQ shall reference and  
6 incorporate any appropriate provisions, including appropriate  
7 schedules and provisions for extension of such schedules, of  
8 this Agreement into such permit. The Parties intend that  
9 judicial review of any permit condition that incorporates a  
10 provision of this Agreement shall, to the extent review is  
11 authorized by law, only occur under the provisions of CERCLA.

12 5.4 Nothing in this Agreement shall alter the  
13 UMDA authority with respect to removal actions conducted  
14 pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.  
15

## 16 VI.

### 17 FINDINGS OF FACT

18 On the basis of investigations conducted at the Site,  
19 U.S. EPA and ODEQ have determined that:

20 6.1 UMDA is a nineteen thousand seven hundred  
21 twenty-eight (19,728) acre military reservation that was  
22 established as an ordnance depot in 1941. The installation lies  
23 in the semi-arid Columbia Plateau approximately three and  
24 one-half (3.5) miles south of the Columbia River. UMDA is  
25 located in Morrow and Umatilla Counties, Oregon.

26 6.2 UMDA is within the Umatilla Lowlands and is  
27  
28 FEDERAL FACILITY AGREEMENT, UMDA - Page 12 September 19, 1989

1 surrounded primarily by irrigated agricultural land. The  
2 lowlands are bordered on the west by hills adjacent to the  
3 Cascade Range. The Horse Haven Plateau borders the lowlands on  
4 the north while the Pendleton Plains mark the eastern boundary.  
5 Coyote Coulee is the most prominent surface feature, cutting  
6 across the Site in a northeast trend. No surface water bodies  
7 are present at UMDA.

8           6.3           Most hazardous waste activities at UMDA have  
9 been associated with munitions, including the disassembly,  
10 analysis, modification, reassembly, and repacking of  
11 chemical-filled munitions, containerized chemical agents, and  
12 conventional munitions which have been or are presently stored  
13 at UMDA. This includes, but is not limited to, white phosphorus  
14 projectiles, missiles, and missile fuels, such as unsymmetrical  
15 dimethyl hydrazine ("UDMH") and redfuming nitric acid ("RFNA").  
16 There are several open storage areas for bulk metals and ores.  
17 Specific disposal operations included release of wastewater from  
18 the previous and current Explosive Washout Plant to two leaching  
19 beds; leaching pits for UDMH and RFNA; and various deactivation,  
20 demolition, burning, or burial sites for sewage treatment  
21 sludge, munitions, and scrap. UMDA has also applied for a RCRA  
22 permit to incinerate toxic nerve agents, blister agents, and  
23 chemical-filled munitions.

24           6.4           The Initial Installation Assessment was  
25 conducted in December 1978. It concluded that the potential for  
26 contaminants from UMDA to leach into groundwater and migrate  
27

1 beyond the installation boundary was present. An Environmental  
2 Contamination Survey and Assessment ("Study") of UMDA was  
3 conducted on-site in 1981. This Study concluded that the  
4 explosive washout lagoons caused contamination of the alluvial  
5 aquifer. A plume of RDX (an explosive compound) approximately  
6 forty-five (45) acres in size around the washout lagoons was  
7 identified. The Study also showed high nitrate levels in some  
8 of the monitor wells.

9           6.5           A Remedial Investigation of the washout  
10 lagoon area, active and inactive landfills, deactivation  
11 furnace, several septic tanks, and selected sites within the  
12 Ammunition Demolition Area ("ADA") was performed during the  
13 period of August 1987 through September 1988. In March 1989, a  
14 draft Remedial Investigation Report was prepared by Roy F.  
15 Weston, Inc. The study confirmed the presence of explosives in  
16 the alluvial aquifer at the washout lagoon as well as trace  
17 (less than 1 ppb) explosives in the shallow basalt aquifer at  
18 the washout lagoon area. The report recommended additional  
19 confirmatory studies at all the sites.

20           6.6           The UMDA Washout Lagoons were proposed for  
21 inclusion on the NPL in 49 Fed. Reg. 40320 (October 15, 1984).  
22 It was listed in 52 Fed. Reg. 27620 (July 22, 1987).  
23

## 24                               VII.

### 25                               CONCLUSIONS OF LAW

26           7.1           On the basis of the results of the sampling  
27



1 and analysis described in the Findings of Fact, U.S. EPA and  
2 ODEQ have determined that:

3 (A) UMDA, located near Hermiston, Oregon, is a  
4 facility within the meaning of Section 3008 of RCRA and Section  
5 101(9) of CERCLA, 42 U.S.C. §§ 6928 and 9601(9);

6 (B) Hazardous substances, pollutants, or contaminants  
7 within the meaning of Sections 1004(5) and 3001 of RCRA, and  
8 Sections 101(14) and 104(a)(2) of CERCLA, 42 U.S.C. §§ 6903(15),  
9 6921, 9601(14), and 9604(a)(2), have been disposed of at UMDA:

10 (C) There have been releases and there continue to be  
11 releases and threatened releases of hazardous substances,  
12 pollutants, or contaminants into the environment within the  
13 meaning of Sections 101(22), 104, 106, and 107, 42 U.S.C.  
14 §§ 9601(22), 9604, 9606, and 9607, at and from UMDA;

15 (D) With respect to those releases and threatened  
16 releases, UMDA is a person within the meaning of Section  
17 1004(15) of RCRA and Section 101(2) of CERCLA, 42 U.S.C.  
18 §§ 6903(15) and 9601(2), and liable for these releases and  
19 threatened releases; and

20 (E) The actions to be taken pursuant to this  
21 Agreement are reasonable and necessary to protect the public  
22 health, welfare, or the environment.

VIII.

SCOPE OF AGREEMENT

A. Work to be Performed

8.1 This comprehensive Agreement integrates UMDA's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, pollutants, and contaminants covered by this Agreement. Therefore, as to UMDA Operable Units covered in this Agreement, including RCRA-regulated units, activities required by this Agreement will (1) achieve compliance with CERCLA, 42 U.S.C. § 9601 et seq.; (2) satisfy the corrective action requirements of Sections 3004(u) and (v) of RCRA, 42 U.S.C. §§ 6924(u) and (v), for a RCRA permit, and Section 3008(h), 42 U.S.C. § 6928(h) for interim status; and (3) meet or exceed all applicable or relevant and appropriate federal and state requirements to the extent required by Section 121 of CERCLA, 42 U.S.C. § 9621, and applicable state law.

8.2 Based upon available information, the list of UMDA Operable Units covered by this Agreement includes:

Washout Lagoons and Associated Buildings

Ammunition Demolition Area (ADA)

Inactive Landfills (3)

Remote Munitions Disassembly Area

Deactivation Furnace

Sewage Treatment Plant

Storm Sewer Tile Field

1 Active Landfill

2 Defense Reutilization Marketing Office

3 Any Party may propose modifications to expand or reduce this  
4 list through any appropriate primary document or other separate  
5 document. In either case, proposals for modifications of this  
6 list shall be treated as a draft primary document, subject to  
7 Parts XX and XXI.

8 8.3 UMDA will conduct and finance the cost of  
9 the RI/FS study and implement the RD/RA at the Site in  
10 accordance with the RI/FS and RD/RA Work Plans, and all relevant  
11 statutes, regulations, policies, guidance, and criteria. It is  
12 the goal of the Parties that UMDA will issue a ROD within thirty  
13 (30) months of the effective date of this Agreement.

14 8.4 All work performed pursuant to this  
15 Agreement shall be under the direction and supervision, or in  
16 consultation with a qualified engineer, geologist, or equivalent  
17 expert with expertise in hazardous substances site investigation  
18 and remediation.

19 8.5 UMDA shall perform the tasks and submit  
20 plans, reports, and other documents as required by those  
21 provisions of the Work Plan.

22 8.6 These matters are set forth in more detail  
23 below and in the RI/FS and RD/RA Work Plans. The Agreement  
24 fully incorporates the provisions of the Work Plans which relate  
25 to the implementation of this Agreement, including but not  
26 limited to, definitions and procedures for submission, review,  
27

1 and approval of documents. In the event of any inconsistency  
2 between this Agreement and the Work Plans, this Agreement shall  
3 govern until duly amended pursuant to Part XXXIII of this  
4 Agreement.

5 B. Interim Remedial Actions

6 8.7 UMDA shall develop and implement any  
7 necessary Interim Remedial Actions ("IRAs"). The IRA(s) shall  
8 be consistent with the purposes set forth in Part III of this  
9 Agreement. Pursuant to Part XX, U.S. EPA, in consultation with  
10 MDA and ODEQ, shall select the IRA(s) for the Site. IRA(s)  
11 shall, to the greatest extent practicable, attain ARARs and be  
12 consistent with and contribute to the efficient performance of  
13 final response actions.

14 C. Remedial Investigations

15 8.8 UMDA shall develop, conduct, and report upon  
16 remedial investigations of the Site which comply with applicable  
17 requirements of CERCLA, the National Oil and Hazardous Waste  
18 Contingency Plan ("NCP"), and relevant written guidance and  
19 established written U.S. EPA policy, in accordance with the  
20 requirements and time schedules set forth in this Agreement.

21 D. Feasibility Studies

22 8.9 UMDA shall design, propose, undertake, and  
23 report upon feasibility studies for the Site which comply with  
24 applicable requirements of CERCLA, the NCP, and relevant written  
25 guidance and established written U.S. EPA policy, in accordance  
26 with the requirements and time schedules set forth in this  
27

1 Agreement.

2 E. Remedial Actions

3 8.10 UMDA shall develop and submit its proposed  
4 plan for a remedial action alternative following completion and  
5 approval of an RI and FS. ODEQ may recommend the remedial  
6 action alternative it deems appropriate to U.S. EPA. Pursuant  
7 to Part XX, the U.S. EPA, in consultation with UMDA and ODEQ,  
8 shall select the remedial action(s) for the Site.

9 F. Implementation of Remedial Actions

10 8.11 Following selection by U.S. EPA, UMDA shall  
11 design, propose, and submit a detailed RD/RA Work Plan for  
12 implementation of each selected remedial action(s), which will  
13 include appropriate timetables and schedules, to U.S. EPA and  
14 ODEQ. Following review by ODEQ and U.S. EPA and subject to the  
15 U.S. EPA Administrator's final approval, UMDA shall implement  
16 the remedial action(s) in accordance with the requirements and  
17 time schedules set forth in the RD/RA Work Plan.

18 IX.

19 PROJECT MANAGERS

20 9.1 The Project Managers for the Parties are  
21 designated in Paragraph 14.2. Each Project Manager shall be  
22 responsible for overseeing his or her principal's duties  
23 concerning the implementation of this Agreement. All written  
24 communications between the Parties (including communication by  
25 letter, reports, notices, etc.), concerning activities related  
26  
27

1 to this Agreement shall be sent to the appropriate Project  
2 Manager(s).

3 9.2 Each Project Manager shall be, or rely on, a  
4 qualified and competent person with experience in hazardous  
5 substances site investigations and remedial actions.

6 9.3 UMDA, ODEQ, and U.S. EPA may change their  
7 respective Project Manager(s) by sending a written notification  
8 to the other Parties no later than five (5) days before the date  
9 of such change.

10 9.4 The Project Managers may, in accordance with  
11 the procedures set forth in Subpart XX(J) of this Agreement,  
12 make modifications to the work to be performed pursuant to this  
13 Agreement, or in techniques, procedures, or design utilized in  
14 carrying out this Agreement, provided such changes are necessary  
15 to the completion of the project.

16 9.5 The Project Manager for UMDA shall be  
17 physically present on the Site or reasonably available to  
18 supervise work performed at the Site during implementation of  
19 the work performed pursuant to this Agreement and be available  
20 to U.S. EPA and ODEQ Project Managers for the pendency of this  
21 Agreement. The absence of U.S. EPA or ODEQ Project Managers  
22 from the Site shall not be cause for work stoppage or delay.

23  
24 X.

25 ACCESS

26 10.1 Without limitation on any authority  
27

1 conferred on them by law, U.S. EPA, ODEQ, and their authorized  
2 representatives shall have authority to enter the Site at all  
3 reasonable times for the purposes of, among other things:  
4 (1) inspecting records, operating logs, contracts, and other  
5 documents relevant to implementation of this Agreement;  
6 (2) reviewing the progress of UMDA, its response action  
7 contractors, or lessees in implementing this Agreement;  
8 (3) conducting such tests as ODEQ and U.S. EPA Project Managers  
9 deem necessary; and (4) verifying the data submitted to U.S. EPA  
10 and ODEQ by UMDA. UMDA shall honor all requests for such access  
11 by U.S. EPA and ODEQ, conditioned only upon presentation of  
12 proper identification and conformance with any statutory and  
13 regulatory requirements as may be necessary to protect health,  
14 safety, national security, or mission essential activities as  
15 specified in the approved Work Plans. The Parties agree that  
16 this Agreement is subject to CERCLA 120(j), 42 U.S.C. § 9620(j),  
17 regarding the issuance of site specific Presidential Orders as  
18 may be necessary to protect national security.

19 10.2 All Parties with access to UMDA pursuant to  
20 this Part shall comply with all applicable health and safety  
21 plans.

22 10.3 To the extent that this Agreement requires  
23 access to property not owned and controlled by UMDA, UMDA shall  
24 exercise whatever authority it has to obtain access pursuant to  
25 Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and Executive  
26 Order 12580. UMDA shall make every reasonable effort to obtain  
27

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

20  
21 XI.

22 SAMPLING AND DATA/DOCUMENT AVAILABILITY

23 11.1 The Parties shall make available to each  
24 other quality assured results of sampling, tests, or other data  
25 generated by any Party, or on their behalf, with respect to the  
26 implementation of this Agreement within sixty (60) days of their  
27



collection or field testing. If quality assurance is not completed within sixty (60) days, preliminary data or results shall be made available within the sixty (60) day period. Quality assured data or results shall be submitted as they become available but in no event later than one hundred and twenty (120) days after the sampling or testing.

11.2 UMDA shall make every reasonable attempt to notify U.S. EPA and ODEQ Project Managers of any excavation, drilling, or sampling to be conducted under this Agreement at least ten (10) business days prior to such activity. This ten (10) day notification requirement may be waived on an activity-by-activity basis upon mutual agreement between the UMDA Project Manager and U.S. EPA or ODEQ Project Manager involved. Upon U.S. EPA or ODEQ's verbal request, UMDA shall allow U.S. EPA or ODEQ to take split or duplicate samples, or shall provide split or duplicate samples to U.S. EPA or ODEQ.

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

11.4 Upon request, raw data (non-QA/QC) shall be made available to Project Managers.

XII.

## QUALITY ASSURANCE

12.1 Throughout all sample collection, transportation, and analyses activities conducted in connection

1 with this Agreement, the UMDA shall use procedures for quality  
2 assurance, quality control, and chain-of-custody in accordance  
3 with approved U.S. EPA methods, including "Interim Guidelines  
4 and Specifications for Preparing Quality Assurance Project  
5 Plans", QAMS 005/80, "Data Quality Objective Guidance", U.S. EPA  
6 1540/687/003 and 004, and subsequent amendments to such  
7 guidelines. UMDA shall require each laboratory it uses to  
8 perform any analysis according to approved U.S. EPA methods and  
9 to participate in a quality assurance/quality control program  
10 equivalent to that which is followed by U.S. EPA and which is  
11 consistent with U.S. EPA document QAMS-005/80. UMDA shall  
12 submit QA/QC plans to U.S. EPA and ODEQ in the Work Plan(s)  
13 pursuant to Part XX for approval prior to use.  
14

15 XIII.

16 REPORTING

17 13.1 UMDA shall submit to ODEQ and U.S. EPA  
18 quarterly written progress reports describing:

- 19 (a) actions taken by UMDA during the previous quarter  
20 to implement this Agreement;  
21 (b) actions scheduled to be taken in the next  
22 quarter; and  
23 (c) problems experienced during the previous quarter.  
24  
25  
26  
27  
28

XIV.

NOTIFICATION

14.1 All Parties shall transmit primary and secondary documents, and all notices required herein by next day mail, hand delivery, or facsimile. Time limitations shall commence upon receipt.

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

- (A) For UMDA:  
J. Patrick Ritchie  
UMDA  
Hermiston, Oregon 97838-9544  
(503) 564-5294
- (B) For U.S. EPA:  
LeRoy ("Bub") Loiselle  
Region 10  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, HW-114  
Seattle, Washington 98101  
(206) 442-1847
- (C) For the State of Oregon:  
Bill Dana  
Department of Environmental Quality  
811 S.W. Sixth Avenue  
Portland, Oregon 97204  
(503) 229-6530

XV.

PERMITS

15.1 When UMDA proposes a CERCLA response action that, in the absence of Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), and the NCP would require a federal or state permit, UMDA shall include in the Submittal:

- (A) Identification of each permit which would

1 otherwise be required;

2 (B) Identification of the standards, requirements,  
3 criteria, or limitations which would have had to have been met  
4 to obtain each such permit; and

5 (C) Explanation of how the response action proposed  
6 will meet the standards, requirements, criteria, or limitations  
7 identified in (B) immediately above.

8 15.2 Upon request of UMDA, U.S. EPA and ODEQ will  
9 provide their position with respect to Paragraphs 15.1(B) and  
10 (C) in a timely manner.

11 15.3 This Part is not intended to relieve UMDA  
12 from any requirements applicable to off-site shipment or  
13 movement of a hazardous waste or substance, including Section  
14 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3). UMDA shall obtain  
15 all permits under applicable federal, state, or local laws and  
16 shall submit timely applications and requests for such permits  
17 and approvals. Off-site disposal of hazardous substances, if  
18 required by this Agreement, shall comply with the U.S. EPA  
19 Off-Site Response Action Policy, dated May 6, 1985, 50 Fed. Reg.  
20 45933 (November 1985), as amended by U.S. EPA's November 13,  
21 1987 "Revised Procedures for Planning and Implementing Off-Site  
22 Response Actions," and as subsequently amended.

23 15.4 UMDA shall notify ODEQ and U.S. EPA in  
24 writing of any permits required for off-site activities as soon  
25 as it becomes aware of the requirement. Upon request, UMDA  
26 shall provide ODEQ and U.S. EPA copies of all such permit  
27

1 applications and other documents related to the permit process.

2           15.5           If a permit which is necessary for  
3 implementation of this Agreement is not issued, or is issued or  
4 renewed in a manner which is materially inconsistent with the  
5 requirements of this Agreement, UMDA agrees it shall notify ODEQ  
6 and U.S. EPA of its intention to propose necessary modifications  
7 to the primary document affected, in accordance with Subpart  
8 XX(J). Notification by UMDA of its intention to propose  
9 modifications shall be submitted within seven (7) calendar days  
10 of receipt by UMDA of notification that: (1) a permit will not  
11 be issued; (2) a permit has been issued or reissued; or (3) a  
12 final determination with respect to any appeal related to the  
13 issuance of a permit has been entered. Within sixty (60) days  
14 from the date it submits its notice of intention to propose  
15 modifications, UMDA shall submit to ODEQ and U.S. EPA its  
16 proposed modifications to the affected primary document with an  
17 explanation of its reasons in support thereof.

18           15.6           If UMDA submits proposed modifications prior  
19 to a final determination of any appeal taken on a permit needed  
20 to implement this Agreement, ODEQ and U.S. EPA may elect to  
21 delay review of the proposed modifications until after such  
22 final determination is entered.

23           15.7           During any appeal of any permit required to  
24 implement this Agreement or during review of any of UMDA's  
25 proposed modifications as provided in Paragraph 15.5 above, UMDA  
26 shall continue to implement those portions of this Agreement  
27

1 which can be reasonably implemented pending final resolution of  
2 the permit issue(s).

3  
4 XVI.

5 RETENTION OF RECORDS

6 16.1 UMDA shall preserve for a minimum of  
7 ten (10) years after termination of this Agreement all of its  
8 records and documents in its possession or in the possession of  
9 its divisions, employees, agents, accountants, contractors, or  
10 attorneys which relate in any way to the presence of hazardous  
11 wastes and constituents, hazardous substances, pollutants, and  
12 contaminants at the Site, or to the implementation of this  
13 Agreement, despite any document retention policy to the  
14 contrary. After this ten (10) year period, UMDA shall notify  
15 U.S. EPA and ODEQ at least forty-five (45) days prior to  
16 destruction or disposal of any such documents or records. Upon  
17 request by U.S. EPA and/or ODEQ, UMDA shall make available such  
18 records or documents, or true copies to U.S. EPA and/or ODEQ.  
19

20 XVII.

21 PUBLIC PARTICIPATION AND ADMINISTRATIVE RECORD

22 17.1 The Parties agree that any subsequent  
23 proposed plan considered for remedial action at the Site arising  
24 out of this Agreement shall comply with public participation  
25 requirements of Section 117 of CERCLA, 42 U.S.C. § 9617.

26 17.2 UMDA agrees it shall establish and maintain  
27

1 an Administrative Record at or near UMDA in accordance with  
2 Section 113(k) of CERCLA, 42 U.S.C. § 9613, and that a copy of  
3 this Agreement shall be placed in the Administrative Record.  
4 The Administrative Record developed by UMDA shall be  
5 periodically updated and a copy of each document included in the  
6 Administrative Record shall be provided to U.S. EPA and ODEQ.

7  
8 XVIII.

9 CREATION OF DANGER/EMERGENCY ACTION

10 18.1 In the event U.S. EPA or ODEQ determines  
11 that activities conducted pursuant to this Agreement are  
12 creating a danger to the health or welfare of the people on the  
13 Site or in the surrounding area or to the environment, U.S. EPA  
14 or ODEQ may require or order UMDA to stop further implementation  
15 of this Agreement for such period of time as needed to abate the  
16 danger.

17 18.2 In the event UMDA determines that activities  
18 undertaken in furtherance of this Agreement are creating a  
19 danger to the health or welfare of the people on the Site or in  
20 the surrounding area or to the environment, UMDA may stop  
21 implementation of this Agreement for such periods of time  
22 necessary for U.S. EPA and ODEQ to evaluate the situation and  
23 determine whether UMDA should proceed with implementation of the  
24 Agreement or whether the work stoppage should be continued until  
25 the danger is abated. UMDA shall notify the Project Managers as  
26 soon as is possible, but not later than twenty-four (24) hours

1 after such stoppage of work, and provide U.S. EPA and ODEQ with  
2 documentation of its analysis in reaching this determination.  
3 If U.S. EPA or ODEQ disagrees with the UMDA determination, it  
4 may require UMDA to resume implementation of this Agreement.

5 18.3 If U.S. EPA and ODEQ concur in the work  
6 stoppage by UMDA, or if U.S. EPA or ODEQ require or order a work  
7 stoppage, UMDA's obligations shall be suspended and the time  
8 periods for performance of that work, as well as the time period  
9 of any other work dependent upon the work which was stopped,  
10 shall be extended, pursuant to Part XXV of this Agreement, for  
11 such period of time as U.S. EPA determines is reasonable under  
12 the circumstances. Any disagreements pursuant to this Part  
13 shall be resolved through the dispute resolution procedures in  
14 Part XXI of the Agreement by referral directly to the DRC.

15 18.4 Notwithstanding any other provision of this  
16 Agreement, UMDA retains the right, consistent with Executive  
17 Order 12580, to conduct such emergency actions as may be  
18 necessary to abate immediate threats to human health or the  
19 environment from the release or threatened release of hazardous  
20 substances, pollutants, or contaminants at or from the Site.  
21 Such actions may be conducted at any time, either before or  
22 after the issuance of a Record of Decision. UMDA shall provide  
23 the other Parties with verbal notice as soon as possible after  
24 it determines that an emergency action is necessary. In  
25 addition, within seven (7) days of initiating such an action,  
26 UMDA shall provide written notice to the other Parties  
27



1 explaining why such action is or was necessary.

2  
3 XIX.

4 FIVE (5) YEAR REVIEW

5 19.1 Consistent with Section 121(c) of CERCLA, 42  
6 U.S.C. § 9621(c), and in accordance with this Agreement, UMDA  
7 agrees that U.S. EPA will review remedial actions, if any, that  
8 allow hazardous substances, pollutants, or contaminants to  
9 remain on-site no less often than each five (5) years after the  
10 initiation of a final remedial action to assure that human  
11 health and the environment are being protected by the remedial  
12 action being implemented. ODEQ may also review such actions  
13 and, following such review, may recommend to U.S. EPA additional  
14 action or modification of the remedial action. If, upon such  
15 review, it is the judgment of U.S. EPA that additional action or  
16 modification of the remedial action is appropriate in accordance  
17 with Section 104 or 106 of CERCLA, 42 U.S.C. §§ 9604 or 9606,  
18 UMDA shall implement such additional or modified action.

19  
20 XX.

21 CONSULTATION WITH U.S. EPA AND ODEQ

22 A. Applicability

23 20.1 The provisions of this Part establish the  
24 procedures that shall be used by UMDA, U.S. EPA, and ODEQ to  
25 provide the Parties with appropriate notice, review, comment,  
26 and response to comments regarding RI/FS and RD/RA documents,  
27

1 specified herein as either primary or secondary documents. In  
2 accordance with Section 120 of CERCLA, 42 U.S.C. § 9620, and 10  
3 U.S.C. § 2705, UMDA will normally be responsible for issuing  
4 primary and secondary documents to U.S. EPA and ODEQ. As of the  
5 effective date of this Agreement, all draft and final reports  
6 for any deliverable document identified herein shall be  
7 prepared, distributed, and subject to dispute resolution in  
8 accordance with Paragraphs 20.3 through 20.24.

9           20.2           The designation of a document as "draft" or  
10 "final" is solely for purposes of consultation with U.S. EPA and  
11 ODEQ in accordance with this Part. Such designation does not  
12 affect the obligation of the Parties to issue documents to the  
13 public for review and comment as appropriate and as required by  
14 law.

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

16           20.3           Primary documents include those reports that  
17 are major, discrete portions of RI/FS or RD/RA activities.  
18 Primary documents are initially issued by UMDA in draft, subject  
19 to review and comment by U.S. EPA and ODEQ. Following receipt  
20 of comments on a particular draft primary document, UMDA will  
21 respond to the comments received and issue a draft final primary  
22 document, subject to dispute resolution, if necessary. The  
23 draft final primary document will become the final primary  
24 document either thirty (30) days after issuance, if dispute  
25 resolution is not invoked, or as modified by decision of the  
26 dispute resolution process.

1                   20.4       Secondary documents include those reports  
2 that are discrete portions of the primary documents and are  
3 typically input or feeder documents. Secondary documents are  
4 issued by UMDA in draft, subject to review and comment by  
5 U.S. EPA and ODEQ. Although UMDA will respond to comments  
6 received, the draft secondary documents may be finalized in the  
7 context of the corresponding primary documents. A secondary  
8 document may be disputed at the time the corresponding draft  
9 final primary document is issued.

10                               C. Primary Reports

11                   20.5       UMDA shall complete and transmit draft  
12 reports for the following primary documents to U.S. EPA and ODEQ  
13 for review and comment in accordance with the provisions of this  
14 Part:

- 15                               (a) RI/FS Work Plan, including Sampling and  
16                               Analysis Plan, Quality Assurance Project  
17                               Plan ("QAPP"), Data Management Plan,  
18                               Community Relations Plan, and Health and  
19                               Safety Plan
- 20                               (b) Risk Assessment
- 21                               (c) RI Report
- 22                               (d) Initial Screening of Alternatives
- 23                               (e) FS Report
- 24                               (f) Proposed Plan
- 25                               (g) Record of Decision
- 26                               (h) RD/RA Work Plan
- 27                               (i) Remedial Design

28                   20.6       Only the draft final reports for the primary

1 documents identified above shall be subject to dispute  
2 resolution. UMDA shall complete and transmit draft primary  
3 documents in accordance with the timetable and deadlines  
4 established in Part XXIV of this Agreement.

5 D. Secondary Documents

6 20.7 UMDA shall complete and transmit draft  
7 reports for the following secondary documents to U.S. EPA and  
8 ODEQ for review and comment in accordance with the provisions of  
9 this Part:

- 10 (a) Site Characterization Summary  
11 (b) Detailed Analysis of Alternatives  
12 (c) Post-Screening Investigation Work Plan  
13 (d) Treatability Studies  
14

15 20.8 Although U.S. EPA and ODEQ may comment on  
16 the draft reports for the secondary documents listed above, such  
17 documents shall not be subject to dispute resolution except as  
18 provided in Paragraph 20.4. Target dates shall be established  
19 for the completion and transmission of draft secondary reports  
20 in the Work Plans.

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

22 20.9 The Project Managers shall confer  
23 approximately every thirty (30) days, except as otherwise agreed  
24 by the Parties, to review and discuss the progress of work being  
25 performed at the Site on the primary and secondary documents.  
26 Prior to preparing any draft report specified in Paragraphs 20.5  
27

1 and 20.7 above, the Project Managers shall discuss the report  
2 results in an effort to reach a common understanding, to the  
3 maximum extent practicable, with respect to the results to be  
4 presented in the draft report.

5 F. Identification and Determination of Potential ARARs

6 20.10 For those primary reports or secondary  
7 documents that consist of or include ARAR determinations, the  
8 Project Managers shall meet, prior to the issuance of a draft  
9 report, to identify and propose all potential ARARs pertinent to  
10 the report being addressed. ODEQ shall identify all potential  
11 state ARARs as early in the remedial process as possible,  
12 consistent with the requirements of Section 121 of CERCLA,  
13 42 U.S.C. § 9621, and the NCP. UMDA shall consider any written  
14 interpretations of ARARs provided by the state. Draft ARAR  
15 determinations shall be prepared by UMDA in accordance with  
16 Section 121(d)(2) of CERCLA, 42 U.S.C. § 9621(d)(2), the NCP,  
17 and pertinent guidance issued by U.S. EPA and ODEQ that is  
18 consistent with CERCLA and the NCP.

19 20.11 In identifying potential ARARs, the Parties  
20 recognize that actual ARARs can be identified only on a  
21 site-specific basis and that ARARs depend on the specific  
22 hazardous substances, pollutants, and contaminants at a site,  
23 the particular actions proposed as a remedy, and the  
24 characteristics of a site. The Parties recognize that ARAR  
25 identification is necessarily an iterative process and that  
26 potential ARARs must be re-examined throughout the RI/FS process  
27

1 until a ROD is issued.

2 G. Review and Comment on Draft Reports

3 20.12 UMDA shall complete and transmit each draft  
4 primary report to U.S. EPA and ODEQ on or before the  
5 corresponding deadline established for the issuance of the  
6 report. UMDA shall complete and transmit the draft secondary  
7 document in accordance with the target dates established for the  
8 issuance of such reports pursuant to Paragraph 20.8 of this  
9 Agreement.

10 20.13 Unless the Parties unanimously agree to  
11 another time period, all draft reports shall be subject to a  
12 thirty (30) day period for review and comment. Review of any  
13 document by U.S. EPA or ODEQ may concern all aspects of the  
14 report (including completeness) and should include, but is not  
15 limited to, technical evaluation of any aspect of the document,  
16 and evaluation of consistency with CERCLA, the NCP, any  
17 pertinent guidance or policy issued by U.S. EPA or ODEQ, and  
18 applicable state law. Comments by U.S. EPA and ODEQ shall be  
19 provided with adequate specificity so UMDA may respond to the  
20 comments and, if appropriate, make changes to the draft report.  
21 Comments shall refer to any pertinent sources of authority or  
22 references upon which the comments are based, and, upon request  
23 of UMDA, U.S. EPA or ODEQ shall provide a copy of the cited  
24 authority or reference. In cases involving complex or unusually  
25 lengthy reports, U.S. EPA and ODEQ may extend the thirty (30)  
26 day comment period for an additional twenty (20) days by written

1 notice to UMDA prior to the end of the thirty (30) day period.  
2 On or before the close of the comment period, U.S. EPA and ODEQ  
3 shall transmit by next day mail their written comments to UMDA.

4           20.14       Representatives of UMDA shall make  
5 themselves readily available to U.S. EPA and ODEQ during the  
6 comment period for purposes of informally responding to  
7 questions and comments on draft reports. Oral comments made  
8 during such discussions need not be the subject of a written  
9 response by UMDA on the close of the comment period.

10           20.15       In commenting on a draft report which  
11 contains a proposed ARAR determination, U.S. EPA or ODEQ shall  
12 include a reasoned statement of whether they object to any  
13 portion of the proposed ARAR determination. To the extent that  
14 U.S. EPA and ODEQ do object, they shall explain the basis for  
15 their objection in detail and shall identify any ARARs which  
16 they believe were not properly addressed in the proposed ARAR  
17 determination.

18           20.16       Following the close of the comment period  
19 for a draft report, UMDA shall give full consideration to all  
20 written comments on the draft report submitted during the  
21 comment period. Within thirty (30) days of the close of the  
22 comment period on a draft secondary report, UMDA shall transmit  
23 to U.S. EPA and ODEQ its written response to comments received  
24 within the comment period. Within thirty (30) days of the close  
25 of the comment period on a draft primary report, UMDA shall  
26 transmit to U.S. EPA and ODEQ a draft final primary report,  
27

1 which shall include UMDA's response to all written comments  
2 received within the comment period. While the resulting draft  
3 final report shall be the responsibility of UMDA, it shall be  
4 the product of consensus, to the maximum extent possible.

5 20.17 UMDA may extend the thirty (30) day period  
6 for either responding to comments on a draft report or for  
7 issuing the draft final primary report for an additional twenty  
8 (20) days by providing written notice to U.S. EPA and ODEQ. In  
9 appropriate circumstances, this time period may be further  
10 extended in accordance with Part XXV.

11 H. Availability of Dispute Resolution for  
12 Draft Final Primary Documents

13 20.18 Dispute resolution shall be available to the  
14 Parties for draft final primary reports as set forth in Part XXI.

15 20.19 When dispute resolution is invoked on a  
16 draft final primary report, work may be stopped in accordance  
17 with the procedures set forth in Part XXI regarding dispute  
18 resolution.

19 I. Finalization of Reports

20 20.20 Subject to Section 121(f)(3)(B) of CERCLA,  
21 42 U.S.C. § 9621(f)(3)(B), the draft final primary report shall  
22 serve as the final primary report if no Party invokes dispute  
23 resolution regarding the document or, if invoked, at completion  
24 of the dispute resolution process should the UMDA's position be  
25 sustained. If UMDA's determination is not sustained in the  
26 dispute resolution process, UMDA shall prepare, within not more  
27



1 than thirty-five (35) days, a revision of the draft final report  
2 which conforms to the results of dispute resolution. In  
3 appropriate circumstances, the time period for this revision  
4 period may be extended in accordance with Part XXV hereof.

5 J. Subsequent Modifications of Final Reports

6 20.21 Following finalization of any primary report  
7 pursuant to Paragraph 20.20 above, U.S. EPA, ODEQ, or UMDA may  
8 seek to modify the report, including seeking additional field  
9 work, pilot studies, computer modeling, or other supporting  
10 technical work, only as provided in Paragraphs 20.22 and 20.23  
11 below.

12 20.22 U.S. EPA, ODEQ, or UMDA may seek to modify a  
13 report after finalization if it determines, based on new  
14 information (i.e., information that became available, or  
15 conditions that became known, after the report was finalized)  
16 that the requested modification is necessary. U.S. EPA, ODEQ,  
17 or UMDA may seek such a modification by submitting a concise  
18 written request to the Project Managers of the other Parties.  
19 The request shall specify the nature of the requested  
20 modification and how the request is based on new information.

21 20.23 In the event that a consensus among the  
22 Parties is reached, any modification shall be incorporated by  
23 reference and become fully enforceable under the Agreement  
24 pursuant to Part XXXIII. In the event that a consensus is not  
25 reached by the Project Managers on the need for a modification,  
26 either U.S. EPA, ODEQ, or UMDA may invoke dispute resolution to  
27

1 determine if such modification shall be conducted. Modification  
2 of a report shall be required only upon a showing that: (1) the  
3 requested modification is based on significant new information;  
4 and (2) the requested modification could be of significant  
5 assistance in evaluating impacts on the public health or the  
6 environment, in evaluating the selection of remedial  
7 alternatives, or in protecting human health and the environment.

8           20.24       Nothing in this Subpart shall alter  
9 U.S. EPA's or ODEQ's ability to request the performance of  
10 additional work which was not contemplated by this Agreement.  
11 UMDA's obligation to perform such work must be established by  
12 either a modification of a report or document or by amendment to  
13 this Agreement.

14  
15                               XXI.

16                               RESOLUTION OF DISPUTES

17           21.1       Except as specifically set forth elsewhere  
18 in this Agreement, if a dispute arises under this Agreement, the  
19 procedures of this Part shall apply. All Parties to this  
20 Agreement shall make reasonable efforts to informally resolve  
21 disputes at the Project Manager or immediate supervisor level.  
22 If resolution cannot be achieved informally, the procedures of  
23 this Part shall be implemented to resolve a dispute.

24           21.2       Within thirty (30) days after: (1) the  
25 issuance of a draft final primary document pursuant to this  
26 Agreement, or (2) any action which leads to or generates a

1 dispute, the disputing Party shall submit to the Dispute  
2 Resolution Committee ("DRC") a written statement of dispute  
3 setting forth the nature of the dispute, the work affected by  
4 the dispute, the disputing Party's position with respect to the  
5 dispute and the technical, legal, or factual information the  
6 disputing Party is relying upon to support its position.

7           21.3           Prior to any Party's issuance of a written  
8 statement of dispute, the disputing Party shall engage the other  
9 Parties in informal dispute resolution among the Project  
10 Managers and/or their immediate supervisors. During this  
11 informal dispute resolution period, the Parties shall meet as  
12 many times as are necessary to discuss and attempt resolution of  
13 the dispute.

14           21.4           The DRC will serve as a forum for resolution  
15 of disputes for which agreement has not been reached through  
16 informal dispute resolution. The Parties shall each designate  
17 one individual and an alternate to serve on the DRC. The  
18 individuals designated to serve on the DRC shall be employed at  
19 the policy level Senior Executive Service ("SES") (or  
20 equivalent) or be delegated the authority to participate on the  
21 DRC for the purposes of dispute resolution under this  
22 Agreement. The U.S. EPA representative on the DRC is the  
23 Hazardous Waste Division Director ("Division Director") of U.S.  
24 EPA's Region 10. UMDA's designated member is the UMDA Commander  
25 ("Commander"). ODEQ's designated member is the Environmental  
26 Cleanup Division Administrator. Written notice of any

1 delegation of authority from a Party's designated representative  
2 on the DRC shall be provided to all other Parties.

3           21.5           Following elevation of a dispute to the DRC,  
4 the DRC shall have twenty-one (21) days to unanimously resolve  
5 the dispute and issue a written decision. If the DRC is unable  
6 to unanimously resolve the dispute within this twenty-one (21)  
7 day period, the written statement of dispute shall be forwarded  
8 to the Senior Executive Committee ("SEC") for resolution, within  
9 seven (7) days after the close of the twenty-one (21) day  
10 resolution period.

11           21.6           The SEC will serve as the forum for  
12 resolution of disputes for which agreement has not been reached  
13 by the DRC. The U.S. EPA representative on the SEC is the  
14 Regional Administrator of U.S. EPA's Region 10. UMDA's  
15 representative on the SEC is the Deputy for Environment, Safety  
16 and Occupational Health, Assistant Secretary of the Army  
17 (Installation and Logistics) ["DESOH, ASA (I&L)"]. ODEQ's  
18 representative on the SEC is the Director of ODEQ. The SEC  
19 members shall, as appropriate, confer, meet, and exert their  
20 best efforts to resolve the dispute and issue a written  
21 decision. If unanimous resolution of the dispute is not reached  
22 within ~~twenty~~-one (21) days, U.S. EPA's Regional Administrator  
23 shall issue a written position on the dispute. UMDA or ODEQ  
24 may, within twenty-one (21) days of the Regional Administrator's  
25 issuance of U.S. EPA's position, issue a written notice  
26 elevating the dispute to the Administrator of U.S. EPA for  
27

1 resolution in accordance with all applicable laws and  
2 procedures. In the event that UMDA or ODEQ elect not to elevate  
3 the dispute to the Administrator within the designated  
4 twenty-one (21) day escalation period, UMDA and/or ODEQ shall be  
5 deemed to have agreed with the Regional Administrator's written  
6 position with respect to the dispute.

7           21.7           Upon escalation of a dispute to the  
8 Administrator of U.S. EPA pursuant to Paragraph 21.6, the  
9 Administrator will review and resolve the dispute within  
10 twenty-one (21) days. Upon request by a Party, and prior to  
11 resolving the dispute, the U.S. EPA Administrator shall meet and  
12 confer with UMDA's Secretariat Representative and a  
13 representative from ODEQ to discuss the issue(s) under dispute.  
14 Upon resolution, the Administrator shall provide UMDA and ODEQ  
15 with a written final decision setting forth resolution of the  
16 dispute. The duties of the Administrator set forth in this Part  
17 shall not be delegated.

18           21.8           The pendency of any dispute under this Part  
19 shall not affect UMDA's responsibility for timely performance of  
20 the work required by this Agreement, except that the time period  
21 for completion of work affected by such dispute shall be  
22 extended for a period of time usually not to exceed the actual  
23 time taken to resolve any good faith dispute in accordance with  
24 the procedures specified herein. All elements of the work  
25 required by this Agreement which are not affected by the dispute  
26 shall continue and be completed in accordance with the  
27

1 applicable schedule.

2           21.9           When dispute resolution is in progress, work  
3 affected by the dispute will immediately be discontinued if  
4 U.S. EPA's Region 10 Division Director or ODEQ's Environmental  
5 Cleanup Division Administrator requests, in writing, that work  
6 related to the dispute be stopped because, in U.S. EPA or ODEQ  
7 opinion, such work is inadequate or defective and such  
8 inadequacy or defect is likely to have an adverse effect on  
9 human health or the environment, or is likely to have a  
10 substantial adverse effect on the remedy selection or  
11 implementation process. To the extent possible, U.S. EPA and  
12 ODEQ shall consult with all Parties prior to initiating a work  
13 stoppage request. After stoppage of work, if UMDA believes that  
14 the work stoppage is inappropriate or may have potential  
15 significant adverse impacts, UMDA may meet with the U.S. EPA  
16 Division Director and ODEQ Environmental Cleanup Division  
17 Administrator to discuss the work stoppage. Following this  
18 meeting, and after further consideration of the issues, the U.S.  
19 EPA Division Director will issue, in writing, a final decision  
20 with respect to the work stoppage. The final written decision  
21 of the U.S. EPA Division Director may immediately be subjected  
22 to formal dispute resolution. Such dispute may be brought  
23 directly to either the DRC or the SEC, at the discretion of UMDA  
24 or ODEQ.

25           21.10           Within twenty-one (21) days of resolution of  
26 a dispute, pursuant to the procedures specified in this Part,  
27

1 UMDA shall incorporate the resolution and final determination  
2 into the appropriate plan, schedule, or procedures, and proceed  
3 to implement this Agreement according to the amended plan,  
4 schedule, or procedures.

5 21.11 Subject to Section 121(f)(3)(B) of CERCLA,  
6 42 U.S.C. § 9621(f)(3)(B), resolution of a dispute pursuant to  
7 this Part of the Agreement constitutes a final resolution of  
8 that dispute arising under this Agreement. All Parties shall  
9 abide by all terms and conditions of any final resolution of  
10 dispute obtained pursuant to this Part of this Agreement.  
11

12 XXII.

13 ENFORCEABILITY

14 22.1 The Parties agree that:

15 (A) Upon the effective date of this Agreement,  
16 any standard, regulation, condition, requirement, or order which  
17 has become effective under CERCLA and which is incorporated into  
18 this Agreement is enforceable by any person pursuant to Section  
19 310 of CERCLA, and any violation of such standard, regulation,  
20 condition, requirement, or order will be subject to civil  
21 penalties under Sections 310(c) and 109 of CERCLA, 42 U.S.C.  
22 §§ 9659(c) and 9609;

23 (B) All timetables or deadlines associated with  
24 the RI/FS shall be enforceable by any person pursuant to Section  
25 310 of CERCLA, 42 U.S.C. § 9659, and any violation of such  
26 timetables or deadlines will be subject to civil penalties under  
27

1 Section 310(c) and 109 of CERCLA, 42 U.S.C. §§ 9659(c) and 9609;

2 (C) All terms and conditions of this Agreement  
3 which relate to interim response actions or final remedial  
4 actions, including corresponding timetables, deadlines, or  
5 schedules, and all work associated with the interim response  
6 actions or final remedial actions, shall be enforceable by any  
7 person pursuant to Section 310(c) of CERCLA, 42 U.S.C.  
8 § 9659(c), and any violation of such terms or conditions will be  
9 subject to civil penalties under Section 310(c) and 109 of  
10 CERCLA, 42 U.S.C. §§ 9659(c) and 9609; and

11 (D) Any final resolution of a dispute pursuant  
12 to Part XXI of this Agreement which establishes a term,  
13 condition, timetable, deadline, or schedule shall be enforceable  
14 by any person pursuant to Section 310(c) of CERCLA, 42 U.S.C.  
15 § 9659(c), and any violation of such term, condition, timetable,  
16 deadline, or schedule will be subject to civil penalties under  
17 Sections 310(c) and 109 of CERCLA, 42 U.S.C. §§ 9659(c) and 9609.

18 22.2 Nothing in this Agreement shall be construed  
19 as authorizing any person to seek judicial review of any action  
20 or work where review is barred by any provision of CERCLA,  
21 including Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

22 22.3 Nothing in this Agreement shall be construed  
23 as a restriction or waiver of any rights the U.S. EPA or ODEQ  
24 may have under CERCLA, including, but not limited to, any rights  
25 under Section 113 and 310 of CERCLA, 42 U.S.C. §§ 9613 and  
26 9659. UMDA does not waive any rights it may have under Sections



1 120 and 121 of CERCLA, 42 U.S.C. §§ 9620 and 9621, Section 211  
2 of SARA, 10 U.S.C. Chapter 160, and Executive Order 12580. In  
3 the event of an action under Section 310 of CERCLA, 42 U.S.C.  
4 § 9659, UMDA shall not contend that ODEQ is not a person within  
5 the meaning of Section 310(a) of CERCLA, 42 U.S.C. § 9659(a).

6 22.4 The Parties agree to exhaust their rights  
7 under Part XXI prior to exercising any rights to judicial review  
8 that they may have.

9 22.5 The Parties agree that all Parties shall  
10 have the right to enforce the terms of this Agreement.

11  
12 XXIII.

13 STIPULATED PENALTIES

14 23.1 In the event that the UMDA fails to submit a  
15 primary document to U.S. EPA and/or ODEQ pursuant to the  
16 appropriate timetable or deadline which relates to an interim  
17 response action or final remedial action in accordance with the  
18 requirements of this Agreement, or fails to comply with a term  
19 or condition of this Agreement, U.S. EPA may assess, or ODEQ may  
20 request that U.S. EPA assess, a stipulated penalty against  
21 UMDA. If U.S. EPA fails to assess a stipulated penalty at  
22 ODEQ's request, ODEQ shall have sixty (60) days from the date of  
23 its request to initiate dispute resolution in accordance with  
24 applicable provisions of Paragraph 23.2. A stipulated penalty  
25 may be assessed in an amount not to exceed FIVE THOUSAND DOLLARS  
26 (\$5,000.00) for the first week (or part thereof), and TEN  
27

1 THOUSAND DOLLARS (\$10,000.00) for each additional week (or part  
2 thereof) for which a failure set forth in this Paragraph occurs.

3 23.2 Upon determining that UMDA has failed in a  
4 manner set forth in Paragraph 23.1, U.S. EPA shall so notify  
5 UMDA in writing. If the failure in question is not already  
6 subject to dispute resolution at the time such notice is  
7 received, UMDA shall have fifteen (15) days after receipt of the  
8 notice to invoke dispute resolution on the question of whether  
9 the failure did, in fact, occur. UMDA shall not be liable for  
10 the stipulated penalty assessed by U.S. EPA or requested by ODEQ  
11 if the failure is determined, through the dispute resolution  
12 process, not to have occurred. No assessment of a stipulated  
13 penalty shall be final until the conclusion of dispute  
14 resolution procedures related to the assessment of the  
15 stipulated penalty.

16 23.3 The annual reports required by Section  
17 120(e)(5) of CERCLA, 42 U.S.C. § 9620(e)(5), shall include, with  
18 respect to each final assessment of a stipulated penalty against  
19 UMDA under this Agreement, each of the following:

- 20 A. The facility responsible for the failure;  
21 B. A statement of the facts and circumstances  
22 giving rise to the failure;  
23 C. A statement of any administrative or other  
24 corrective action taken at the relevant facility, or a statement  
25 of why such measures were determined to be inappropriate;  
26 D. A statement of any additional action taken  
27

1 by or at the facility to prevent recurrence of the same type of  
2 failure; and

3 E. The total dollar amount of the stipulated  
4 penalty assessed for the particular failure.

5 23.4 Stipulated penalties assessed pursuant to  
6 this Part shall be payable to the Hazardous Substances Response  
7 Trust Fund only in the manner and to the extent expressly  
8 provided for in Acts authorizing funds for, and appropriations  
9 to, the Department of Defense.

10 23.5 In no event shall this Part give rise to a  
11 stipulated penalty in excess of the amount set forth in Section  
12 109 of CERCLA, 42 U.S.C. § 9609.

13 23.6 This Part shall not affect UMDA's ability to  
14 obtain an extension of a timetable, deadline, or schedule  
15 pursuant to Part XXV of this Agreement.

16 23.7 Nothing in this Agreement shall be construed  
17 to render any officer or employee of UMDA personally liable for  
18 the payment of any stipulated penalty assessed pursuant to this  
19 Part.

20  
21 XXIV.

22 DEADLINES

23 24.1 A draft RI/FS Work Plan, which shall include  
24 the Sampling and Analysis Plan, QAPP, Community Relations Plan,  
25 and Health and Safety Plan, shall be submitted within one  
26 hundred and twenty (120) days of the signing of the RI/FS  
27

1 contract, but in no event later than January 31, 1990. A draft  
2 final RI/FS Work Plan shall be submitted within thirty (30) days  
3 of receipt by UMDA of U.S. EPA and ODEQ comments, subject to the  
4 provisions of Paragraph 20.17 and Part XXV.

5 24.2 Within twenty-one (21) days of the effective  
6 date of this Agreement, UMDA shall propose deadlines for  
7 completion of the following draft primary documents:

- 8 A. Risk Assessment
- 9 B. RI Report
- 10 C. Initial Screening of Alternatives
- 11 D. FS Report
- 12 E. Proposed Plan
- 13 F. Record of Decision

14 24.3 Within fifteen (15) days of receipt,  
15 U.S. EPA and ODEQ shall review and provide comments to UMDA  
16 regarding the proposed deadlines. Within fifteen (15) days  
17 following receipt of the comments UMDA shall, as appropriate,  
18 make revisions and reissue the proposal. The Parties shall meet  
19 as necessary to discuss and finalize the proposed deadlines. If  
20 the Parties agree on proposed deadlines, the finalized deadlines  
21 shall be incorporated into the appropriate Work Plans. If the  
22 Parties fail to agree within thirty (30) days on the proposed  
23 deadlines, the matter shall immediately be submitted for dispute  
24 resolution pursuant to Part XXI of this Agreement. The final  
25 deadlines established pursuant to this Paragraph shall be  
26 published by U.S. EPA and ODEQ.

1                   24.4       Within twenty-one (21) days of issuance of  
2 the Record of Decision, UMDA shall propose deadlines for  
3 completion of the following draft primary documents:

4                   A.    RD/RA Work Plan

5                   B.    Remedial Design

6                   These deadlines shall be proposed, finalized, and  
7 published utilizing the same procedures set forth in Paragraphs  
8 24.2 and 24.3 above.

9                   24.5       The deadlines set forth in this Part, or to  
10 be established as set forth in this Part, may be extended  
11 pursuant to Part XXV of this Agreement. The Parties recognize  
12 that one possible basis for extension of the deadlines for  
13 completion of the RI/FS Reports is the identification of  
14 significant new Site conditions during the performance of the RI.

15  
16                                   XXV.

17                                   EXTENSIONS

18                   25.1       Either a timetable and deadline or a  
19 schedule shall be extended upon receipt of a timely request for  
20 extension and when good cause exists for the requested  
21 extension. Any request for extension by UMDA shall be submitted  
22 in writing to the Project Managers and shall specify:

23                   A.    The timetable and deadline or the schedule that  
24                        is sought to be extended;

25                   B.    The length of the extension sought;

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

- 1 D. Any related timetable and deadline or schedule  
2 that would be affected if the extension were  
3 granted.

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

- 5 A. An event of force majeure;  
6 B. A delay caused by another Party's failure to meet  
7 any requirement of this Agreement;  
8 C. A delay caused by the good faith invocation of  
9 dispute resolution or the initiation of judicial  
10 action;  
11 D. A delay caused, or which is likely to be caused,  
12 by the grant of an extension in regard to another  
13 timetable and deadline or schedule; and  
14 E. Any other event or series of events mutually  
15 agreed to by the Parties as constituting good  
16 cause.

17 25.2 Absent agreement of the Parties with respect  
18 to the existence of good cause, UMDA may seek and obtain a  
19 determination through the dispute resolution process that good  
20 cause exists.

21 25.3 Within seven (7) days of receipt of a  
22 request for an extension of a timetable and deadline or a  
23 schedule, U.S. EPA and ODEQ shall advise UMDA in writing of  
24 their respective position on the request. Any failure by  
25 U.S. EPA or ODEQ to mail a response within the seven (7) day  
26 period shall be deemed to constitute concurrence in the request  
27 for extension. If U.S. EPA or ODEQ does not concur in the  
28 requested extension, it shall include in its statement of  
nonconcurrence an explanation of the basis for its position.

25.4 If there is consensus among the Parties that

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

8           25.5           Within seven (7) days of receipt of a  
9 statement of nonconcurrence with the requested extension, UMDA  
10 may invoke dispute resolution.

11           25.6           A timely and good faith request for an  
12 extension shall toll any assessment of stipulated penalties or  
13 application for judicial enforcement of the affected timetable  
14 and deadline or schedule until a decision is reached on whether  
15 the requested extension will be approved. If dispute resolution  
16 is invoked and the requested extension is denied, stipulated  
17 penalties may be assessed and may accrue from the date of the  
18 original timetable and deadline or schedule. Following the  
19 granting of an extension, an assessment of stipulated penalties  
20 or an application for judicial enforcement may be sought only to  
21 compel compliance with the timetable and deadline or schedule as  
22 most recently extended.

23  
24                           XXVI.

25                           FORCE MAJEURE

26           26.1           Force Majeure shall mean any event arising  
27

1 from causes beyond the control of a Party that causes a delay in  
2 or prevents the performance of any obligation under this  
3 Agreement, including, but not limited to:

4 A. acts of God; fire; war; insurrection; civil  
5 disturbance; or explosion;

6 B. unanticipated breakage or accident to machinery,  
7 equipment, or pipelines despite reasonably diligent maintenance;

8 C. adverse weather conditions that could not be  
9 reasonably anticipated, or unusual delay in transportation;

10 D. restraint by court order or order of public  
11 authority;

12 E. inability to obtain, at a reasonable cost and  
13 after exercise of reasonable diligence, any necessary  
14 authorizations, approvals, permits, or licenses due to action or  
15 inaction of any governmental agency or authority other than the  
16 Army;

17 F. delays caused by compliance with applicable  
18 statutes or regulations governing contracting, procurement, or  
19 acquisition procedures, despite the exercise of reasonable  
20 diligence; and

21 G. insufficient availability of appropriated funds,  
22 if UMDA has made a timely request for such funds as part of the  
23 budgetary process as set forth in Part XXVII; provided, any  
24 extension granted on the basis of this event shall not affect  
25 ODEQ's right to terminate under Paragraph 27.7.

26 26.2 Force Majeure shall also include any strike  
27



1 or other labor dispute, whether or not within the control of the  
2 Parties affected thereby. Force Majeure shall not include  
3 increased costs or expenses of response actions, whether or not  
4 anticipated at the time such response actions were initiated.

5 26.3 The existence of a Force Majeure is subject  
6 to Parts XXI and XXV.

7  
8 XXVII.

9 FUNDING

10 27.1 It is the expectation of the Parties to this  
11 Agreement that all obligations of UMDA arising under this  
12 Agreement will be fully funded. UMDA agrees to seek sufficient  
13 funding through the United States Department of Defense  
14 budgetary process to fulfill its obligations under this  
15 Agreement.

16 27.2 In accordance with Section 120(e)(5)(B) of  
17 CERCLA, 42 U.S.C. § 9620(e)(5)(B), UMDA shall include in its  
18 annual report to Congress the specific cost estimates and  
19 budgetary proposals associated with the implementation of this  
20 Agreement.

21 27.3 Any requirement for the payment or  
22 obligation of funds, including stipulated penalties and  
23 technical assistance/oversight reimbursement, by UMDA  
24 established by the terms of this Agreement shall be subject to  
25 the availability of appropriated funds, and no provision herein  
26 shall be interpreted to require obligation or payment of funds  
27

1 in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. In  
2 cases where payment or obligation of funds would constitute a  
3 violation of the Anti-Deficiency Act, the dates established  
4 requiring the payment or obligation of such funds shall be  
5 appropriately adjusted.

6 27.4 If appropriated funds are not available to  
7 fulfill UMDA's obligations under this Agreement, U.S. EPA and  
8 ODEQ reserve the right to initiate an action against any other  
9 person, or to take any response action which would be  
10 appropriate absent this Agreement.

11 27.5 Funds authorized and appropriated annually  
12 by Congress under the "Environmental Restoration, Defense"  
13 appropriation in the Department of Defense Appropriation Act and  
14 allocated by the Deputy Assistant Secretary of Defense  
15 (Environment) to UMDA will be the source of funds for activities  
16 required by this Agreement consistent with Section 211 of SARA,  
17 10 U.S.C. Chapter 160. However, should the Environmental  
18 Restoration, Defense appropriation be inadequate in any year to  
19 meet the total Army CERCLA implementation requirements, the  
20 United States Department of Defense ("DOD") shall employ and  
21 UMDA shall follow a standardized DOD prioritization process which  
22 allocates that year's appropriations in a manner that maximizes  
23 the protection of human health and the environment. A  
24 standardized DOD prioritization model shall be developed and  
25 used with the assistance of U.S. EPA and ODEQ.

26 27.6 Upon U.S. EPA or ODEQ's request, UMDA shall  
27

1 submit to U.S. EPA and ODEQ budget documents sufficient to  
2 establish that UMDA is requesting or has requested all necessary  
3 funds to carry out UMDA's obligations under this Agreement for  
4 the applicable budget year. UMDA annually shall notify U.S. EPA  
5 and ODEQ of the actual amounts budgeted for implementation of  
6 this Agreement by February 1 of the current fiscal year.

7           27.7           In the event that UMDA's obligations under  
8 this Agreement are not fulfilled due to insufficient funding,  
9 ODEQ may terminate all provisions in the Agreement affecting  
10 ODEQ's rights and responsibilities, and ODEQ may thereafter seek  
11 any appropriate relief. This Paragraph is not subject to Part  
12 XXI, but does not preclude the consensual use of Part XXV.  
13 However, in no case would ODEQ terminate the Agreement without  
14 providing sixty (60) days notice of the intent to terminate to  
15 the other Parties.

16  
17  
18                           XXVIII.

19                           RECOVERY OF EXPENSES

20           28.1           UMDA and U.S. EPA may amend this Part by  
21 bilateral agreement to address reimbursement of U.S. EPA's costs  
22 at a later date in accordance with any subsequent national  
23 resolution of this issue of cost reimbursement.

24           28.2           UMDA agrees to request funding and to  
25 reimburse ODEQ, subject to the conditions and limitations set  
26 forth in this Part and Part XXVII, for all reasonable costs ODEQ  
27

1 incurs under this Agreement, provided that the costs of such  
2 activities have not been reimbursed to ODEQ by other federal  
3 mechanisms (such as through U.S. EPA Management Assistance  
4 Grants).

5           28.3           Reimbursable expenses shall consist only of  
6 actual expenditures made by ODEQ, including direct and indirect  
7 (overhead) costs, for the following activities under this  
8 Agreement:

9           (a) Timely technical review and comments on reports  
10 or studies required to be prepared and submitted by UMDA under  
11 this Agreement;

12           (b) Identification and explanation of state  
13 requirements applicable to response actions at military  
14 installations, especially state ARARs;

15           (c) Field visits, travel, sampling, and analysis to  
16 ensure that investigations and cleanup activities are  
17 implemented in accordance with appropriate state requirements  
18 and this Agreement;

19           (d) Support and assistance to UMDA in the conduct of  
20 public participation activities in accordance with federal and  
21 state requirements for public involvement;

22           (e) Attendance at meetings pertaining to activities  
23 under this Agreement; and

24           (f) Any other activities necessary to implement this  
25 Agreement.

26           28.4           Within ninety (90) days after the end of  
27

1 each month, ODEQ shall submit to UMDA an accounting of all ODEQ  
2 costs actually incurred during that month under this Agreement.  
3 Such accounting shall be accompanied by cost summaries and be  
4 supported by documentation which meets federal auditing  
5 requirements. The summaries will set forth employee hours and  
6 other expenses by major type of support service. All costs  
7 submitted must be for work directly related to implementation of  
8 this Agreement and not inconsistent with either the NCP or the  
9 requirements described in OMB Circulars A-87 (Cost Principles  
10 for State and Local Governments) and A-128 (Audits for State and  
11 Local Cooperative Agreements with State and Local Governments)  
12 and the Standard Forms 424 and 270. UMDA may audit cost reports  
13 used by ODEQ to develop the cost summaries. At least ninety  
14 (90) days before the beginning of each fiscal year, ODEQ shall  
15 supply a budget estimate of what it plans to do in the next year  
16 in detail comparable to the billing documents, as appropriate.

17           28.5           Except as provided under Paragraphs 28.6 or  
18 28.7, within ninety (90) days of receipt of the accounting  
19 provided pursuant to Paragraph 28.4, UMDA shall reimburse ODEQ  
20 in the amount set forth in the accounting.

21           28.6           In the event UMDA contends that any of the  
22 costs set forth in the accounting provided pursuant to Paragraph  
23 28.4 are not properly payable, the matter shall be resolved  
24 through the dispute resolution process set forth under Paragraph  
25 28.10.

26           28.7           UMDA shall be responsible for reimbursing  
27

1 ODEQ for any costs actually incurred in the implementation of  
2 this Agreement up to one percent (1%) of UMDA's total lifetime  
3 DERA project costs incurred through construction of the remedial  
4 action(s). ODEQ will be limited annually to one-quarter of one  
5 percent of UMDA's total lifetime DERA project costs. This total  
6 reimbursement limit is currently estimated to be a sum of \$  
7 800,000.00 over the life of the Agreement. Circumstances could  
8 arise whereby fluctuations in UMDA's estimates or actual final  
9 costs through the construction of the final remedial action  
10 creates a situation where ODEQ receives reimbursement in excess  
11 of one percent of these costs. Under these circumstances, ODEQ  
12 remains entitled to payment for activities undertaken prior to  
13 the completion of a new estimate if the expenses are within the  
14 ceiling applicable under the previous estimate.

15           28.8       Either UMDA or ODEQ may request, on the  
16 basis of significant upward or downward revisions in UMDA's  
17 estimate of its total lifetime costs through construction used  
18 in Paragraph 28.7, or on the basis of a significant change in  
19 the amount of costs actually incurred by ODEQ, a renegotiation  
20 of the cap. Failing an agreement, either UMDA or ODEQ may  
21 initiate dispute resolution in accordance with Paragraph 28.10.

22           28.9       ODEQ agrees to seek reimbursement for its  
23 expenses for activities undertaken pursuant to this Agreement  
24 solely through the mechanisms established in this Part.

25           28.10       Notwithstanding Part XXI, this Paragraph  
26 shall govern any dispute between UMDA and ODEQ regarding  
27

1 reimbursement of ODEQ costs. While it is the intent of UMDA and  
2 ODEQ that these procedures shall govern resolution of disputes  
3 concerning ODEQ reimbursement, informal dispute resolution is  
4 encouraged.

5 (a) The UMDA and ODEQ Project Managers shall be the  
6 initial points of contact for coordination of dispute resolution  
7 under this Paragraph.

8 (b) If the UMDA and ODEQ Project Managers are unable  
9 to resolve a dispute, the matter shall be referred to the UMDA  
10 Commander and ODEQ Environmental Cleanup Division Administrator,  
11 as soon as practicable, but in any event within five (5) working  
12 days, after the dispute is determined unresolved by the Project  
13 Managers.

14 (c) If the UMDA Commander and Environmental Cleanup  
15 Division Administrator are unable to resolve the dispute within  
16 twenty (20) working days, the matter shall be elevated to the  
17 Army Deputy for Environment, Safety and Occupational Health, and  
18 the Director of ODEQ.

19 (d) In the event the Deputy for Environment, Safety  
20 and Occupational Health, and the Director of ODEQ are unable to  
21 resolve a dispute, ODEQ retains any legal and equitable remedies  
22 it may have to recover its expenses. In addition, ODEQ may  
23 withdraw from this Agreement by giving sixty (60) days notice to  
24 the other Parties.

25 28.11 Nothing herein shall be construed to limit  
26 the ability of UMDA to contract with ODEQ for technical services

27  
28 FEDERAL FACILITY AGREEMENT, UMDA - Page 61 September 19, 1989

1 that could otherwise be provided by a private contractor  
2 including, but not limited to:

3 (a) Identification, investigation, and cleanup of any  
4 contamination beyond the boundaries of the UMDA facility;

5 (b) Laboratory analysis; or

6 (c) Data collection for field studies.

7 28.12 Nothing in this Agreement shall be construed  
8 to constitute a waiver of any claims by ODEQ for any expenses  
9 incurred prior to the effective date of this Agreement.

10 28.13 UMDA and ODEQ agree that the terms and  
11 conditions of this Part may become null and void if ODEQ enters  
12 into a Defense/State Memorandum of Agreement ("DSMOA") with the  
13 Department of Defense that addresses ODEQ reimbursement.

14  
15 XXIX.

16 OTHER CLAIMS

17 29.1 Nothing in this Agreement shall constitute  
18 or be construed as a bar or release from any claim, cause of  
19 action, or demand in law or equity by or against any persons,  
20 firm, partnership, or corporation not a signatory to this  
21 Agreement for any liability it may have arising out of or  
22 relating in any way to this Agreement or the generation,  
23 storage, treatment, handling, transportation, release, or  
24 disposal of any hazardous substances, hazardous wastes,  
25 hazardous constituents, pollutants, or contaminants found at,  
26 taken to, or taken from UMDA.



1                   29.2           U.S. EPA and ODEQ shall not be considered a  
2 Party to any contract entered into by UMDA to implement the  
3 requirements of this Agreement.

4                   29.3           UMDA shall notify the appropriate federal  
5 and state natural resource trustees as required by Section  
6 104(b)(2) of CERCLA, 42 U.S.C. § 9604(e), and Section 2(e)(2) of  
7 Executive Order 12580. UMDA is not released from any liability  
8 which it might have pursuant to any provisions of state and/or  
9 federal law, including any claim for damages for destruction or  
10 loss of natural resources.

11                  29.4           This Agreement shall not restrict U.S. EPA  
12 and/or ODEQ from taking any legal or response action for any  
13 matter not addressed by this Agreement.

14  
15                                   XXX.

16                                   OTHER APPLICABLE LAWS

17                  30.1           All actions required to be taken pursuant to  
18 this Agreement shall be undertaken in accordance with the  
19 requirements of all applicable state and federal laws,  
20 including, but not limited to, RCRA, and regulations as required  
21 by this Agreement, CERCLA, or the NCP.

22  
23                                   XXXI.

24                                   CONFIDENTIAL INFORMATION

25                  31.1           Regarding information submitted to U.S. EPA  
26 pursuant to this Agreement, UMDA may assert on its own behalf or  
27

28 FEDERAL FACILITY AGREEMENT, UMDA - Page 63           September 19, 1989

1 on behalf of a contractor, subcontractor, or consultant, a  
2 confidentiality claim covering all or part of the information  
3 required by this Agreement, pursuant to Section 104(e)(7),  
4 42 U.S.C. § 9604(e)(7), and 40 C.F.R. Part 2, Subpart B.  
5 Analytical data shall not be claimed as confidential by UMDA.

6 31.2 Regarding information submitted to ODEQ,  
7 UMDA may assert on its own behalf or on behalf of a contractor,  
8 subcontractor, or consultant, a claim of confidentiality in  
9 accordance with ORS 192.410 through 192.505. ODEQ shall treat  
10 information for which a claim of confidentiality has been made  
11 in accordance with ORS 192.410 through 192.505.

12 31.3 If no claim of confidentiality accompanies  
13 the information when it is submitted to either U.S. EPA or ODEQ,  
14 the information may be made available to the public without  
15 further notice to UMDA.

16  
17 XXXII.

18 TRANSFER OF PROPERTY

19 32.1 Conveyance of title, easement, or other  
20 interest in this facility shall be in accordance with Section  
21 120(h) of CERCLA, 42 U.S.C. § 9620(h), and applicable  
22 regulations.

23  
24 XXXIII.

25 AMENDMENT OF AGREEMENT

26 33.1 This Agreement may be amended by unanimous  
27

1 agreement of UMDA, ODEQ, and U.S. EPA. Any such amendment shall  
2 be in writing, shall have as the effective date that date on  
3 which it is signed by all the Parties, and shall be incorporated  
4 into and modify this Agreement.

5  
6 XXXIV.

7 SEVERABILITY

8 34.1 If any provision of this Agreement is ruled  
9 invalid, illegal, or unconstitutional, the remainder of the  
10 Agreement shall not be affected by such ruling.

11  
12 XXXV.

13 RESERVATION OF RIGHTS

14 35.1 Notwithstanding any provision in this  
15 Agreement to the contrary,

16 (A) ODEQ reserves the right to apply and enforce any  
17 and all authority ODEQ has under state and federal law and  
18 regulations relating to hazardous waste, hazardous waste  
19 constituents, and hazardous substances, pollutants, and  
20 contaminants regarding matters not covered under this Agreement  
21 or in the event of nonperformance of this Agreement by UMDA;

22 (B) ODEQ reserves the right to seek civil penalties  
23 for past, present, or future violations of state laws and  
24 regulations regarding matters not covered under this Agreement  
25 or in the event of nonperformance of this Agreement by UMDA.

26 UMDA reserves the right to contest any such claim for civil  
27

1 penalties;

2 (C) ODEQ reserves the right, upon exhaustion of  
3 dispute resolution under Part XXI, to maintain an action under  
4 Section 121(f)(3)(B) of CERCLA, 42 U.S.C. § 9621(f)(3)(B), to  
5 challenge the selection of a remedial action that does not  
6 attain an ARAR;

7 (D) ODEQ reserves its right to seek natural resource  
8 damages under CERCLA and state law; and

9 (E) ODEQ reserves any other right or remedy available  
10 under federal or state law, including common law, regarding  
11 matters not covered under this Agreement or in the event of  
12 nonperformance of this Agreement by UMDA.

13 35.2 Subject to the provisions of this Agreement,  
14 UMDA and U.S. EPA reserve the right, as to any person not a  
15 Party to this Agreement, to raise or assert any defense, whether  
16 procedural or substantive, in law or equity, or to raise any  
17 issue as to jurisdiction, standing, or any other matter in any  
18 proceeding related or not related to this Agreement, which UMDA  
19 or U.S. EPA might otherwise be entitled to raise or assert.  
20

21 XXXVI.

22 TERMINATION AND SATISFACTION

23 36.1 The provisions of this Agreement shall be  
24 deemed satisfied and terminated upon receipt of UMDA of written  
25 notice from U.S. EPA and ODEQ that UMDA has demonstrated, to the  
26 satisfaction of U.S. EPA and ODEQ, that all the terms of this  
27

1 Agreement have been completed.

2 XXXVII.

3 PUBLIC COMMENT

4 37.1 Within fifteen (15) days of the execution of  
5 this Agreement, UMDA shall publish notice in at least one major  
6 local newspaper of general circulation that this Agreement is  
7 available for a thirty (30) day period of public review and  
8 comment.

9 37.2 Promptly upon the completion of the comment  
10 period, UMDA shall transmit to the other Parties copies of all  
11 comments received within the comment period. The Parties shall  
12 review all such comments and, within thirty (30) days of the  
13 close of the comment period, UMDA shall prepare a written  
14 response to comments for the review and concurrence of U.S. EPA  
15 and ODEQ. Within sixty (60) days of the close of the comment  
16 period, the Parties shall determine that either:

17 A. the Agreement shall remain effective in its  
18 present form; or

19 B. seek to modify the Agreement pursuant to Part  
20 XXXIII herein, in response to the comments received. Absent or  
21 pending an Amendment of the Agreement pursuant to Part XXXIII,  
22 the Agreement will remain effective in its present form.

23 XXXVIII.

24 EFFECTIVE DATE

25 38.1 This Agreement is effective upon signature  
26 by all the Parties to this Agreement.

27  
28 FEDERAL FACILITY AGREEMENT, UMDA - Page 67 September 19, 1989

Signature sheet for the foregoing Federal Facility  
Agreement for the Umatilla Depot Activity among the U.S.  
Environmental Protection Agency, the Department of the Army, and  
the Oregon Department of Environmental Quality.

Lewis D. Walker  
LEWIS D. WALKER  
Deputy Assistant Secretary of the Army  
for Environment, Safety and Occupational Health

9/27/89  
Date

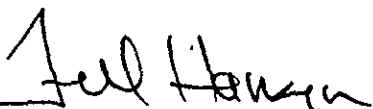
Larry A. Sparks  
LTC LARRY A. SPARKS  
Commander  
U.S. Army Depot Activity, Umatilla

31 October 1989  
Date

REPRESENTED BY:

Roger K. Corman, Esq.

Signature sheet for the foregoing Federal Facility  
Agreement for Umatilla Depot Activity among the U.S.  
Environmental Protection Agency, the Department of the Army, and  
the Oregon Department of Environmental Quality.



FREDERIC J. HANSEN  
Director  
Oregon Department of Environmental  
Quality



Date

REPRESENTED BY:

Kurt Burkholder, Esq.

Signature sheet for the foregoing Federal Facility  
Agreement for the Umatilla Depot Activity among the U.S.  
Environmental Protection Agency, the Department of the Army, and  
the Oregon Department of Environmental Quality.



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

October 31, 1989  
Date

REPRESENTED BY:

Monica Kirk, Esq.