

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

_____)	
IN THE MATTER OF:)	FIRST AMENDMENT TO THE
)	INTERAGENCY AGREEMENT
The U.S. Department of the Navy,)	UNDER CERCLA SECTION 120
)	
Bremerton Naval)	
Complex)	Administrative Docket No.
Bremerton, Washington)	10-97-0104-CERCLA
)	
_____)	

Introduction

WHEREAS, the existing Interagency Agreement (IAG or Agreement) between the United States Department of the Navy (Navy), the United States Environmental Protection Agency (EPA), and the Washington State Department of Ecology (Ecology) (hereinafter Parties) addressing the Puget Sound Naval Shipyard Complex, also known as the Bremerton Naval Complex, in Bremerton, Washington, requires an amendment to delineate actions planned to be taken at Operable Unit B (OU-B);

WHEREAS, OU-B has been further divided into OU-B Terrestrial and OU-B Marine;

WHEREAS, the intent of the Parties is to amend the IAG prospectively only, and not to disturb any work already completed under the IAG except as required by the terms of this First Amendment to the IAG, the IAG, the NCP, and CERCLA;

WHEREAS, the Parties agree that it is in the best interests of the cleanup to address such prospective work under current Federal Facility Agreement (FFA) procedures by utilizing a Site Management Plan (SMP);

WHEREAS, the Parties also desire to amend the Dispute Resolution section so that it is consistent with the NCP, current FFA procedures, and EPA's oversight role;

WHEREAS, the FFA procedures set forth in the Fort Eustis FFA have been adopted by both the Department of Defense, to include Navy, and EPA;

WHEREAS, the Navy believes it can address the presence of mercury in OU-B Marine through the work to be performed at OU-B Marine without reopening any of the actions taken at OU-B Terrestrial;

NOW THEREFORE, in accordance with paragraph 6.5 of the IAG, the Parties hereby amend the IAG as set forth herein. The Parties agree that the modifications of this First Amendment will be applied prospectively only and will be applied only to OU-B Marine with the exception of the amended Purpose clause (Paragraph 4.3) and Dispute Resolution clause (new Paragraph 12.16) which will apply to OU-B.

Part III. Definitions:

The Parties agree to add the following definitions to the IAG:

“Deadlines” shall mean the Near Term Milestones specifically established for the current fiscal year under the Site Management Plan (SMP). Deadlines are subject to stipulated penalties in accordance with Part XIV (Stipulated Penalties).

“Deliverables” shall mean those required documents listed as Primary and Secondary Documents under this Agreement.

“Land Use Controls” or “LUCs” shall mean any restriction or administrative action, including engineering and institutional controls, arising from the need to reduce risk to human health and the environment.

“Milestones” shall mean the dates established by the Parties in the SMP for the initiation or completion of Primary Actions and the submission of Primary Documents and Project End Dates. Milestones shall include Near Term Milestones, Out Year Milestones, Primary Actions, and Project End Dates.

“Near Term Milestones” shall mean the Milestones within the current fiscal year (FY), the next fiscal year or “budget year” (FY+1), and the year for which the budget is being developed or “planning year” (FY+2).

“Out Year Milestones” shall mean the Milestones within those years occurring after FY+2 until the completion of the cleanup or phase of the cleanup (i.e., FY+3 through Project End Date).

“Primary Actions” as used in these definitions shall mean those specified major, discrete actions that the Parties identify as such in the SMP.

“Project End Dates” shall mean the dates established by the Parties in the SMP for the completion of major portions of the cleanup or phase of the cleanup. The Parties recognize that, in many cases, a higher degree of flexibility is appropriate with Project End Dates due to uncertainties associated with establishing such dates.

“Site Management Plan” or “SMP” shall mean a planning document entitled “Puget Sound Naval Shipyard Complex Superfund Site, Bremerton Naval Complex, Site Management Plan for OU-B Marine,” prepared specifically under Paragraphs 6.6 through 6.8 set forth in the First Amendment to the Agreement, which contains plans, deliverables, and schedules that indicate the timing and sequence of response activities

developed under the terms of this Agreement. The SMP will be used as a management tool in planning, reviewing and setting priorities for response activities.

The Parties agree to amend the definition of “Navy” as follows:

After the first sentence, add: “The Navy shall also include the United States Department of Defense (DoD) to the extent necessary to effectuate the terms of the Agreement, including, but not limited to, appropriations and Congressional reporting requirements.”

Part IV. Purpose:

The Parties agree to amend Part IV of the IAG as follows:

Paragraph 4.1:

Add a semicolon after the phrase “Bremerton Naval Complex” and then add: “(2) establish a procedural framework and Schedule for developing, implementing and monitoring appropriate response actions at the Site in accordance with CERCLA, as amended by SARA, the NCP, Superfund Guidance and policy, RCRA, RCRA Guidance and policy, and applicable State law; (3) Ensure that the environmental impacts associated with past and present activities at the Site are thoroughly investigated and appropriate remedial action taken as necessary to protect the public health, welfare and the environment;”

Renumber (2) in Paragraph 4.1 to “(4)”.

Paragraph 4.3:

Add at the end of paragraph: “For purposes of interagency coordination and oversight, EPA and Ecology entered into an agreement for managing Superfund sites in Washington, dated February 23, 2000, which is appended to this Agreement as Attachment 3. For OU-B only, the EPA-Ecology working relationship established in that agreement is hereby incorporated to establish a joint oversight approach consistent with Section 120 of CERCLA, the NCP, and the revisions made in the First Amendment to this Agreement. Wherever the term “Agency” is used in this Agreement or the First Amendment to this Agreement, that term shall mean EPA and Ecology for purposes of OU-B only.”

Part VI. Remedial Deliverables and Schedule:

The Parties agree to amend Part VI of the IAG to incorporate the following new subparagraph:

Paragraph 6.4, new subparagraph d:

d. Within 90 days of the Effective Date of the First Amendment to the IAG, the Navy shall complete and submit a draft SMP for OU-B Marine to EPA and Ecology. EPA and Ecology will review and comment on the draft SMP in accordance with the provisions of Part VIII of the IAG.

The Parties agree to amend Part VI of the IAG to incorporate the following as new paragraphs 6.6 through 6.11:

New Paragraph 6.6:

6.6 Contents and Deadlines of Site Management Plan for OU-B Marine. This Agreement establishes a process for creating, and amending on an annual basis thereafter, the Site Management Plan (SMP) for OU-B Marine. The SMP establishes milestones associated with the performance of work and submittal of documents as stipulated in the IAG. The SMP will be provided in draft by the Navy within 90 days of the Effective Date of the First Amendment to the IAG and is to be incorporated as Attachment 2 to the IAG. Draft SMPs shall be subject to the review and comment process outlined in Part VIII of the IAG and amendments thereto. Milestones shall be established in the SMP and will remain unchanged unless otherwise agreed to by the Parties or unless directed to be changed pursuant to the agreed dispute resolution process set out in Part XII of the IAG. In addition, if an activity is fully funded in the current fiscal year (FY), Milestones associated with the performance of work and submittal of Primary Documents associated with such activity (even if they extend beyond the current FY) shall be enforceable.

- a. The SMP shall include proposed actions for both CERCLA responses and actions which would otherwise be handled pursuant to RCRA corrective actions per Part XXIII (RCRA/CERCLA Integration) of the IAG, and shall outline all response activities and associated documentation to be undertaken at the Site. The SMP shall incorporate all existing Milestones contained in approved Work Plans, and all Milestones approved in future Work Plans immediately become incorporated into the SMP.
- b. The SMP and its annual amendments shall include: (1) A description of actions necessary to mitigate any immediate threat to human health or the environment, and (2) Activities and schedules for response actions covered by the SMP, including at a minimum: Identification of any Primary Actions; All Deadlines; All Near Term Milestones; All Out Year Milestones; Project End Dates; and a Schedule for initiation of any planned response action(s) covered by the IAG or this Amendment.
- c. Milestones in the SMP reflect the priorities agreed to by the Parties through a process of “risk, plus other factors” priority setting. Site activities have been prioritized by weighing and balancing a variety of factors including, but not limited to: (i) the DoD relative risk rankings for the Site (DoD Relative Risk Site Evaluation Model for Installation Restoration Program sites or the DoD Munitions Response Site Prioritization Protocol for Military Munitions Response Program sites); (ii) current, planned, or potential uses of the Facility; (iii) ecological impacts; (iv) impacts on human health; (v) intrinsic and future value of affected resources; (vi) cost effectiveness of the proposed activities; (vii) environmental justice considerations; (viii) regulatory requirements; and, (ix)

actual and anticipated funding levels. While Milestones should not be driven by budget targets, such targets should be considered when setting Milestones. Furthermore, in setting and modifying Milestones, the Parties agree to make good faith efforts to accommodate Federal Fiscal constraints, which include budget targets established by the Navy.

d. The Milestones established in accordance with this Part will be established on an annual basis in the SMP, and will remain the same unless otherwise agreed to by the Parties, or unless changed in accordance with the dispute resolution procedures set out in Part XII of the IAG. The Parties recognize that possible bases for requests for changes or extensions of the Milestones include but are not limited to the following: (i) The identification of significant new site conditions at OU-B Marine; (ii) Reprioritization of activities under the First Amendment or the IAG caused by changing priorities or new site conditions elsewhere in the Navy; (iii) Reprioritization of activities under the First Amendment or the IAG caused by budget adjustments (e.g., rescissions, inflation adjustments, and reduced Congressional appropriations); (iv) An event of force majeure; (v) A delay caused by another party's failure to meet any requirement of this Amendment or the IAG; (vi) A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action; (vii) A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and Deadline or schedule; and (viii) Any other event or series of events mutually agreed to by the Parties as constituting good cause.

New Paragraph 6.7:

6.7 Annual SMP Amendments. No later than June 15 of each year after the initial adoption of the SMP, the Navy shall submit to EPA and Ecology a draft amendment to the SMP. When formulating such draft amendments, the Navy shall consider funding circumstances (including Office of Management and Budget targets/guidance) and "risk plus other factors" outlined in this Agreement to evaluate whether the previously agreed upon Milestones should change. Prior to proposing changes to Milestones in its annual SMP amendment, the Navy will first offer to meet with EPA and Ecology to discuss any proposed changes. The Parties will attempt to agree on Milestones before the Navy submits its Annual SMP Amendment by June 15, but failure to agree on such proposed changes does not modify the June 15 date, unless agreed to by EPA and Ecology. Any proposed extensions or other changes to Milestones must be explained in a cover letter to the draft amendment to the SMP. Resolution of any disagreement over adjustment of Milestones pursuant to this Paragraph shall be resolved pursuant to Part XII of the IAG.

a. The Parties shall meet as necessary to discuss the draft SMP amendment. The Parties shall use the consultation process contained in Part VIII of the IAG, except that none of the Parties will have the right to use the extension provisions provided therein and comments on the draft amendment will be due to the Navy no later than 30 days after receipt of the draft amendment by EPA and Ecology.

If either EPA or Ecology provide comments and are not satisfied with the draft amendment during this comment period, the Parties shall meet to discuss the comments within 15 days of the Navy's receipt of comments on the draft amendment. The draft final amendment to the SMP will be due from the Navy no later than 30 days after the end of the EPA and Ecology comment period. During this second 30-day time period, the Navy will, as appropriate, make revisions and issue a revised draft herein referred to as the draft final amendment. To the extent that Part VIII (Review and Comment Process on Deliverables) contains time periods differing from these 30 day periods, this provision will control for consultation on the amendment to the SMP.

b. If the Navy proposes, in a draft final SMP amendment, modifications of Milestones to which EPA or Ecology have not agreed, those proposed modifications shall be treated as a request by the Navy for an extension. Requests for extension of milestones during the SMP review process will be governed by Part VIII of the IAG. The time period for EPA and Ecology to respond to the request for extension will begin on the date EPA and Ecology receive the draft final SMP amendment, and EPA and Ecology shall advise the Navy in writing of their respective positions on the request within 30 days. If EPA and Ecology approve of the Navy's draft final amendment, the document shall then await finalization in accordance with Paragraph 6.7.e. If EPA denies the request for extension, then the Navy may amend the SMP in conformance with EPA comments or seek and obtain a determination through the dispute resolution process established in Part XII (Dispute Resolution), within 21 days of receipt of notice of denial. Within 21 days of the conclusion of the dispute resolution process, the Navy shall revise and reissue, as necessary, the draft final amendment to the SMP. If EPA or Ecology initiates a formal request for a modification to the SMP to which the Navy does not agree, EPA or Ecology may initiate dispute resolution as provided in Part XII (Dispute Resolution) with respect to such proposed modification. In resolving a dispute, the persons or person resolving the dispute shall give full consideration to the bases for changes or extensions of the Milestones referred to in Paragraph 6.6 asserted to be present, and the facts and arguments of each of the parties.

c. Notwithstanding Paragraph 6.7.b., if the Navy proposes, in the draft final amendment to the SMP, modifications of Project End Dates which are intended to reflect the time needed for implementing the remedy selected in the ROD, ROD Amendment, or Explanation of Significant Differences, but to which either EPA or Ecology have not agreed, those proposed modifications shall not be treated as a request by the Navy for an extension, but consistent with Part XII (Dispute Resolution), EPA or Ecology may initiate dispute resolution with respect to such Project End Dates.

d. In any dispute under this Part, the time periods for the standard dispute resolution process contained in Paragraphs 12.2, 12.6, and 12.10 of Part XII

(Dispute Resolution) shall be reduced by half in regard to such dispute, unless the Parties agree to dispute directly to the Senior Executive Committee level.

e. The Navy shall finalize the draft final amendment as a final amendment to the SMP consistent with the mutual consent of the Parties, or in the absence of mutual consent, in accordance with the final decision of the dispute resolution process.

New Paragraph 6.8:

6.8 Primary Documents. In accordance with Paragraphs 8.6 and 8.7, the Navy shall complete and transmit draft and draft final reports for all Primary Documents to EPA and Ecology for review in accordance with the provisions of this Part. Consistent with Paragraphs 6.6 and 6.7, the first SMP to be submitted by the Navy to EPA and Ecology shall include the schedule for the following Primary Documents to EPA and Ecology for review in accordance with the provisions of this Part:

- a. Draft and Draft Final Focused Feasibility Study (focus on mercury), OU-B Marine.
- b. Proposed Plan (focus on mercury), OU-B Marine.
- c. ROD Amendment (focus on mercury), OU-B Marine.

New Paragraph 6.9:

6.9 The Navy shall use quality assurance, quality control, and chain of custody procedures throughout all field investigation, sample collection and laboratory analysis activities. If additional detail is required, the Navy shall develop a site-specific Quality Assurance Project Plan. These work plans will be reviewed as Primary Documents pursuant to Part VIII. QA/QC Plans shall be prepared in accordance with applicable EPA Guidance, including the Uniform Federal Policy for Quality Assurance Project Plans (March 2005).

New Paragraph 6.10:

6.10 In order to provide for quality assurance and maintain quality control regarding all fieldwork and samples collected pursuant to this Agreement, the Navy shall include in each QA/QC Plan submitted to EPA and Ecology all protocols to be used for sampling and analysis. Said protocols shall be consistent with applicable EPA and Ecology guidance. The Navy shall also ensure that any laboratory used for analysis is a participant in a QA/QC program that is consistent with EPA Guidance.

New Paragraph 6.11:

6.11 The Navy shall ensure that lab audits are conducted as appropriate and are made available to EPA and the Ecology upon request. The Navy shall use all reasonable efforts to ensure that EPA and/or Ecology and/or their authorized representatives shall have

access to all laboratories performing analyses on behalf of the Navy pursuant to this Agreement.

Part VIII. Review and Comment Process on Deliverables:

The parties agree to amend Part VIII of the IAG as follows:

New Paragraph 8.6:

8.6 At OU-B Marine, the Navy shall complete and transmit each draft and draft final deliverable, including the draft SMP due under Paragraph 6.4.d., to EPA and Ecology on or before the corresponding deadline established in the SMP or this Agreement. If no deadline has been established in the SMP or this Agreement or in another final deliverable, such as a Primary Document, the Parties shall mutually agree to an enforceable deadline. Unless the Parties mutually agree to another time period, all draft deliverables shall be subject to a 30-day period for review and comment. Review of any deliverable by EPA and Ecology may concern all aspects of the deliverable (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the deliverable, and consistency with CERCLA, the NCP, and any pertinent guidance or policy promulgated by EPA, and with applicable state law. Within 60 days of the close of the comment period on a draft Primary Document, the Navy shall submit to EPA and Ecology a draft final Primary Document which shall include the Navy's response to all written comments received within the comment period. Within 60 days of receipt of EPA and Ecology comments on a Secondary Document, the Navy shall submit its written response to comments received within the comment period. For the purposes of reviewing and commenting on deliverables at OU-B Marine, Paragraphs 8.1 through 8.5 shall apply after the Navy submits its draft final deliverable to EPA and Ecology. The draft final SMP, OU-B Marine Primary Documents, and any subsequent amendments thereto shall be subject to dispute resolution in accordance with Part XII of the IAG. For Agency comments on deliverables, the Navy shall prepare and transmit Responses to Comments to both EPA and Ecology in accordance with this Section.

New Paragraph 8.7:

8.7 Primary Documents include major documents, as well as discrete portions of major documents, and include the Remedial Investigation/Feasibility Study (RI/FS); RI/FS Work Plans including Sampling and Analysis Plans and Quality Assurance Project Plans (QAPP); Remedial Investigation Reports, including Risk Assessments; Feasibility Studies and Focused Feasibility Studies; Proposed Plans; Records of Decision; Remedial Design/Remedial Action (RD/RA) plans and reports, including Remedial Designs, Remedial Action Work Plans, and Remedial Action Completion Reports; and the Site Management Plan and its annual amendments. Primary Documents are initially issued by the Navy in draft subject to review and comment by EPA and Ecology. Following receipt of comments on a particular draft Primary Document, the Navy will respond to the comments received and issue a draft final Primary Document subject to dispute resolution. The draft final Primary Document will become the final Primary Document

upon the earlier of (i) issuance of a "no additional comment letter" by EPA and Ecology, (ii) thirty days after the period established for review of a draft final primary document if dispute resolution is not invoked, or (iii) modification by decision of the dispute resolution process.

Secondary Documents include those reports that are discrete portions of the Primary Documents and are typically input or feeder documents. Secondary Documents are issued by the Navy in draft, subject to review and comment by EPA and Ecology. Although the Navy will respond to comments received, the draft Secondary Documents may be finalized in the context of the corresponding Primary Documents. A Secondary Document may be disputed at the time the corresponding draft final Primary Document is issued.

Part XII. Dispute Resolution:

New Paragraph 12.16:

12.16 Dispute Resolution at OU-B. Except as specifically set forth elsewhere in this Agreement, if a dispute arises at OU-B under this Agreement, as amended, the procedures of this Paragraph shall apply. All Parties to this Agreement shall make reasonable efforts to resolve disputes informally at the Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Paragraph shall be implemented to resolve a dispute.

- a. Within thirty (30) days after: (1) issuance of a draft final Primary Document pursuant to Part VI of this Agreement; or (2) any action that leads to or generates a dispute, the disputing Party shall submit to the Dispute Resolution Committee (DRC) for OU-B a written statement of dispute setting forth the nature of the dispute, the Work affected by the dispute, the disputing Party's position with respect to the dispute and the technical, legal or factual information the disputing Party is relying upon to support its position.
- b. Prior to any Party's issuance of a written statement of dispute, the disputing Party shall engage the other Parties in informal dispute resolution among the Project Managers and/or their immediate supervisors. During this informal dispute resolution period, the Parties shall meet as many times as are necessary to discuss and attempt resolution of the dispute.
- c. The DRC for OU-B will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC for OU-B. The individuals designated to serve on the DRC for OU-B shall be employed at the policy level (Senior Executive Service (SES) or equivalent) or be delegated the authority to participate on the DRC for OU-B for the purposes of dispute resolution under this Agreement. EPA's representative on the DRC is the Director of the Office of Environmental Cleanup (ECL Director) of EPA Region 10. The Ecology

representative on the DRC for OU-B is the Manager of the Toxics Cleanup Program, Headquarters Section. The Navy's designated member is the Director, Environmental Department, Engineering Field Activity, Northwest. Notice of any delegation of authority from a Party's designated representative on the DRC for OU-B shall be provided to all other Parties in writing.

- d. Following elevation of a dispute to the DRC for OU-B, the DRC for OU-B shall have twenty-one (21) days to unanimously resolve the dispute and issue a written decision signed by all Parties. If the DRC for OU-B is unable to unanimously resolve the dispute within this twenty-one (21) day period, the written statement of dispute shall be forwarded to the Senior Executive Committee (SEC) for OU-B for resolution within seven (7) days after the close of the 21-day resolution process.
- e. The SEC for OU-B will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC for OU-B. EPA's representative on the SEC for OU-B is the Regional Administrator of EPA Region 10. Ecology's representative on the SEC for OU-B is the Director of the Department of Ecology. The Navy's representative on the SEC for OU-B is the Deputy Assistant Secretary of the Navy (Environment). The SEC for OU-B members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision signed by all Parties. If unanimous resolution of the dispute is not reached within twenty-one (21) days, the EPA Regional Administrator shall issue a written position on the dispute. The Secretary of the Navy and the Director of Ecology may, within fourteen (14) days of the Regional Administrator's issuance of EPA's position, issue a written notice elevating the dispute to the Administrator of EPA for resolution in accordance with all applicable laws and procedures. In the event that the Navy or Director of the Department of Ecology elect not to elevate the dispute to the Administrator within the designated fourteen (14) day escalation period, that Party shall be deemed to have agreed with Regional Administrator's written position with respect to the dispute.
- f. Upon elevation of a dispute to the Administrator of EPA pursuant to Paragraph 12.16.e, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Secretary of the Navy and Director of the Department of Ecology to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the other Parties with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Paragraph 12.16 shall not be delegated.
- g. The pendency of any dispute under this Section shall not affect the Navy's responsibility for timely performance of the Work required by this Agreement, as amended, except that the time period for completion of Work affected by such dispute shall be extended for a period of time usually not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the Work required by this Agreement, as amended, that are not affected

by the dispute, shall continue to be completed in accordance with the applicable Schedule.

- h. When dispute resolution is in progress, Work affected by the dispute will immediately be discontinued if the ECL Director requests, in writing, that Work related to the dispute be stopped because, in EPA's opinion, such Work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. Ecology may request the ECL Director, EPA Region 10, to order Work stopped for the reasons set out above. To the extent possible, the Party seeking a Work stoppage shall consult with the other Parties prior to initiating a Work stoppage request. After stoppage of Work, if a Party believes that the Work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with the Party ordering a Work stoppage to discuss the Work stoppage. Following this meeting, and further consideration of the issues, the ECL Director will issue, in writing, a final decision with respect to the Work stoppage. The final written decision of the ECL Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC for OU-B, at the discretion of the Party requesting dispute resolution.
- i. Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Section, the Navy shall incorporate the resolution and final determination into the appropriate plan, schedule or procedures and proceed to implement this Agreement, as amended, according to the amended plan, schedule or procedures.
- j. Resolution of a dispute pursuant to this Paragraph 12.16 constitutes a final resolution of any dispute arising under this Agreement, as amended. All Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to Paragraph 12.16 of this Agreement.

Part XXI. Reservation of Rights:

The Parties agree to amend Part XXI (Reservation of Rights) as follows:

Paragraph 21.1:

Replace the “and” following EPA in line 20 with “and/or.”

Paragraph 21.4:

After “Paragraph 12.10” on line 14 add “or Paragraph 12.16”

Approval of First Amendment to Interagency Agreement

By signing below, EPA, the Navy, and Ecology indicate their consent to the amendment of the IAG as described herein. Pursuant to Part XIX of the IAG, this First Amendment shall become effective upon signature by all the Parties. Within thirty (30) days of the effective date, the Navy will issue public notice of the Amendment.

Each of the undersigned representatives of the Parties certifies that he or she is authorized to enter into the terms and conditions of this First Amendment to the IAG and to legally bind such party to this First Amendment to the IAG. The Agreement, as amended, shall be binding upon EPA, the Navy, and Ecology.

IT IS SO AGREED.

Signature sheet for the foregoing First Amendment to the Interagency Agreement
(Administrative Docket No. 10-97-0104-CERCLA) for the Bremerton Naval Complex among
the Department of the Navy, the Washington Department of Ecology, and the U.S.
Environmental Protection Agency.

By:

Karnig Ohannessian

Karnig H. Ohannessian

Deputy Assistant Secretary of the Navy, Environment

2/26/18

Date

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Environmental Protection Agency.

By:



Maia D. Bellon, Director
Department of Ecology

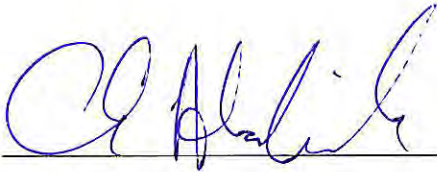
3/12/2018

Date

Represented by:
Allyson Bazan, Esq.

Signature sheet for the foregoing First Amendment to the Interagency Agreement
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the Department of the Navy, the Washington Department of Ecology, and the U.S.
Environmental Protection Agency.

By:



Chris Hladick
Regional Administrator
United States Environmental Protection Agency
Region 10

March 1, 2018

Date

Represented by:
Nick Vidargas, Esq.

ENVIRONMENTAL PROTECTION AGENCY REGION 10
WASHINGTON STATE DEPARTMENT OF ECOLOGY
SUPERFUND MANAGEMENT IN WASHINGTON
February 23, 2000

Introduction and Purpose

This agreement¹ is intended to outline how EPA and Ecology will manage both private and federal Superfund sites in the State of Washington now and in the foreseeable future. It represents a continuing shift towards a more complete division of labor on the majority of NPL sites. This division of labor has been, and will continue to be a shared goal. Based on established program capability and capacity, it is understood that NPL sites can be adequately addressed by either EPA or Ecology as the lead agency.

The primary purpose of this agreement has been to restructure the EPA - Ecology regulatory relationship on NPL sites so the potential for conflicts among staff are minimized, agency resources are conserved, and environmental cleanups are pursued in a faster and more efficient way.

This document is intended solely as a managerial tool to be used by the EPA Superfund and Ecology Toxics Cleanup Program offices. Nothing in this document is intended to conflict with any provision or requirement of CERCLA or MTCA, the NCP, or applicable EPA rules, policy or guidance. It is the intention of both EPA and Ecology that the federal facilities fully adhere to applicable federal and state law. This document is intended to benefit only EPA and Ecology. It extends no benefits or rights to any party not a signatory to the agreement.

In support of this restructuring, EPA and Ecology have agreed that all NPL sites will be categorized as state or federal lead (with a few notable exceptions such as sites with joint Consent Decrees), and that a substantial majority of sites shall have only management involved on behalf of the support agency at 3 "touch points" (**milestone briefings**) in the cleanup process. A smaller number of sites which meet the criteria discussed herein will qualify for **enhanced involvement** status.

The scope of support agency involvement at **enhanced involvement** sites will be covered in a site-specific scope of work (SOW) as part of the support agency agreement. In the event

¹ This is an updated agreement. The managers of EPA Region 10's Environmental Cleanup Office, and the Washington Department of Ecology's Toxics Cleanup Program held a meeting on March 10, 1999. One of the topics discussed at the meeting was the status of implementing the "Ecology/EPA Agreement on Roles and Responsibilities at NPL Sites," which was signed by Ecology and EPA on October 14, 1994. Both agencies expressed their views that while in general the Agreement appears to be working well, we both were concerned that some parts of the agreement are not sufficiently detailed in areas that are now of greater importance to both of our programs. To address this mutual concern, Ecology and EPA agreed to update the 1994 agreement by providing further clarification of specific topics.

Superfund is reauthorized, it will not affect the division of labor as outlined here. It may, however, affect certain program and legal implementation requirements. These will be dealt with over time on a case by case basis.

II. Objectives

The approach described below is designed to achieve four primary objectives. First, the approach is designed to maximize the universe of sites for which there will be no support agency involvement other than **milestone briefings** (project managers will not be assigned by the support agency); second, it is expected to result in a more efficient use of EPA and Ecology resources at "**enhanced involvement**" sites by directing support agency resources to complimentary rather than redundant activities; third, it sets forth a process that will help ensure that project completion by the lead agency is expected to be sufficient for concurrence and delisting by the support agency at minimal transaction cost; and fourth, it provides that Ecology and EPA will meet on an annual basis to discuss site-related planning and scheduling issues.

III. Planning and Scheduling

Each year on or about July 15, Ecology and EPA will have a face-to-face meeting to begin a discussion of site planning and scheduling issues. The goal of this discussion will be to reach agreement on milestone projections or "target" dates for the coming year, including those for Preliminary Assessments (PA's), RODs and CAPs, Construction Completions, deletions, five year reviews, and remedy changes or updates. The July meeting will focus on assessing the status of all sites with targets in the current EPA fiscal year, and identifying likely targets for the next fiscal year. Ecology and EPA will negotiate the agenda in advance of the meeting, and may agree to add other topics as appropriate.

On or about October 7, EPA and Ecology will meet again, or hold a conference call, to conclude the discussion. This meeting or call will clarify which targets were met during the just-concluded fiscal year, and which sites should be targeted for the coming year. EPA will use this information in its targeting negotiations with EPA headquarters, which typically occur in late October.

IV. Front End of Pipeline²

EPA and Ecology will conduct site assessment activities according to the EPA/Ecology Site

² This section does not apply to sites located on tribal land because of jurisdictional issues, nor to federal facilities because of the primacy issue.

Assessment Agreement, dated December 2, 1998 (Attachment 1). The agreement describes how the agencies will apportion site assessment work and provides guidelines for information sharing. During the site assessment process, the agencies commit to communicate frequently about those sites for which there is a mutual interest. If a site appears to be eligible for the National Priorities List (NPL), EPA will verbally notify Ecology, and the agencies will have an opportunity to meet to discuss potential management options for the site.

EPA and Ecology will discuss relevant site management factors, including identified threats to human health and the environment, fund-lead vs. PRP-lead, agency work load and resource capacities, potential timeliness of response, and other considerations. It is EPA and Ecology's intent to work toward and reach agreement on the appropriate site management approach. Once a site has been identified as potentially eligible for the NPL, Ecology may request a deferral of NPL listing to state Model Toxics Control Act (MTCA) authorities. EPA will use its guidance on deferral, including "Deferral of NPL Listing While States Oversee Response Actions," to evaluate Ecology's request and determine the suitability of the site for the deferral process.

Region 10 sites considered for NPL listing will be subject to the management review process according to Regional policy (see Attachment 2 - Policy for Site Prioritization in Region 10). Before listing a site on the NPL, EPA will follow its national policy on seeking state support for NPL listing by requesting governor concurrence. EPA will keep Ecology informed as to any communication with the Governor. If EPA does not receive governor concurrence, EPA will use its national policy on dispute resolution.

For sites that have been proposed on the NPL, Ecology may request lead agency status for the site. Because Ecology's cleanup authorities under MTCA are comparable to EPA's authorities under CERCLA, and because Ecology has a demonstrated record of appropriate cleanups under MTCA, EPA will defer to Ecology's request for lead agency status at new NPL sites. ("Automatic" state deferral may not apply to sites that are likely to be fund-lead.)

V. Site Management

Each NPL site in Washington (with few exceptions such as sites which have joint Consent Decrees) will either be the responsibility of EPA or Ecology (see Table 1). Once the lead agency is established, the support agency will be involved in **milestone briefings** or have **enhanced involvement**, as described below.

Milestone Briefings

For the large majority of NPL sites, support agency involvement will be limited only to milestone briefings. Support agency management or senior policy staff will participate in milestone briefings at three specific phases of the project and determine their willingness to provide written concurrence on the ROD and delisting materials based on briefing materials alone. These briefings shall be of sufficient detail so that both parties can meet their statutory obligations.

These milestone briefings include:

- o Project Planning Briefing - The lead agency will present the conceptual site model and describe how the site will be managed, including investigation and enforcement. The support agency will provide input regarding technical, enforcement, community issues, and, in the case of federal facilities, resource implications. The lead agency will prepare the informational briefing package.
- o Remedy Selection Briefing - A proposed plan briefing by the lead agency will be provided for the support agency to form a basis of concurrence on the proposed plan and record of decision (ROD) or cleanup action plan (CAP).

Following the proposed plan and response to public comment, a second management briefing will be held for the ROD/CAP. The lead agency will prepare the briefing package.

- o NPL Delisting - For all existing NPL sites, EPA will prepare all draft delisting packages. Ecology will assist in this effort.

EPA shall notify and hold a briefing for Ecology on the proposed delisting package. The briefing and delisting package will be the basis for delisting concurrence by Ecology. For more on the delisting process, see Section X.

For more detailed information on the milestone briefings process, see the attachments to the November 16, 1994, Memorandum entitled, "Implementation Status of the Ecology/EPA Management Agreement for NPL Sites."

Enhanced Involvement

At a few sites, in addition to milestone briefings, certain factors may warrant additional coordination or assistance between EPA and Ecology. The assistance and coordination will be restricted to non-duplicative, value-added support tasks. These factors are:

- o Fund-financed sites - Ecology has fiscal obligations at all fund-financed private sites. ROD concurrence by the State is especially important and a State Superfund Contract (SSC) is mandatory. The State is required to pay 10% of remedial action costs and assume 100% of operation and maintenance. While some fund-lead sites will have a support project manager assigned, it is agreed that others will not warrant this level of involvement. For more on SSCs, see Section VII.
- o State and local stakeholder concerns - There are a limited number of sites in which politics or local concerns play a more important role in the cleanup process. This situation may warrant some additional level of involvement by the support agency.

- o Special circumstances - Some sites may benefit from the unique support agency expertise (e.g., state involvement at marine sediment sites or EPA risk assessment), or agency resources may be insufficient to meet site demands. In these instances the lead agency shall request support agency involvement.

For **enhanced involvement** sites, scopes of work (SOWs) will be developed by EPA and Ecology on an annual basis identifying the role of the support agency. For Ecology, these SOWs will act as the basis for the multi-site grant application on private sites. For federal facilities, the SOW will document the technical oversight responsibilities of, and working relationship between, the two agencies.

VI. Remedy Selection

There are many parallels between MTCA and CERCLA. One difference however, is how low risk sites are managed. (For purposes of this section, low risk sites are sites which fall within the 10^{-4} to 10^{-6} risk range.) To ensure sites are managed in the same manner in the State, Ecology and EPA will give strong preference to 1 and 2, below.

- 1) When Ecology is the lead, institutional controls and other low cost remedial alternatives will be applied at low risk NPL sites. For federal facilities, Ecology will also consider deferring action until the federal facility is scheduled to go through base closure.
- 2) When EPA is the lead, EPA will push to include institutional controls or other low cost remedial alternatives for low risk sites, even if it would not ordinarily take this action under CERCLA.

In the event 1 and 2 are not possible, Ecology will be a signatory to the CERCLA ROD, thereby concurring that the remedy decision is consistent with CERCLA/NCP requirements, but state that the "No Action Cleanup Decision" does not meet state MTCA requirements.

VII. State Superfund Contracts (SSC): Planning for Transition to Ecology-Lead O&M

For fund-lead sites with a Record of Decision, Ecology and EPA will work together to produce a State Superfund Contract (SSC). The purpose of the SSC is to obtain assurances required by CERCLA regarding the State's remedial action (RA) cost share, potential property acquisition, and the conduct of operation and maintenance (O&M) of the remedy. During negotiation of the SSC, in addition to the CERCLA O&M assurance provided by the State, EPA and Ecology will collaborate on the development of an O&M agreement. The O&M agreement, which will be an attachment to the SSC, will be designed to clarify respective roles and expectations during specific periods of time, facilitate smooth O&M transitions, and help Ecology plan for upcoming financial burdens. The Plan will:

- identify State and EPA responsibilities for O&M related activities during the remedial design (RD), RA, post-RA, and O&M periods;
- further define, to the extent practicable, the administrative, financial, and technical parameters associated with typical O&M activities including inspection, sampling and analysis, routine maintenance, and reporting requirements;
- include conditions for State acceptance of O&M;
- describe the overall procedures and time frames for O&M transfer to the State.

The O&M agreement will be updated during the RD/RA phase of the project as more specific needs and information are developed.

VIII. EPA Statutory Obligations at Federal Facilities

Under Section 120 of CERCLA/SARA, EPA is currently required to: a) publish the RI/FS schedule within 6 months of NPL listing; b) enter into an interagency agreement with the federal facility for the conduct of the remedial action within 180 days of RI/FS completion; c) approve the remedial action; and d) exercise concurrence/approval responsibility in cases of federal property lease and/or transfer. Currently EPA is not permitted to delegate these obligations. EPA will continue to exercise these authorities/obligations regardless of which agency is in the lead oversight role. These circumstances may change under reauthorization.

IX. Procedures: Post-ROD and Post-CAP Remedy Changes

If a significant change to the remedy is under consideration by the lead agency after the ROD or CAP is final, the lead agency will inform the support agency of the possible change early in the evaluation and decision process. The support agency will then decide on its level of involvement. This involvement may be as limited as acknowledging this early notification, or may include a milestone briefing such as that required at remedy selection.

At federal facilities where Ecology is the lead agency, a somewhat different process must be followed because of EPA's statutory obligations to approve the remedial action. If significant changes to the selected remedy are under consideration by Ecology or the federal facility after the ROD has been signed, Ecology will inform EPA of the possible change early in the evaluation and decision process and will consult with EPA about the appropriate mechanism, under the National Contingency Plan (NCP), to document this change. If an Explanation of Significant Difference (ESD) or a Record of Decision (ROD) amendment is needed, then the procedures for remedy selection in this agreement will be followed, with the exception that an ESD will generally be signed by EPA's Environmental Cleanup Office Director, and may not require a milestone briefing.

At any EPA-lead site where an ESD or ROD amendment is prepared, Ecology will be offered the

opportunity to concur on the document.

X. Construction Completion

A site is considered eligible for "construction completion" once all physical construction required by the Cleanup Action Plan or Record of Decision is complete throughout the NPL site. The Preliminary Closeout Report (PCOR) is an EPA document that is prepared by the lead agency. The PCOR documents that physical construction throughout an NPL site has been completed. Even before the pre-final inspection is conducted, the site manager can start drafting portions of the Preliminary Closeout Report. The EPA state-lead coordinator will provide samples of PCORs to site managers to help facilitate the process and provide any necessary assistance. All draft PCORs will be reviewed by the Region and by EPA Headquarters. The construction completion milestone is achieved when the EPA Director of Environmental Cleanup signs the PCOR, a copy of the signed document is sent to EPA Headquarters, and EPA Headquarters concurs. If a site that meets the construction completion requirements also achieves all the cleanup standards stated in the CAP or ROD, then a Final Closeout Report (FCOR) should be prepared by the lead agency, following the same steps described for the PCOR.

XI. NPL Deletion

EPA and Ecology will work together to identify NPL sites that are ready for full or partial deletion, and a tracking schedule will be developed. Once the cleanup standards specified in the Cleanup Action Plan (CAP) or Record of Decision (ROD) have been met throughout the NPL site, and the cleanup is deemed protective of human and health and the environment, site completion has been achieved and the site deletion process can begin. Site deletion is possible once all the documents required by EPA guidance are completed. EPA requires a Final Closeout Report (FCOR) which ensures that (1) the documentation of activities and decision making at the site are complete, (2) the activities conducted and documented are verified, and (3) cleanup standards for site completion have been met. The FCOR will be completed by the lead agency. EPA will take the lead for all other deletion activities at all sites, including preparation of deletion packages and Federal Register Notices. Ecology will provide assistance as required. For Ecology-lead sites, this assistance will include providing copies of all necessary documents to EPA and reviewing the draft deletion package. If Ecology agrees that the site should be deleted, Ecology will provide EPA with a letter of concurrence for the proposed deletion.

XII. Five Year Reviews


While both CERCLA and MTCA have similar goals, they have different procedural requirements. CERCLA requires five year reviews for all Federal facility sites and most EPA-

lead sites. MTCA requires periodic reviews at sites cleaned up under MTCA that result in hazardous substances remaining at a site above Method A or B cleanup levels. Region 10 believes that CERCLA five-year reviews are not required for NPL sites cleaned up under non-CERCLA authorities such as MTCA. (EPA Headquarters is in the process of revising the five-year review guidance. If the revised guidance indicates that CERCLA five-year reviews are required for NPL sites cleaned up under non-CERCLA authorities, EPA and Ecology will deal with the issue at that time.)

EPA will provide copies of its current five year review guidance and samples of completed five year reviews to Ecology. EPA will also provide Ecology copies of the five year review guidance when it is updated. A draft is scheduled for Fall 1999, with the final guidance in Spring 2000.

At Ecology-lead federal facility sites, five year reviews need to be consistent with CERCLA and EPA's guidance. Copies of draft five year reviews will be provided to EPA for review to ensure consistency. If a five year review discloses the need for a change to a remedy, the procedures outlined above for remedy change will be followed. Copies of final five year reviews will be sent to EPA. EPA will then sign off on the reviews and make its statutorily required protectiveness determination.

Washington Department of Ecology


Jim Pendowski, Manager
Toxics Cleanup Program

Environmental Protection Agency

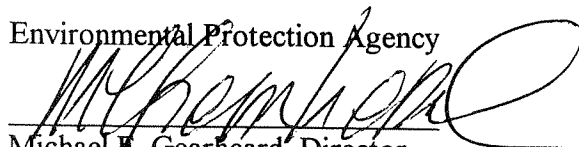

Michael F. Gearheard, Director
Environmental Cleanup Office

Table 1 - EPA and Ecology Division of Labor¹

Site	Lead	Support Agencies Role
American Crossarm	EPA	Milestone
ASARCO	EPA	Enhanced
Boomsnub/Airco	EPA	Enhanced
Bonneville Power Adm. Ross (USDOE)	EPA	Milestone
Commencement Bay	EPA	Milestone
CBSTC ² - South Tacoma Field	EPA	Milestone
CBSTC - Well 12A	EPA	Milestone
FMC Yakama	EPA	Milestone
Frontier Hardchrome	EPA	Milestone
Harbor Island	EPA	Enhanced
Lakewood/Ponders	EPA	Milestone
Moses Lake/Skyline	EPA	Milestone
Northwest Transformer Mission Pole	EPA	Milestone
Northwest Transformer South Harkness	EPA	Milestone
Oeser	EPA	Milestone
Pacific Sound Resources	EPA	Milestone
Palermo Groundwater Contamination	EPA	Milestone
Queen City Farms	EPA	Milestone
Ruston North Tacoma	EPA	Enhanced
Silver Mountain Mine	EPA	Milestone
Spokane Junkyard	EPA	Milestone
Tacoma Tarpits	EPA	Milestone
Tulalip Landfill	EPA	Milestone
Vancouver Water Station #1	EPA	Milestone
Vancouver Water Station #4	EPA	Milestone
Wyckoff/Eagle Harbor - Wyckoff	EPA	Enhanced
Wyckoff/Eagle Harbor - East Harbor	EPA	Enhanced
Wyckoff/Eagle Harbor - West Harbor	EPA	Milestone
Yakima Plating	EPA	Milestone
Alcoa Vancouver Smelter	Ecology	Milestone
Centrailia Landfill	Ecology	Milestone
Colbert Landfill	Ecology	Milestone
Commencement Bay Sources	Ecology	Milestone
General Electric - Spokane	Ecology	Milestone
Greenacres Landfill	Ecology	Milestone

¹ Hanford Sites are not included in this list.

² Commencement Bay South Tacoma Channel

Table 1 continued - EPA and Ecology Division of Labor

Site	Lead	Support Agencies Role
Hidden Valley Landfill	Ecology	Milestone
Kaiser Aluminum Mead Works	Ecology	Milestone
Kent Highlands	Ecology	Milestone
Mica Landfill	Ecology	Milestone
Midway Landfill	Ecology	Milestone
North Market Street/ TOSCO	Ecology	Milestone
North Side Landfill	Ecology	Milestone
Paccar	Ecology	Milestone
Pasco Landfill	Ecology	Milestone
Western Processing	Joint	N/A
CBSTC - Tacoma Landfill	Joint	N/A
<u>FEDERAL FACILITIES</u>		
Fort Lewis Logistics Center	EPA	Milestone
Manchester Laboratory	EPA	Enhanced
Whidbey Island Ault Field	EPA	Milestone
Bangor	Ecology	Milestone
Fairchild	Ecology	Milestone
Hamilton Island	Ecology	Milestone
Jackson Park Housing Complex	Ecology	Milestone
Keyport Naval Undersea Warfare Station	Ecology	Milestone
McChord Air Force Base	Ecology	Milestone
Port Hadlock	Ecology	Milestone
Puget Sound Naval Shipyard (Bremerton)		
- OUA & OUNSC	Ecology	Milestone
Puget Sound Naval Shipyard (Bremerton)		
- OUB	Joint	N/A
Whidbey Seaplane Base	Ecology	Milestone
<u>PROPOSED NPL SITE</u>		
Midnight Mine	EPA	Milestone

**Site Assessment Agreement
EPA/Washington Dept. Of Ecology**

Purpose:

The purpose of this agreement is to, through the partnership of EPA and Ecology, effectively address contaminated sites in the State of Washington by apportioning site assessment work between the two agencies and thereby achieve the most effective use of federal and state site assessment resources. This agreement is intended to serve as a guideline as to how the Agencies will apportion this work.

Agreement:

As EPA and the Dept. Of Ecology become aware of a site presenting a potential environmental problem, such as those described below, they will promptly inform each other of their planned assessment activities.

EPA will typically perform assessments on: 1) Sites that Ecology determines are beyond their capability to handle due to limited resources (i.e., Large sites or sites with special factors such as unique conditions or contaminants); 2) Emergency response actions involving unwilling or unable PRPs, and not being worked on by the State; 3) Sites which Ecology believes have the potential to "score" on the revised HRS, that is, the level of contamination present is at a caliber similar to existing NPL sites; 4) Sites for which EPA receives a petition; 5) Tribal lands where Ecology does not have the authority to act and has no agreement with the appropriate Tribal government; 6) Federal Facilities; 7) Sites which may come under a special EPA site assessment initiative, such as Brownfields, sediment or mining sites, and 8) criminal investigations.

Ecology will typically perform assessments on: 1) Sites not likely to score high on the federal Hazard Ranking System (HRS), that is, the level of contamination present is less than that found at similar to existing NPL sites; 2) Sites contaminated with petroleum products; 3) Operating municipal landfills; 4) RCRA sites (except for Environmental Priorities Initiative sites); and 5) formally used defense sites (FUDS).

Sites discovered by one agency may be referred to the other agency at any time during the site assessment process. The other agency will determine how they will respond and then notify the referring agency in a timely manner. To avoid delays in responding to a site, this referral should be done at the earliest possible time. A copy of the site file will accompany the referral.

The agencies will communicate frequently about those sites for which there is a mutual interest. These include new sites as well as those sites where activities are ongoing or planned. This will be done informally, on an "as needed" basis, and formally through scheduled meetings scheduled every six months. These meetings will be arranged through the Headquarters Section Manager for Ecology's Toxics Cleanup Program or designee.

The Department of Ecology will provide annual updates on those sites that have been assessed by

EPA and have determined to be a "low priority" assuming that the State is taking an active role in the remediation of those sites. A low priority site is a site that does score on the HRS, but the level of contamination is not of the caliber of a typical NPL site.

The Department of Ecology may determine that, for those low priority sites that have been cleaned up under Ecology's MTCA authorities, it is appropriate to request that EPA archive certain sites (according to EPA's Archiving Policy) and remove them from CERCLIS. The State will be responsible for initiating this action and for supplying up-to-date information to EPA on the specified site. In addition, all parties must be in agreement this archiving a particular site is appropriate. If there are objections, it will not be archived.

Part II. Information Sharing:

EPA will provide Ecology with a listing of new sites added to CERCLIS on a quarterly basis. Ecology will provide EPA a listing of new sites added to its Confirmed and Suspected Contaminated Sites List on a quarterly basis. These listings will include the name and address of each site.

On a semi-annual basis, (Note: Ecology's Site Register's Hazardous Sites List is updated semi-annually, around the third week in every February and August) each agency will provide the other with a status report of all sites in their database. This report will include the name and address of each site, the studies conducted on the site (e.g., preliminary assessment (PA), site hazard assessment (SHA), site inspection (SI)) the expected and the actual dates of the completed studies, and the disposition of the site.

Ecology will provide EPA with a copy of updates to the state Hazardous Sites List prior to publishing it. EPA will keep such lists confidential until published by Ecology.

Prior to conducting site specific pre-remedial activities at sites that are on CERCLIS (including sending letters to obtain site access and/or for information) each agency will notify the other. This will be accomplished by periodically developing and sharing a list of Site Hazard Assessments (SHAs), Preliminary Assessments (PAs), or Site Inspections (SIs)

If one agency desires to accompany the lead agency on the site visit, that agency will notify the lead agency as soon as they receive notice that the assessment will take place. The lead agency will then notify the other agency of the specific date and time.

EPA will submit final copies of assessment reports conducted in Washington by EPA or its contractors to the appropriate Toxics Cleanup Program Regional Office Unit Manager. Either agency may request review of quality assured data and draft reports. Ecology will submit to the EPA Region 10 assessments completed by Ecology for specific sites that are on CERCLIS. EPA may request copies of studies completed by Ecology for specific sites not on CERCLIS.

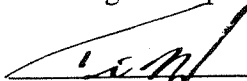
EPA will notify and consult with Ecology prior to proposing any site to the NPL. An Ecology

representative will also be invited to participate in EPA's Regional Decision Team meetings. The Regional Decision Team is a panel of Superfund Manager and staff who meets on an "as needed" basis to decide on whether to proceed with NPL listing. (Please refer to "Policy for Site Prioritization in Region 10.") A decision is reached by voting. The Ecology representative will be given the opportunity to vote or not vote at their discretion. The names of the sites recommended for nomination to the NPL and the HRS scoring packages are predecisional and will be kept confidential. They are exempt from Federal or State Freedom of Information Act (FOIA) laws until published in the Federal Register.

Each agency's site files will be made readily available to the other agency or the other agency's representative without having to go through (FOIA) requests. Appointments to review files should be made with the appropriate agency contact. Confidential information in site files will generally be shared between agencies; however, agency representatives (i.e., contractors) will not generally be provided access to confidential information in the other agency's files unless agreed to by both agencies on a case-by-case basis.

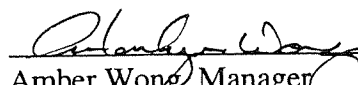
Generally no fees will be required to obtain information from each agency's site files.

Washington Department of Ecology

 11/30/98

Tim Nord, Co-Manager
Headquarters Section
Toxics Cleanup Program

Environmental Protection Agency

 12/2/98
Amber Wong, Manager
Site Assessment & Cleanup Unit #2
Environmental Cleanup Office



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

October 13, 1999

Reply To

Attn of: ECL-115

From: Michael Gearheard, Director
Environmental Cleanup Office

To: Chuck Clarke
Regional Administrator

Subject: Policy for Site Prioritization in Region 10

Attached for your concurrence is a revised Policy for Site Prioritization in Region 10. As we have discussed, the former Regional Decision Team (RDT) policy had become unworkable due to many factors. By revising the policy, EPA Region 10 Superfund can expedite the site management decision while still maintaining non-EPA coordination and communication.

Please indicate your concurrence/non-concurrence below and return to me. Thank you for your attention to this matter and feel free to contact me directly to discuss this if you desire.

Concur:

Chuck Clarke
signature

10/13/99
date

Non-concur:

signature

date

NOTICE: The policies and procedures set out in this document are intended solely for the guidance of response personnel. They are not intended, nor can they be relied upon, to create any rights, substantive or procedural, enforceable by any party in litigation with the United States. EPA officials may decide to follow this guidance, or to act at variance with these policies and procedures based on an analysis of specific site circumstances, and to change them at any time without public notice.

Policy for Site Prioritization in Region 10

I. PURPOSE:

This policy describes the process by which Region 10 will prioritize sites that are eligible for proposal to the National Priorities List (NPL). The Site Assessment and Clean-up Unit #2 will forward sites determined to be eligible for the NPL based on the Hazard Ranking System (HRS) score for EPA Region 10 Management review. The Management review process will document the priority decisions made on sites.¹

Eligible sites not proposed for the NPL will be reviewed on a periodic basis (described below) and may be reviewed anytime if site conditions and/or resource availability change.

Priorities among eligible sites will be set using a number of criteria set forth below, including the affected or potentially affected populations or environments and also the levels of exposure.

A balanced Superfund program needs to be maintained by which discovery of sites continues, progressing through site evaluation activities and early action decisions, and giving the highest priority for sites warranting Superfund action. This policy also recognizes that the Superfund Program has limited resources to address all sites.

II. BACKGROUND:

A. Introduction:

In the National Contingency Plan (NCP), EPA describes the NPL as the list of priority releases for long-term remedial evaluation and response. A site's inclusion on the NPL serves, along with other factors, as a means to guide the allocation of Superfund resources. Releases that meet certain criteria are "eligible" to be included on the NPL, an indication that sites are not to be automatically listed, but are to be chosen by EPA as the most serious sites in need of attention. Only after a site is added to the NPL can it be eligible for CERCLA-financed remedial action.

¹ The Site Assessment Managers (SAMs) have been empowered to make low priority NPL decisions (the "mini-Management review"). Refer to Appendix A for the differences between the SAM procedures and the procedures detailed in this policy.

In general, the Superfund amendments of 1986 establish a schedule to evaluate sites for inclusion on the NPL. CERCLA Section 116 mandates that facilities be evaluated (for inclusion on the NPL), within four years after the date of CERCLIS listing if the President determines that such evaluation is warranted based on a Site Inspection or Preliminary Assessment. In addition, Federal Facilities are required by CERCLA to undergo NPL evaluation within 18 months of listing on the Hazardous Waste Federal Facility Compliance Docket.

B. Evaluating sites for the NPL:

If a site is not eligible (HRS score below cut off), then the Site Assessment program will give the site a No Further Remedial Action Planned (NFRAP) designation. If a site is eligible (HRS score above cut off), then the Site Assessment program may (depending on the mini-Management review decision - see Appendix A) present the site for Management review. The Region's NPL evaluation can have four results: (1) forward a listing package to headquarters, (2) make no final decision -- additional information is needed to complete the evaluation, (3) decide not to forward a listing package to headquarters at this time, (4) decide that other Superfund action (enforcement, removal, etc.) is appropriate.

III. PROCESS:

A. Management Review:

The group charged with setting priorities includes:

- Division Director - Chairperson
- Site Assessment and Cleanup Unit #2 Manager
- NPL Coordinator
- Emergency Response/Clean-up Unit #1 Manager
- ECL Unit Manager (rotating)
- ORC Multi-Media Unit #2 Manager
- OEA Risk Evaluation Unit Manager
- Tribal Policy Director (if site is on Tribal land)

Also the following may attend (but not vote):

- State/Tribal Coordinator
- Cleanup Policy Coordinator
- Other EPA staff with knowledge of the site, if appropriate

The above group will generally be maintained from review session to review session, but alternates or designees may be appointed. Other technical specialists (non-voting) may be invited to participate if their viewpoints will assist in arriving at a decision.

B. Implementation:

(1) The Site Assessment and Clean-up Unit #2 is charged with the initial review of sites considered eligible for proposal to the NPL. If a backlog exists of sites to be considered, the Site Assessment Managers will make a determination of those sites that warrant earlier attention.

The basic criteria to be used by the Site Assessment Managers for earlier Management review referrals (when a backlog of sites exists) include, but are not necessarily limited to: observed releases, particularly where releases are above established health-based benchmarks; number of people or sensitive environments directly and/or potentially affected; number of pathways affected, even if not all pathways were prioritized during the SI; consideration of removal actions, whether near-term actions are contemplated, underway, or under serious consideration; status of other regulatory programs, degree of community, state, or other interest.

Prior to the Management review meeting, EPA management will contact the appropriate state clean-up manager to notify the state of the upcoming Management review and to solicit the states policy position on the site.

(2) The voting members of the Management review convened for a site or group of sites will be charged with evaluating the information and data presented by the site evaluation section member, asking key questions of concern to enable a decision to be made, and registering a vote--proceed immediately with NPL listing, low priority, or other action appropriate. For the purposes of keeping a record, only the number of advisory votes (with reasons) will be recorded. However, the names of the participants in the overall decision will be included.

The sites may be presented for Management review either during the regularly scheduled Management review or during meetings specifically scheduled for review of sites. Generally, the process will proceed as follows:

1. The Chairperson will briefly run through the agenda for the meeting and reaffirm the purpose and responsibilities of each participant.
2. The Site Assessment Manager will present data and information about the site including regulatory and site history, contaminants found and levels, the affected and/or potentially affected targets (populations/sensitive environments), community interest, state role if any, and other facts considered important in arriving at a decision. Limited handouts can be considered to provide the group with a 'picture' of the site.

3. NPL Coordinator will present HRS scoring scenario(s), with specific pathways to be scored, how solid the score is, and any potential challenges and weaknesses in the score.
4. The presentation by the SAM and NPL Coordinator will, as appropriate or available, discuss the following issues of concern:
 - How does this site compare to similar sites in the state and region?
 - Is there another site like this already on the NPL and what, if any, lessons have been learned?
 - What are the state's and/or Tribe's views about the site?
 - What is the position of the Operations Office?
 - What does ATSDR think related to human health issues? What are the concerns of other agencies (e.g. NOAA, FWS, DOI, other Natural Resource Trustees, etc.)
 - Why is the site a good candidate for listing?
 - Is the site a good candidate for recommending that an early action be taken?
 - Could another program more appropriately handle the site?
 - What are community issues/concerns/interest?
5. The Site Assessment Manager will provide his/her recommendation on the site and elaborate the reasons.
6. Generally, at the end of the discussion, each voting member will be asked for her/his vote. If questions raised require research to provide a reasonable assessment of the site for listing purposes, then the final decisions can be delayed until the next Management review. This allows the appropriate follow-up, likely to be the responsibility of the SAM or NPL Coordinator. It is however, the goal is to make a decision in a single meeting.
7. Upon reconvening, site facts will be briefly restated, new information provided, and each member will be asked for his/her decision.

8. If regional Superfund resources are not adequate to proceed with all sites chosen for preparation of NPL listing packages, then Management review will set priorities that will be documented in the memorandum described below.

C. FACTORS:

Considerations for a low priority for listing may include a wide range of factors, such as:

- the facility is nearing completion of cleanup of sources identified during earlier investigations
- the state is actively engaged in or overseeing remediation activities (an enforceable order in place with specific milestones, reasonably consistent with the National Contingency Plan (NCP)),
- site is minimally contaminated and not considered a priority for the limited resources available,
- a removal action by the facility has taken place that substantially reduces the risk,
- site scores solely on potential to release and there seems minimal risk of such occurrence,
- low community or other interest,
- low toxicity and mobility of contaminants, good security of site, and small waste quantities,
- score does not adequately represent threats at the site,
- the facility is nearing completion of investigative/treatability studies that will significantly refine knowledge of site risks and/or necessary cleanup options,
- Superfund resources are not available,
- other pertinent site specific factors.

D. Documentation:

The Site Assessment and Clean-up Unit #2 Manager will make a record of the results of each meeting. A memorandum for each site will be prepared which contains a list of the participants, site discussed and the decision on the site. The consensus opinion will decide whether the site proceeds to listing or is delayed. If a consensus is not reached, the Chairperson will decide. When a low priority listing decision is made, the specific reasons will be provided and a specific time frame for a follow-up review of the site will be stated. The memorandum will be sent to the Chairperson for signature and concurrence and a copy sent to the appropriate state clean-up manager.

Where a decision is made to move forward in the listing process (prepare an HRS package), the ECL Director and appropriate staff will brief the Regional Administrator (RA) on the site. The RA will then confirm the Management review decision and offer his/her support in communicating the EPA recommendation to the governor. If the RA does

not confirm the Management review decision, then a written memorandum will be prepared explaining why and what other course of action is appropriate.

Given the recent implementation of EPA policy for state Governor support letters, further documentation regarding the state's position will be necessary for those sites considered to be a high priority for listing. A letter will be sent to the state Governor requesting Governor support for the Management review decision. The letter will request a response in writing. The Site Assessment and Cleanup Unit #2 Manager is responsible for developing a strategy for further communications with the state, including the letter to the governor.

E. Periodic Review of Delayed Sites:

On a periodic basis, the eligible sites that have been delayed from being proposed to the NPL will be reviewed by either Management review or the "mini-Management review". As mentioned previously, a site may be reviewed anytime if site conditions have changed. Site Assessment Managers are responsible for tracking the low priority sites, conducting the annual review, and collecting additional information. The purpose of the review is to determine if Regional priorities have changed, if site conditions have changed, if there is new information available, if other agencies have taken care of the problem, and any other factor that may be pertinent to EPA's earlier decision about the site.

The new information or status quo will be presented for Management review for a decision whether to continue with the delay decision or proceed with NPL proposal. This review of sites will also be documented in a memorandum by the Site Assessment and Cleanup Unit Manager and sent to the Chairperson for concurrence.

F. Confidentiality of Decisions:

At sites where a low priority for listing decision has been made, the memorandum documenting this decision will be publicly available.

This policy is subject to review periodically and may be revised as determined necessary.

Appendix A

The SAMs will forward for Management review those sites considered a high priority for NPL proposal (without first conducting a "mini-Management review") or where the "mini-Management review" is unable to reach a consensus on the priority. The group empowered to reach low priority NPL decisions will include SAMs, the NPL Coordinator, the Site Assessment and Clean-up Unit #2 Manager, an RPM, and an OSC.

The Unit Manager will briefly run through the agenda when the group is convened. The group evaluation can have three results: (1) forward the site for Management review, (2) make a low priority NPL Decision, or (3) Collect further data. A consensus of the group will decide the outcome.

The group will also explore other options for possible action.