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HEARINGS CLERK
EPA -- REGION 10

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:

The U.S. Department of the Navy,

Bremerton Naval Complex,
Bremerton, Washington

INTERAGENCY AGREEMENT
UNDER CERCLA SECTION 120

Administrative Docket Number :
10-97-0104-CERCLA

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1 Based on the information available to the Parties on the effective date of this Interagency
2 Agreement ("IAG" or "this Agreement"), and without trial or adjudication of any issues of fact
3 or law, the Parties agree as follows:
4

5 I. BACKGROUND

6 1.1 In June 1994, the Bremerton Naval Complex ("the Site"), Bremerton, Washington
7 was placed on the National Priorities List (listed as the Puget Sound Naval Shipyard Complex).
8 The Site has been administratively divided into four Operable Units ("OUs"): OU-A, OU-B, OU-
9 C, and OU-NSC. In December 1996, a Remedial Investigation/Feasibility Study ("RI/FS") and
10 Record of Decision ("ROD") were completed for OU-NSC (Naval Supply Center, now known as
11 the Fleet and Industrial Supply Center ("FISC"), Puget Sound). In January 1997, an RI/FS and
12 ROD were completed for OU-A, with the exception of the marine environment. Potential
13 remedies to address marine resources offshore of OU-A and -NSC, along with any additional
14 remedial measures found to be necessary as a result of the OU-B evaluation, will be evaluated in
15 the RI/FS, and defined in the ROD, for OU-B. On the effective date of this Agreement, RI/FS
16 activities for OU-B are proceeding, with the results anticipated to be published in a ROD in
17 1999. OU-C is limited to petroleum in soil and groundwater; neither an RI/FS nor a ROD is
18 anticipated to be completed for OU-C. It is the Parties' expectation that any threats to human
19 health and/or the environment posed by OU-C shall be sufficiently addressed through a program
20 for closure of underground storage tanks, pursuant to 42 U.S.C. § 6991 and implementing federal
21 regulations, or pursuant to a state program authorized by EPA to operate in lieu of the federal
22 program. This Agreement addresses remedial actions to be conducted at OU-NSC, OU-A, and
23 certain actions with respect to OU-B.
24
25
26

II. JURISDICTION

2.1 The United States Environmental Protection Agency, Region 10 ("EPA"), enters into this Agreement pursuant to Section 120(e)(2) and (4) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9620(e)(2) and (4), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 (hereinafter referred to as "CERCLA"); Sections 6001, 3008(h), and 3004(u) and (v) of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6961, 6928(h), 6924(u) and (v), as amended by the Hazardous and Solid Waste Amendments of 1984 and the Federal Facility Compliance Act of 1992, (hereinafter jointly referred to as "RCRA"); and Executive Order 12580.

2.2 The United States Navy ("Navy") enters into this Agreement pursuant to Section 120(e)(2) and (4) of CERCLA, 42 U.S.C. § 9620(e)(2) and (4), Executive Order 12580, and the Defense Environmental Restoration Program, 10 U.S.C. § 2701 et seq.

2.3 The State of Washington Department of Ecology ("Ecology") enters into this Agreement pursuant to Sections 120(f) and 121(f) of CERCLA, 42 U.S.C. § 9620(f) and 9621(f); Chapters 90.48, 70.105 and 43.21(A) of the Revised Code of Washington ("RCW"); and Chapter 70.105D RCW, the Model Toxics Control Act ("MTCA").

III. DEFINITIONS

3.1 The terms used in this Agreement shall have the same definition as the terms defined in Section 101 of CERCLA, 42 U.S.C. § 9601, and the National Contingency Plan ("NCP"), 40 CFR Part 300.

3.2 "Agency" shall mean the State of Washington Department of Ecology, together with its employees and authorized representatives, except as described in Paragraph 4.4.

3.3 "Agreement" shall mean this document and shall include all attachments and amendments to this document and all other documents incorporated by reference. All such

1 attachments and amendments shall be appended to or integrated into and considered an integral
2 and enforceable part of this document.

3 3.4 "Authorized representative" may include a Party's contractors or other designees.

4 3.5 "Days" shall mean calendar days unless otherwise specified.

5 3.6 "Ecology" shall mean the State of Washington, as represented by the Department
6 of Ecology, its employees, and authorized representatives.

7 3.7 "EPA" or "U.S. EPA" shall mean the United States Environmental Protection
8 Agency, including Region 10, its employees, and authorized representatives.

9 3.8 "Facility" shall mean that property owned by the United States and operated by
10 the U.S. Department of the Navy and known as the Bremerton Naval Complex located in
11 Bremerton, Washington. The Bremerton Naval Complex is comprised of the Puget Sound Naval
12 Shipyard and the Fleet and Industrial Supply Center, Puget Sound. This definition is for the
13 purpose of describing a geographical area and not a governmental entity.

14 3.9 "Navy" shall mean the Department of the Navy, its employees, and authorized
15 representatives.

16 3.10 "Part" when used to refer to a portion of this Agreement corresponds to any
17 portion of this Agreement identified by roman numeral.

18 3.11 "Parties" shall mean the Navy, U.S. EPA, and Ecology.

19 3.12 "Site" shall include the Facility and any other areas where a hazardous substance,
20 hazardous waste, hazardous constituent, pollutant, or contaminant from the Facility has been
21 deposited, stored, disposed of, or placed, or has migrated or otherwise come to be located. The
22 Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9). This
23 definition is not intended to include hazardous substances or wastes intentionally transported
24 from the Facility by motor vehicle.

IV. PURPOSE

4.1 The general purposes of this Agreement are (1) to provide a legal framework in accordance with Section 120 of CERCLA for the expeditious selection of remedial actions and completion of the remedial actions selected in the RODs for the Bremerton Naval Complex and (2) to set out the roles and responsibilities of the Parties to this Agreement.

4.2 Specifically, the Navy's role and responsibility is to act as lead agency for the proposal of remedial actions and the implementation of the selected remedies, achieving the cleanup goals and ARAR requirements in accordance with the RODs. Ecology's role and responsibility is to oversee the implementation process, including but not limited to document review and approval. EPA's role is to satisfy its responsibilities in CERCLA and the NCP, including its duties to publish a schedule for the expeditious completion of an RI/FS, concur that a remedy is operating properly and successfully prior to transfer by the Navy, approve the selection of and schedule for remedial actions, confirm that arrangements for the operation and maintenance of the remedy are in place, and, upon completion of the remedial actions in accordance with RODs, delist the Site.

4.3 In accordance with the EPA/Ecology Agreement entitled "Superfund Management In Washington" dated October 14, 1994 [Attachment 1], Ecology has primary responsibility under this Agreement for the review and approval of work plans and other deliverables and for oversight of remedial actions and operation and maintenance. Work plans and other deliverables will be submitted to Ecology. In accordance with the EPA/Ecology Agreement, EPA will provide "enhanced" support to Ecology, the details of which are specified in a site-specific Statement of Work [Attachment 2]. The Statement of Work may be revised periodically by EPA and Ecology, in which case all future revisions shall be fully incorporated into this Agreement.

4.4 In the event Ecology withdraws from this Agreement, or if the situation otherwise warrants and Ecology agrees, and after written notification to the Navy, EPA may take over

1 Ecology's roles and responsibilities under this Agreement. In such event, the term "Agency" or
2 "Ecology" in this Agreement means EPA.

4 **V. STATUS OF REMEDIAL ACTIVITIES**

5 5.1 The alternatives that were considered for Operable Unit NSC were presented and
6 evaluated in the Proposed Plan that was made available to the public on March 6, 1996. A ROD
7 that selected remedial actions for OU-NSC was executed on December 13, 1996. The OU-NSC
8 ROD is hereby incorporated by reference.

9 5.2 The alternatives that were considered for Operable Unit A were presented and
10 evaluated in the Proposed Plan that was made available to the public on May 7, 1996. A ROD
11 that selected remedial actions for OU-A was executed on January 29, 1997. The OU-A ROD is
12 hereby incorporated by reference.

13 5.3 Upon the effective date of this Agreement, the RI/FS for OU-B is in the process of
14 development. To ensure the expeditious completion of the RI/FS, the Navy shall submit to the
15 Agency a draft Proposed Plan for remedial actions in accordance with the schedule in Part VI.

17 **VI. REMEDIAL DELIVERABLES AND SCHEDULE**

18 6.1 Upon approval by the Agency, the deliverables identified in this Part shall be
19 incorporated into this Agreement, and shall be implemented by the Navy in accordance with their
20 terms and schedules, and in accordance with the applicable laws and RODs.

21 6.2 The Navy shall submit deliverables in support of the implementation of the
22 remedial actions identified in the OU-NSC ROD for Agency review and approval in accordance
23 with the schedule shown below:

- 24 a. Draft Final Remedial Action Work Plan (to contain a schedule for the completion
25 of the selected remedial actions identified in the ROD) submitted to the Agency by
26 February 1, 1998.

1 b. Draft Final Remedial Action Report (date of submittal will be established in the
2 Remedial Action Work Plan).

3 c. Draft Final Operation and Maintenance Plan (to include Compliance Monitoring
4 Plan for groundwater and institutional control measures) submitted to the Agency by
5 April 15, 1998.

6 6.3 The Navy shall submit deliverables in support of the implementation of the
7 remedial actions identified in the OU-A ROD for Agency review and approval in accordance
8 with the schedule shown below:

9 a. Draft Final Remedial Action Work Plan (to contain a schedule for the completion
10 of the selected remedial actions identified in the ROD) submitted to the Agency by
11 October 31, 1997.

12 b. Draft Final Remedial Action Report (date of submittal will be established in the
13 Remedial Action Work Plan).

14 c. Draft Final Operation and Maintenance Plan (to include Compliance Monitoring
15 Plan for groundwater and institutional control measures) submitted to the Agency by
16 March 15, 1998.

17 6.4 The Navy shall submit deliverables in support of the selection of remedial actions
18 for OU-B in accordance with the schedule below:

19 a. Draft Proposed Plan for public comment in accordance with Section 117 of
20 CERCLA, 42 U.S.C. § 9617, and the NCP, submitted to the Agency by the date agreed
21 by the Parties within 60 days of submission of final comments on the Draft Final
22 Remedial Investigation for OU-B. If no such date is selected within 60 days of
23 submission of final comments to the Draft Final Remedial Investigation for OU-B, the
24 Agency shall select such date, subject to the dispute resolution procedures of Part XII. If
25 such date has not otherwise been selected within 90 days of submission of final
26

1 comments to the Draft Final Remedial Investigation for OU-B, such date shall be selected
2 by EPA, subject to the dispute resolution procedures of Part XII.

3 b. Draft ROD incorporating and responding to all public comments, submitted to the
4 Agency within 30 days of the close of the public comment period.

5 c. Within 30 days of issuance of the ROD, the Navy shall propose dates for
6 completion on the draft Remedial Design/Remedial Action Workplan (to contain a
7 proposed schedule for the completion of the selected remedial actions).

8 6.5 It is the expectation of the Parties that this Agreement will be further amended,
9 pursuant to Part XIX, to address all future remedial actions, and appropriate deliverables in
10 support of such actions, at OU-B.

11 12 **VII. OPERATION AND MAINTENANCE**

13 7.1 Operation and maintenance activities shall be conducted in accordance with the
14 Operation and Maintenance Plan for each OU.

15 16 **VIII. REVIEW AND COMMENT PROCESS ON DELIVERABLES**

17 8.1 The Navy shall submit deliverables to the Agency in accordance with the schedule
18 set forth herein. From the date of Agency receipt of the draft final document, the following
19 process will ensue:

20 a. Within 30 days of receiving the Navy's draft final document and response to
21 comments on the draft document, the Agency will notify the Navy whether the draft final
22 document adequately addresses Agency comments on the draft document. In the absence
23 of notification or submittal of comments, the document will become final at the end of
24 the 30-day period.

1 b. If the Agency identifies inadequacies in the draft final document and/or the
2 response to comments, the Agency will provide the Navy with relevant comments within
3 the 30-day period.

4 c. Within 30 days of receiving the Agency comments, the Navy will submit to the
5 Agency a final document along with a response to comments identifying how comments
6 were addressed.

7 d. Within 30 days of receiving the Navy's final document and response to comments,
8 the Agency will notify the Navy whether the final document adequately addresses
9 Agency comments. In the absence of notification, the document will become final at the
10 end of the 30-day period.

11 e. If within the 30-day period the Agency identifies that inadequacies in the final
12 document which were previously identified to the Navy have not been addressed and/or
13 the Navy's response to Agency comments are inadequate, the Agency will activate the
14 dispute resolution process by preparing a written statement of dispute.

15 8.3 The Agency or the Navy may extend for an additional 30 days the 30-day period
16 for commenting on a draft final document or finalizing a document by giving written notice to
17 the other Parties.

18 8.4 The Agency or the Navy may seek to modify a deliverable after finalization if it
19 determines, based on new information (i.e., information that became available, or conditions that
20 became known, after the report was finalized) that the requested modification is necessary. The
21 Parties agree in principle that reports should not be modified unless the new information is
22 substantial and relevant. The Agency or the Navy may seek such a modification by submitting a
23 concise written request to the Project Manager of the other Parties. The request shall specify the
24 nature of the requested modification and how the request is based on new information.

1 8.5 In the event that unanimous agreement is not reached by the Project Managers on
2 the need for a modification, any Party may invoke dispute resolution to determine if such
3 modification shall be conducted.
4

5 IX. AUTHORITY OF PROJECT MANAGERS

6 9.1 Within 14 days of the effective date of this Agreement, the Agency and the Navy
7 Parties shall identify in writing their Project Managers for purposes of implementing this
8 Agreement and inform each other via letter of who they are. The Agency and Navy Project
9 Managers will meet or confer approximately every 14 days to review and discuss work being
10 performed under this Agreement. The Agency and Navy Project Managers shall have the
11 following authorities:

- 12 a. To review and comment on deliverables (Agency Project Manager only).
- 13 b. To coordinate dispute resolution, to invoke dispute resolution, and to issue the
14 written statement of dispute under the formal dispute resolution procedures.
- 15 c. By mutual agreement, to modify deliverables, to approve deadlines, revise
16 deadlines and schedules (not including any deadline established, or to be established,
17 under Part VI), and modify deliverable review periods in accordance with written
18 justification. Ecology shall inform EPA of all deadlines and schedules revised by
19 Ecology. If the Project Managers cannot reach agreement, the matter will be referred to
20 their immediate supervisors for resolution who will attempt to resolve the dispute
21 informally. If that is not possible, the matter will be referred for formal dispute resolution
22 in accordance with Part XII.

23 9.2 The Navy, Ecology, and EPA may unilaterally change their respective Project
24 Managers by sending written notification to the other Parties no later than five days before the
25 date of such change.
26

9.3 Any significant revisions to the schedule set forth herein shall be published by the Agency and the Navy in accordance with CERCLA Section 117, 42 U.S.C. § 9617. Any amendments to the requirements in any ROD will require EPA review and approval.

X. ACCESS

10.1 Without any limitation on any authority conferred on them by law, Ecology and EPA, and/or their authorized representatives, shall have authority to enter the Site at all reasonable times for the purposes of, among other things: (1) inspecting records, operating logs, contracts, and other documents relevant to implementation of this Agreement; (2) reviewing the progress of the Navy, its response action contractors, or agents in implementing this Agreement; (3) conducting such tests as they deem necessary in accordance with Part II of this agreement; and (4) verifying the data submitted by the Navy. The Navy shall honor all requests for such access, subject only to presentation of proper identification and conformance with security regulations. The Navy reserves the right to require an escort for Agency representatives when visiting the Site; however, the Navy agrees that conformance with security regulations and the provision of an escort will not unduly delay access. To the extent consistent with the purpose of a particular site visit, the Agency shall provide reasonable notice to the Navy prior to a Site visit. Such notice shall not be construed as limiting EPA's statutory authority for access or information gathering.

10.2 To the extent that this Agreement requires access to property not owned and controlled by the Navy, the Navy shall take all reasonable steps to obtain access including, but not limited to, relying on its authority under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). If the Navy obtains access to the property by agreement with the property owner, the Navy will make every reasonable effort to obtain identical access rights for EPA and Ecology, and provide the Agency with copies of such agreements. The Navy may request the assistance of the Agency

1 in obtaining such access, and, upon such request, the Agency will take all reasonable steps to
2 obtain the required access.

3 4 **XI. FUNDING**

5 11.1 Funds appropriated annually by Congress under the "Environmental Restoration,
6 Navy" appropriation in the Department of Defense (DOD) Appropriation Act will be the source
7 of funds for activities required by this Agreement. The Navy agrees to seek sufficient funding
8 through its budgetary process to fulfill its obligations under this Agreement.

9 11.2 EPA and the Navy agree that any requirement for the payment or obligation of
10 funds, including penalties, arising under this Agreement, shall be subject to the availability of
11 appropriated funds. EPA and the Navy further agree that no provision herein shall be interpreted
12 to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C.
13 § 1341.

14 11.3 Ecology disagrees that lack of appropriations or funding is a valid defense to the
15 Navy's failure to comply with the terms of this Agreement. However, Ecology and the Navy
16 agree that it is premature at this time to raise and adjudicate the existence of such a defense. If
17 appropriated funds are not available to fulfill the Navy's obligations under this Agreement, the
18 Parties shall attempt to agree upon appropriate adjustments to the work that requires the payment
19 or obligation of such funds. If no agreement can be reached, and Ecology subsequently brings an
20 action to enforce any provision of this Agreement, then Ecology and the Navy agree that they
21 may litigate the validity of this defense.

22 23 **XII. DISPUTE RESOLUTION**

24 12.1 Except as specifically set forth elsewhere in this Agreement, if a dispute arises
25 under this Agreement, the procedures of this Part shall apply. All Parties to this Agreement shall
26 make reasonable efforts to informally resolve disputes at the Project Manager or immediate

1 supervisor level. If resolution cannot be achieved informally, the procedures of this Part shall be
2 implemented to resolve the dispute.

3 12.2 Within 30 days after: (1) issuance of a revised deliverable pursuant to Part VI of
4 this Agreement, or (2) notification of a decision made, or action that leads to or generates a
5 dispute taken, pursuant to this Agreement, the disputing Party shall submit to the Dispute
6 Resolution Committee a written statement of dispute setting forth the nature of the dispute, the
7 work affected by the dispute, the disputing Party's position with respect to the dispute and the
8 information the disputing Party is relying upon to support its position.

9 12.3 Prior to any Party's issuance of a written statement of dispute, the disputing Party
10 shall engage the other Party in informal dispute resolution among the Project Managers and/or
11 their immediate supervisors. During this informal dispute resolution period the Parties shall
12 meet as many times as are necessary to discuss and attempt resolution of the dispute.

13 12.4 The DRC will serve as a forum for resolution of disputes for which agreement has
14 not been reached through informal dispute resolution. Ecology and the Navy shall each
15 designate one individual and an alternate to serve on the DRC. The individuals designated to
16 serve on the DRC shall be employed at the policy level or be delegated the authority to
17 participate on the DRC for the purposes of dispute resolution under this Agreement. The Navy
18 representative to the DRC will be the Director, Environmental Department, Engineering Field
19 Activity, Northwest. For Ecology, it will be the Manager of the Toxics Cleanup Program,
20 Headquarters Section. Notice of any delegation of authority from a Party's designated
21 representative on the DRC shall be provided to all other Parties in writing.

22 12.5 In the event EPA takes over the oversight role from Ecology, or in the event of a
23 dispute arising under Paragraph 14.2, following a notice of intent to assess, or an assessment of,
24 stipulated penalties by EPA, the Director, Environmental Department, Engineering Field
25 Activity, Northwest, and the Associate Director of the EPA Office of Environmental Cleanup, or
26 his designee, shall comprise the DRC and attempt to resolve the dispute.

1 12.6 Following elevation of a dispute to the DRC, the DRC shall have 21 days to
2 unanimously resolve the dispute and issue a written decision signed by the Parties involved in the
3 dispute. If the DRC is unable to unanimously resolve the dispute within this 21-day period the
4 written statement of dispute shall be forwarded to the Senior Executive Committee ("SEC") for
5 resolution, within seven days after the close of the 21-day resolution period.

6 12.7 The SEC will serve as the forum for resolution of disputes for which agreement
7 has not been reached by the DRC. The Navy's representative on the SEC is the Deputy Assistant
8 Secretary of the Navy (Environment and Safety). Ecology's representative on the SEC is the
9 Director of the Department of Ecology. Notice of any delegation of authority from a Party's
10 designated representative on the SEC shall be provided to all other Parties in writing.

11 12.8 The SEC members shall make themselves available to, as appropriate, confer,
12 meet and exert their best efforts to resolve the dispute and issue a written decision within 21 days
13 after elevation from the DRC. If unanimous resolution of the dispute is not reached within 21
14 days, the Director of the Department of Ecology shall issue a written position on the dispute,
15 except as provided in the following paragraph.

16 12.9 In the event EPA takes over the oversight role from Ecology, or in the event of a
17 dispute arising under Paragraph 14.2, following a notice of intent to assess, or an assessment of,
18 stipulated penalties by EPA, the EPA Regional Administrator and the Deputy Assistant Secretary
19 of the Navy (Environment and Safety) shall comprise the SEC and attempt to resolve the dispute.

20 12.10 If the Director of Ecology issues a written position on the dispute, such written
21 position shall state whether or not the assessment of stipulated penalties is appropriate in such
22 context. Upon any written position by the Director that the assessment of stipulated penalties is
23 appropriate, the Regional Administrator shall allow the Navy 15 days from receipt of the
24 Director's written position to present any information concerning whether the Navy did in fact
25 fail to comply with this Agreement. If the Regional Administrator, after considering any
26 information submitted timely by the Navy, concludes that the Navy did in fact fail to comply

1 with this Agreement, the Regional Administrator shall assess a stipulated penalty, consistent with
2 Paragraph 14.1 of this Agreement.

3 12.11 Within 14 days of receipt of a written position pursuant to Paragraph 12.8 or 12.9,
4 or an assessment of stipulated penalties pursuant to Paragraph 12.10, the Secretary of the Navy
5 may elevate any dispute to the Administrator of U.S. EPA for final resolution by submitting a
6 written determination that the position of the Ecology Director, or EPA Regional Administrator,
7 has significant national policy implications. The written request for elevation shall identify the
8 issue warranting review by the Administrator, including the basis for the determination that the
9 position has significant national policy implications, and shall be addressed to the Administrator.
10 Additionally, notice shall be provided to Ecology immediately. This threshold determination of
11 significant national policy implications is not reviewable by the Administrator and not subject to
12 dispute resolution. In the event that the Navy elects not to elevate the dispute to the
13 Administrator in accordance with this Paragraph, the Navy shall be deemed to have agreed with
14 the Director's or Regional Administrator's written position with respect to the dispute.

15 12.12 If a dispute is elevated to the Administrator, the Administrator will review and
16 resolve the dispute in accordance with applicable law and regulations within 21 days. Upon
17 request and prior to resolving the dispute, the Administrator may meet and confer with all the
18 Parties to discuss the matters under dispute. The Administrator shall provide a minimum of five
19 working days advance notice of such meeting to all Parties in order to afford the Parties the
20 opportunity to attend. Upon resolution, the Administrator shall provide the Parties with a written
21 final decision setting forth resolution of the dispute. The duties of the Administrator pursuant to
22 this Paragraph may be delegated only to the EPA Assistant Administrator for Enforcement and
23 Compliance Assurance. The duties of the Secretary of the Navy pursuant to Paragraph 12.11
24 may be delegated only to the Deputy Assistant Secretary of the Navy (Environment and Safety).

25 12.13 After resolution of a dispute, the Navy shall incorporate the results of dispute
26 resolution into the appropriate deliverable, schedule or procedures within 30 days and proceed

1 accordingly.

2 12.14 Within 30 days of resolution of a dispute, the schedule affected by the dispute and
3 any dependent subsequent tasks and activities shall be adjusted to reflect the final decision
4 resulting from dispute resolution and a written revised schedule shall be issued and incorporated
5 herein.

6 12.15 Any deadline in the dispute resolution process may be extended with the consent
7 of the Agency and the Navy.

8 9 XIII. ENFORCEABILITY

10 13.1 The Parties agree that:

11 a. Upon its effective date, this Agreement is enforceable by any person pursuant to
12 Section 310 of CERCLA and any violation of any term or condition of this Agreement
13 will be subject to civil penalties under Sections 109 and 310(c) of CERCLA;

14 b. Any final resolution of a dispute pursuant to this Agreement that establishes a
15 term, condition, schedule, or deadline shall be enforceable by any person pursuant to
16 Section 310 of CERCLA, and any violation of such term, condition, schedule, or deadline
17 will be subject to civil penalties under Sections 109 and 310(c) of CERCLA; and

18 c. Nothing in this Agreement shall be construed as authorizing any person to seek
19 judicial review of any action or work where review is barred by any provision of
20 CERCLA including Section 113(h) of CERCLA.

21 22 XIV. STIPULATED PENALTIES

23 14.1 In the event that the Navy fails to comply with any provision of this Agreement,
24 EPA may assess a stipulated penalty against the Navy. A stipulated penalty may be assessed in
25 an amount not to exceed \$5,000 for the first week (or part thereof), and \$10,000 for each
26 additional week (or part thereof) for which a failure set forth in this Paragraph occurs. If the

1 failure concerns a provision of this Agreement that Ecology is responsible for overseeing,
2 Ecology may transmit to EPA a written request to assess a penalty against the Navy.

3 14.2 Upon determining that the Navy has failed to comply with any provision of this
4 Agreement, EPA, consistent with the preceding Paragraph, may notify the Navy in writing of an
5 intent to assess stipulated penalties. If the failure in question is not already subject to dispute
6 resolution at the time such notice is received, or penalty assessed, the Navy shall have fifteen
7 days after receipt of the notice, or penalty assessment, to submit a written statement of dispute
8 and invoke dispute resolution on the question of whether the failure did, in fact, occur, regardless
9 of any previous resolution of the failure in question. The Navy shall not be liable for the
10 stipulated penalty assessed by EPA if the failure is determined, through the dispute resolution
11 process, not to have occurred. No assessment of a stipulated penalty shall be final until the
12 conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

13 14.3 The annual reports required by Section 120 (e)(5) of CERCLA shall include, with
14 respect to each final assessment of a penalty against the Navy under this Agreement, each of the
15 following:

- 16 a. The facility responsible for the failure;
- 17 b. A statement of the facts and circumstances giving rise to the failure;
- 18 c. A statement of any administrative or other corrective action taken at the relevant
19 facility, or a statement of why such measures were determined to be inappropriate;
- 20 d. A statement of any additional action taken by or at the facility to prevent
21 recurrence of the same type of failure; and
- 22 e. The total dollar amount of the penalty assessed for the particular failure.

23 14.4 Penalties shall be made payable to the Hazardous Substance Superfund and
24 mailed to U.S. EPA Region 10, Attn: Superfund Accounting, P.O. Box 360903M, Pittsburgh, PA
25 15251. Penalties assessed pursuant to this Part shall be payable to the Hazardous Substance
26 Superfund only in the manner and to the extent expressly provided for in acts authorizing funds

1 for, and appropriations to, the DoD in accordance with 10 U.S.C. § 2703(e), as amended by the
2 National Defense Authorization Act for Fiscal Year 1997, Pub.L. No. 104-201, § 322, 110 Stat.
3 2478.

4 14.5 This Part shall not affect the Navy's ability to obtain an extension of a timetable,
5 deadline or schedule pursuant to Part XV of this Agreement.

6 14.6 Nothing in this Agreement shall be construed to render any officer or employee of
7 the Navy personally liable for the payment of any stipulated penalty assessed pursuant to this
8 Part.

10 XV. EXTENSIONS

11 15.1 Either a timetable and deadline or a schedule shall be extended upon receipt of a
12 timely request for extension and when good cause exists for the requested extension. Any
13 request for extension by the Navy shall be submitted in writing and shall specify:

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

19 15.2 Good cause exists for an extension when sought in regard to:

- 20 a. An event of *force majeure*;
- 21 b. A delay caused by another Party's failure to meet any requirement of this
22 Agreement;
- 23 c. A delay caused by the good faith invocation of dispute resolution or the initiation
24 of judicial action;
- 25 d. A delay caused, or which is likely to be caused, by the grant of an extension in
26 regard to another timetable and deadline or schedule; and

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

3 15.3 Absent agreement of the Parties with respect to the existence of good cause, the
4 Navy may seek and obtain a determination through the dispute resolution process whether good
5 cause exists.

6 15.4 Within seven days of receipt of a request for an extension of a timetable and
7 deadline or a schedule, the Agency shall advise the Navy in writing of its respective position on
8 the request. Any failure by the Agency to respond within the seven-day period shall be deemed
9 to constitute concurrence in the request for extension. If the Agency does not concur in the
10 requested extension, it shall include in its statement of nonconcurrence an explanation of the
11 basis for its position.

12 15.5 If there is consensus among the Parties that the requested extension is warranted,
13 the Navy shall extend the affected timetable and deadline or schedule accordingly. If there is no
14 consensus among the Parties as to whether all or part of the requested extension is warranted, the
15 timetable and deadline or schedule shall not be extended except in accordance with determination
16 resulting from the dispute resolution process.

17 15.6 Within seven days of receipt of a statement of noncurrence with the requested
18 extension, the Navy may invoke dispute resolution.

19 15.7 A timely and good faith request for an extension shall toll any assessment of
20 stipulated penalties or application for judicial enforcement of the affected timetable and deadline
21 or schedule until a decision is reached on whether the requested extension will be approved. If
22 dispute resolution is invoked and the requested extension is denied, stipulated penalties may be
23 assessed and may accrue from the date of the original timetable, deadline or schedule. Following
24 the grant of an extension, an assessment of stipulated penalties or an application for judicial
25 enforcement may be sought only to compel compliance with the timetable and deadline or
26 schedule as most recently extended.

XVI. FORCE MAJEURE

16.1 A *force majeure* shall mean any event arising from causes beyond the control of a Party that causes delay in or prevents the performance of any obligation under this Agreement, including, but not limited to, the following:

- a. acts of God; fire; war; insurrection; civil disturbance; or explosion;
- b. unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance;
- c. adverse weather conditions that could not be reasonably anticipated;
- d. unusual delay in transportation;
- e. restraint by court order or order of public authority;
- f. inability to obtain, at reasonable cost and after exercise of due diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than the Navy;
- g. delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence;
- h. delays caused by any strike or other labor dispute, whether or not within the control of the Parties affected thereby; and
- i. insufficient availability of appropriate funds, if the Navy shall have made timely request for such funds as part of the budgetary process as set forth in Part XI of this Agreement. If such an event occurs, Ecology may exercise its rights as provided in Paragraph 11.3, but EPA shall be bound by this *force majeure* and shall not assess stipulated penalties.

16.2 *Force majeure* shall not include increased costs or expenses of response actions, whether or not anticipated at the time such response actions were initiated.

1 16.3 Any claim of *force majeure* shall be subject to dispute resolution and, where
2 applicable, to the limitations of Paragraph 11.3.
3

4 XVII. FIVE YEAR REVIEW

5 17.1 In accordance with Section 121(c) of CERCLA and 40 C.F.R. § 300.430(f)(4)(ii),
6 the Navy shall conduct a review of the remedial actions in the RODs no less often than every five
7 years after the initiation of a final remedial action to ensure that such actions are protective of
8 human health and the environment.

9 17.2 Upon completion of such reviews, the Navy shall submit a report to the Agency
10 with a recommendation as to whether additional action or modification of the remedial action
11 pursuant to Sections 104 or 106 of CERCLA is appropriate. If the Parties are unable to agree on
12 the appropriateness of additional action, dispute resolution shall be available to any Party.
13

14 XVIII. TRANSFER OF PROPERTY

15 18.1 Conveyance of title, easement, or other interest in property on the Site shall be in
16 accordance with Section 120(h) of CERCLA, 42 U.S.C. § 9620(h), and the Navy shall notify
17 EPA and Ecology of any such intention at least ninety days prior to such proposed transfer.

18 18.2 Pursuant to Section 120(h)(1) of CERCLA and Part 373 of the NCP, should the
19 United States enter into a contract for the sale or other transfer of BNC property, the United
20 States would give notice of hazardous substances that have been stored, disposed of, or released
21 on the property. Pursuant to Section 120(h)(3) of CERCLA, the United States would include in
22 each deed entered into for the transfer of the property a covenant stating that the remedial
23 action(s) are completed and any additional remedial action found to be necessary after the
24 transfer shall be conducted by the United States. In addition to the covenants required by Section
25 120(h) of CERCLA, the Navy is seeking General Service Administration approval of restrictive
26 covenants/deed restrictions to effectuate the ROD, which will be included in the conveyance

1 document in the event of transfer of the property to a nonfederal entity. The conveyance
2 document shall require the nonfederal transferee to record the restrictive covenants/deed
3 restrictions with the county auditor within 30 days of transfer. Such covenants/deed restrictions
4 will address any limits to remain in effect after the time of transfer to restrict land use, restrict the
5 use of groundwater, and manage excavation. The deed covenants will also include provisions
6 addressing the continued operation, maintenance, and monitoring of the selected remedy. In the
7 event that GSA does not approve the restrictive covenants/deed restrictions by the time of the
8 5-year review, the ROD may be reopened.

10 XIX. AMENDMENT OF AGREEMENT

11 19.1 This Agreement may be amended by unanimous agreement of the Navy, Ecology,
12 and EPA. Any such amendment shall be in writing, shall have as the effective date that date on
13 which it is signed by all the Parties, and shall be incorporated into this Agreement.

15 XX. SEVERABILITY

16 20.1 If any provision of this Agreement is ruled invalid, illegal, or unconstitutional, the
17 remainder of the Agreement shall not be affected by such ruling.

19 XXI. RESERVATION OF RIGHTS

20 21.1 EPA and Ecology reserve the right to issue orders and/or penalties pursuant to
21 available statutory authority, or to take any other enforcement action allowable by law, under the
22 following circumstances:

- 23 a. In the event or upon the discovery of a release or threatened release not addressed
24 by this Agreement and which the Parties choose not to address by modification of this
25 Agreement;

1 b. Upon EPA's or Ecology's determination that action beyond the terms of this
2 Agreement is necessary to abate an emergency situation which threatens the public health
3 or the environment; or

4 c. Upon the occurrence or discovery of a situation beyond the scope of this
5 Agreement, to which EPA or Ecology would be empowered to take an enforcement
6 action and which the Parties choose not to address by modification of this Agreement.

7 21.2 The Navy reserves all of its rights to contest any enforcement action brought
8 under this Part.

9 21.3 Consistent with this Part, for matters subject to this Agreement, EPA and Ecology
10 agree to exhaust their rights under Part XII, and remedies as provided in this Agreement, prior to
11 exercising any rights to administrative or judicial review that they may have.

12 21.4. Ecology reserves its right to withdraw from this Agreement if, in Ecology's
13 judgment, any final written decision of the Administrator of U.S. EPA under Paragraph 12.10
14 grants relief to the Navy based upon lack of adequate appropriations. After any such withdrawal,
15 nothing in this Agreement shall prevent Ecology from taking any and all actions authorized by
16 law to compel fully protective remedial environmental measures at the Site. Nor shall anything
17 in this Agreement be construed to abrogate the Navy's rights to assert any and all legal and
18 equitable defenses if Ecology withdraws from the Agreement and initiates legal or administrative
19 action against the Navy.

20

21

XXII. TERMINATION

22 22.1 Any Party may propose in writing that this agreement be terminated. Termination
23 requires agreement among all Parties. If the Parties fail to agree, any Party may invoke dispute
24 resolution. This Agreement shall terminate upon written notice to the Navy of termination
25 (except that the requirements set forth in Paragraph 7.1 in Part VII above shall be performed).

26

XXIII. RCRA/CERCLA INTEGRATION

23.1 It is a goal of the Parties to this Agreement to avoid inefficiency and unnecessary duplication of effort. Therefore, in carrying out their duties under this Agreement, the Parties will endeavor to integrate to the maximum extent possible any corrective action requirements the Navy may have under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., and Washington's Hazardous Waste Management Act, chapter 70.105 RCW.

23.2 The Navy has submitted to Ecology a Part B application for a hazardous waste treatment, storage, and disposal ("TSD") permit for the Puget Sound Naval Shipyard. Ecology is reviewing that application, and intends to make a permitting decision in the near future. Pursuant to WAC 173-303-646, any TSD permit that Ecology issues will include corrective action requirements, which may include work beyond that required by this Agreement.

23.3 The completion of work required by this Agreement shall be considered compliance with Section 120 of CERCLA, including all federal or state applicable or relevant and appropriate requirements under Section 121 of CERCLA. Furthermore, unless Ecology withdraws from this Agreement, completion of work required by this Agreement shall satisfy any corrective action requirement to perform that same work.

XXIV. RECOVERY OF EXPENSES

24.1 The Navy and Ecology agree that Ecology's duties under this Agreement shall be funded through the Defense State Memorandum of Agreement ("DSMOA"), as amended. Should the DSMOA be terminated, the Parties agree to negotiate in good faith on modifications to this section within 30 days that provide, pursuant to RCW 70.105D.050(3), for the recovery of Ecology's costs, including indirect costs, incurred in overseeing the Navy's remedial action activities at the Site. In the event that the Parties cannot agree on such modifications within this period of time, Ecology reserves its right to withdraw from this Agreement. Upon withdrawal from the Agreement, Ecology may take any and all actions authorized by law to recover all costs

1 incurred by Ecology in connection with the Site that are not reimbursed by the Navy, and/or to
2 use any and all authorities available to Ecology to compel fully protective remedial
3 environmental measures at the Site. Nothing in this Agreement shall be construed to abrogate
4 the Navy's rights to assert any and all legal and equitable defenses in the event Ecology
5 withdraws from this Agreement and initiates legal or administrative action against the Navy.
6

7 **XXV. EFFECTIVE DATE**

8 25.1 This Agreement shall be effective upon signature by all Parties to this Agreement.
9

10 **XXVI. APPROVAL OF AGREEMENT**

11 26.1 Each undersigned representative of a Party certifies that he or she is fully
12 authorized to enter into this Agreement and to legally bind such Party to this Agreement.
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1 Signature sheet for the foregoing Interagency Agreement for the Bremerton Naval
2 Complex among the U.S. Environmental Protection Agency, the Washington Department of
3 Ecology, and the Department of the Navy.

4
5 BY: Charles C. Clarke

DATE: 8/31/88

6 Charles C. Clarke
7 Regional Administrator
8 U.S. Environmental Protection Agency
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10 Represented by:

11 Clifford J. Villa, Esq.
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1 Signature sheet for the foregoing Interagency Agreement for the Bremerton Naval
2 Complex among the U.S. Environmental Protection Agency, the Washington Department of
3 Ecology, and the Department of the Navy.

4
5 BY: 

DATE: 8-6-98

6 Tom Fitzsimmons
7 Director
8 Washington Department of Ecology
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10 Represented by:

11 Tanya Barnett, Esq.
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1 Signature sheet for the foregoing Interagency Agreement for the Bremerton Naval
2 Complex among the U.S. Environmental Protection Agency, the Washington Department of
3 Ecology, and the Department of the Navy.
4

5
6 BY: Elsie L. Munsell

DATE: 8/31/98

Elsie L. Munsell
Deputy Assistant Secretary of the Navy
(Environment and Safety)
Department of the Navy

9
10 Represented by:

11 Eric W. Hanger, Esq.
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XXVII. LIST OF ATTACHMENTS

- Attachment 1 Environmental Protection Agency Region 10 – Washington State
Department of Ecology Superfund Management In Washington, dated
October 14, 1994
- Attachment 2 Statement of Work, Bremerton Naval Complex, Revision 1