

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

IN THE MATTER OF:)
The U.S. Army Corps of Engineers) FEDERAL FACILITY AGREEMENT
Hamilton Island, Washington) UNDER CERCLA SECTION 120
Administrative Docket Number:
1092-02-05-120

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

5 I. JURISDICTION

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

8 1.1 The United States Environmental Protection
9 Agency ("U.S. EPA"), Region 10, enters into those portions of
10 this Agreement that relate to the Remedial Investigation/
11 Feasibility Study ("RI/FS") pursuant to Section 120(e)(1) of the
12 Comprehensive Environmental Response, Compensation, and Liability
13 Act ("CERCLA"), 42 U.S.C. § 9620(e)(1), as amended by the
14 Superfund Amendments and Reauthorization Act of 1986 ("SARA"),
15 Pub. L. 99-499 (hereinafter jointly referred to as "CERCLA");
16 Sections 3004(u) and (v), 3008(h), and 6001 of the Resource
17 Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6924(u)
18 and (v), 6928(h), and 6961, as amended by the Hazardous and Solid
19 Waste Amendments of 1984 ("HSWA") (hereinafter jointly referred
20 to as "RCRA"); and Executive Order 12580;

21 1.2 U.S. EPA, Region 10, enters into those
22 portions of this Agreement that relate to interim actions and
23 final remedial actions pursuant to Section 120(e)(2) of CERCLA,
24 42 U.S.C. § 9620(e)(2); Sections 3004(u) and (v), 3008(h), and
25 6001 of RCRA, 42 U.S.C. §§ 6924(u) and (v), 6928(h), and 6961;
26 and Executive Order 12580;

1 1.3 The Department of the Army, United States
2 Army Corps of Engineers ("USACE") enters into those portions of
3 this Agreement that relate to the RI/FS pursuant to Section
4 120(e)(1) of CERCLA, 42 U.S.C. § 9620(e)(1); Sections 3004(u) and
5 (v), 3008(h), and 6001 of RCRA, 42 U.S.C. §§ 6924(u) and (v),
6 6928, and 6961; Executive Order 12580; and the National
7 Environmental Policy Act, 42 U.S.C. § 4321;

8 1.4 The Department of the Army, United States
9 Army Corps of Engineers enters into those portions of this
10 Agreement that relate to interim actions and final remedial
11 actions pursuant to Section 120(e)(2) of CERCLA, 42 U.S.C.
12 § 9620(e)(2); Sections 3004(u) and (v), 3008(h), and 6001 of
13 RCRA, 42 U.S.C. §§ 6924(u) and (v), 6928(h), and 6961; Executive
14 Order 12580.

15 1.5 The State of Washington Department of
16 Ecology ("Ecology") enters into this Agreement pursuant to
17 Sections 107, 120(e), 120(f), and 121(f) of CERCLA, 42 U.S.C.
18 §§ 9607, 9620(e), 9620(f), and 9621(f); and Titles 70 and 43 of
19 the Revised Code of Washington ("RCW").
20

21 II. DEFINITIONS

22 2.1 The terms used in this Agreement shall have
23 the same meaning as defined in Section 101 of CERCLA, 42 U.S.C.
24 § 9601; the NCP, 40 C.F.R. § 300.5; and Section 1004 of RCRA,
25 42 U.S.C. § 6903. In addition:
26
27

(a) "Agreement" shall mean this document and shall include all Attachments to this document. All such Attachments are incorporated by reference and are an integral and enforceable part of this document;

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

(c) "USACE" shall mean the United States Army Corps of Engineers as the agency implementing, performing and administering this Agreement for the Department of the Army and, to the extent necessary to effectuate the terms of this Agreement (including appropriations and congressional reporting requirements), its employees, agents, successors, assigns, and authorized representatives;

(d) "Authorized representative" may include a designated contractor or any other designee;

(e) "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. 99-499, or as further amended;

(f) "Community Relations" is defined in 40 C.F.R. § 300.5 and shall mean U.S. EPA's program to inform and encourage public participation in the Superfund process and to respond to community concerns. The term "public" includes

1 citizens directly affected by the Site, other interested citizens
2 or parties, organized groups, elected officials, and potentially
3 responsible parties;

4 (g) "Days" shall mean calendar days, unless
5 otherwise specified. Any submittal that under the terms of this
6 Agreement would be due on a Saturday, Sunday, or federal or state
7 holiday shall be due on the following business day;

8 (h) "Deadline" shall mean the same as
9 "timetable" and both terms shall mean the specific date or period
10 of time for which a document or action under this Agreement is
11 scheduled to be completed or submitted.

12 (i) "Ecology" shall mean the State of
13 Washington, as represented by the Department of Ecology, its
14 employees, agents, and authorized representatives;

15 (j) "Feasibility Study" or "FS" is defined in
16 40 C.F.R. § 300.5 and shall mean a study undertaken by the lead
17 agency to develop and evaluate options for remedial action. The
18 FS emphasizes data analysis and is generally performed
19 concurrently and in an interactive fashion with the Remedial
20 Investigation ("RI"), using data gathered during the RI. The RI
21 data are used to define the objectives of the response action, to
22 develop remedial action alternatives, and to undertake an initial
23 screening and detailed analysis of the alternatives. The term
24 also refers to a report that describes the results of the study;

25 (k) "Interim Remedial Actions" or "IRAs" are
26 discussed in the Preamble to 40 C.F.R. § 300.430(a)(1), 55 Fed.

1 Reg. 8703-8706 (March 8, 1990), and shall mean all discrete
2 actions implemented under remedial authority that are taken to
3 prevent or minimize the release of hazardous substances,
4 pollutants, or contaminants so that they do not endanger human
5 health or the environment. Interim actions shall neither be
6 inconsistent with nor preclude implementation of the final
7 expected Site remedy and shall be undertaken in accordance with
8 the NCP, 40 C.F.R. Part 300, as amended, and with the
9 requirements of CERCLA;

10 (1) "NCP" shall mean the National Oil and
11 Hazardous Substances Pollution Contingency Plan, 40 C.F.R.
12 Part 300, as amended;

13 (m) "Operable Unit" or "OU" is defined in
14 40 C.F.R. § 300.5 and shall mean a discrete action that comprises
15 an incremental step toward comprehensively addressing Site
16 problems. This discrete portion of a remedial response manages
17 migration, or eliminates or mitigates a release, threat of a
18 release, or pathway of exposure. The cleanup of a site can be
19 divided into a number of operable units, depending on the
20 complexity of the problems associated with the site. Operable
21 units may address geographical portions of a site, specific site
22 problems, or initial phases of an action, or may consist of any
23 set of actions performed over time or any actions that are
24 concurrent but located in different parts of a site;

25 (n) "Paragraph" shall mean a numbered paragraph
26 of this Agreement, designated by an Arabic numeral;

(o) "Part" shall mean one of the thirty-seven (37) subdivisions of this Agreement, designated by a Roman numeral;

(p) "Parties" shall mean USACE, which is the agency implementing, performing and administering this Agreement for the Department of the Army, U.S. EPA, and Ecology;

(q) "Project Manager" shall mean the parties' Project Managers, or their designated representative.

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

(s) "Record of Decision" or "ROD" is discussed at 40 C.F.R. § 300.430 and shall mean the document that summarizes the selection of an interim remedial action or a final remedial action, and all facts, analyses of facts, and source-specific policy determinations considered in the course of carrying out activities at the Site;

(t) "Remedial Action" or "RA" is defined in 40 C.F.R. § 300.5 and shall mean those actions consistent with the permanent remedy taken instead of, or in addition to, a removal action in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is

not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances and associated contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternative water supplies, any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment and, where appropriate, post-removal site control activities. The term includes the costs of permanent relocation of residents and businesses and community facilities, including the cost of providing "alternative land of equivalent value" to an Indian tribe pursuant to Section 126(b) of CERCLA, 42 U.S.C. § 9626(b), where U.S. EPA determines that, alone or in combination with other measures, such relocation is more cost-effective than, and environmentally preferable to, the transportation, storage, treatment, destruction, or secure disposition off-site of such hazardous substances, or may otherwise be necessary to protect the public health or welfare; the term includes off-site transport and off-site storage, treatment, destruction, or secure disposition of hazardous substances and associated contaminated materials. For the purpose of the NCP, the term also includes enforcement activities related thereto;

1 (u) "Remedial Design" or "RD" is defined in
2 40 C.F.R. § 300.5 and shall mean the technical analysis and
3 procedures that follow the selection of remedy for a Site and
4 result in a detailed set of plans and specifications for
5 implementation of the Remedial Action ("RA");

6 (v) "Remedial Investigation" or "RI" is defined
7 in 40 C.F.R. § 300.5 and shall mean a process undertaken by the
8 lead agency to determine the nature and extent of the problem
9 presented by the release. The RI emphasizes data collection and
10 site characterization, and is generally performed concurrently
11 and in an interactive fashion with the Feasibility Study ("FS").
12 The RI includes sampling and monitoring, as necessary, and
13 includes the gathering of sufficient information to determine the
14 necessity for remedial action and to support the evaluation of
15 remedial alternatives;

16 (w) "Remedial Investigation/Feasibility Study
17 Management Plan" shall mean a comprehensive document describing
18 all activities planned within the RI and the FS process to
19 include the Work Plan, Field Sampling Plan ("FSP"), Quality
20 Assurance Project Plan ("QAPP"), Health and Safety Plan ("HSP"),
21 and the Community Relations Plan ("CRP");

22 (x) "Removal" as defined by Section 311(a)(8) of
23 the Clean Water Act ("CWA"), 33 U.S.C. 1321(a)(8), shall mean the
24 removal of oil or hazardous substances from the water and
25 shorelines or the taking of such other actions as may be
26 necessary to minimize or mitigate damage to the public health,

1 welfare, or to the environment. As defined by Section 101(23) of
2 CERCLA, 42 U.S.C. § 9601(23), removal shall mean the cleanup or
3 removal of released hazardous substances from the environment;
4 such actions as may be necessary in the event of the threat of
5 release of hazardous substances into the environment; such
6 actions as may be necessary to monitor, assess, and evaluate the
7 release or threat of release of hazardous substances; the
8 disposal of removed material; or the taking of such other actions
9 as may be necessary to prevent, minimize, or mitigate damage to
10 the public health or welfare or to the environment that may
11 otherwise result from a release or threat of release. The term
12 includes, in addition, without being limited to, security fencing
13 or other measures to limit access, provision of alternative water
14 supplies, temporary evacuation and housing of threatened
15 individuals not otherwise provided for, action taken under
16 Section 104(b) of CERCLA, 42 U.S.C. § 9604(b), post-removal site
17 control, where appropriate, and any emergency assistance that may
18 be provided under the Disaster Relief Act of 1974. For the
19 purpose of the NCP, the term also includes enforcement activities
20 related thereto;

21 (y) "Response" is defined by Section 101(25) of
22 CERCLA, 42 U.S.C. § 101(25), and 40 C.F.R. § 300.5, and shall
23 mean removal, remedy, or remedial action, including enforcement
24 activities related thereto;

25 (z) "Scope of Work" shall mean the planning
26 document prepared by USACE, in consultation with U.S. EPA and
27

1 Ecology, and in accordance with OSWER Directive 9835.8, that
2 identifies the source-specific objectives and general management
3 approach for the RI/FS process for the Site and/or operable
4 unit(s) and which will be submitted as part of the RI/FS
5 Management Plan;

6 (aa) "Site" shall mean the areal extent of
7 contamination and shall include sources of contamination subject
8 to this Agreement within that portion of the Hamilton Island area
9 known as Parcels "1" and "B", and the "Duck Pond" area,
10 constituting approximately 226 acres of filled land adjacent to
11 the City of North Bonneville, Washington, and the Columbia River
12 as more specifically described in Attachment I hereto. The Site
13 includes any off-site area(s) contaminated as a result of USACE
14 operations at Hamilton Island or by the migration of hazardous
15 substances, pollutants, contaminants, or constituents from
16 sources at Hamilton Island subject to this Agreement;

17 (bb) "Statement of Work" shall mean the
18 description of the requirements for developing management plans;

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

22 (dd) "Work Plan" shall mean the RI/FS, RD or RA
23 Work Plan that is to be prepared in accordance with Office of
24 Solid Waste and Emergency Response ("OSWER") Directives 9355.3-01
25 (October 1988) and 9355.0-4A (June 1986), this Agreement and the
26 NCP.

1 III. PURPOSE

2 3.1 The general purposes of this Agreement are
3 to:

4 (a) Ensure that the environmental impacts associated
5 with past and present activities at the Site are thoroughly
6 investigated and that appropriate removal and/or remedial
7 action(s) are taken as necessary to protect the public health,
8 welfare, and the environment;

9 (b) Establish a procedural framework and schedule for
10 developing, implementing, and monitoring appropriate response
11 actions at the Site in accordance with CERCLA, the NCP, national
12 Superfund guidance and policy, RCRA, and national RCRA guidance
13 and policy, and applicable state law; and,

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

16 3.2 Specifically, the purposes of this Agreement
17 are to:

18 (a) Investigate historical information about the Site
19 in order to identify those sources of contamination that will be
20 addressed under this Agreement;

21 (b) Identify removal and Interim Remedial Action(s)
22 ("IRA") alternatives that are appropriate at the Site prior to
23 the implementation of final remedial action(s) for the Site. IRA
24 alternatives shall be identified and proposed to the Parties as
25 early as possible prior to formal proposal of IRA(s) to U.S. EPA
26 and Ecology pursuant to CERCLA and applicable state law. This

process is designed to promote cooperation among the Parties in identifying IRA alternatives prior to selection of final IRA(s);

(c) Establish requirements for the performance of a Remedial Investigation ("RI") to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release or threatened release of hazardous substances, pollutants, or contaminants at the Site, and to establish requirements for the performance of an FS for the Site to identify, evaluate, and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants, or contaminants at the Site in accordance with CERCLA and applicable state law;

(d) Identify the nature, objective, and schedule of response actions to be taken at the Site. Response actions at the Site shall attain that degree of cleanup of hazardous substances, pollutants, or contaminants mandated by CERCLA and applicable state law;

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

(f) Assure compliance, through this Agreement, with RCRA and other federal and state hazardous waste laws and regulations for matters covered herein;

1 (g) Coordinate response actions at the Site with the
2 activities occurring at Hamilton Island;

3 (h) Expedite the cleanup process to the extent
4 consistent with protection of human health and the environment;

5 (i) Provide for operation and maintenance of any
6 remedial action selected and implemented pursuant to this
7 Agreement.

8 IV. PARTIES BOUND

9 4.1 This Agreement shall apply to and be binding
10 upon USACE, U.S. EPA, and Ecology. This Agreement shall also
11 apply to subsequent owners and operators of any portion of the
12 Site. USACE agrees to include notice of this Agreement in any
13 document transferring ownership of property owned by the United
14 States to any subsequent owners and operators of any portion of
15 the Site in accordance with Section 120(h) of CERCLA, 42 U.S.C.
16 § 9620(h), 40 C.F.R. §§ 264.119 and 264.120, and Part XXXII of
17 this Agreement. USACE agrees that the requirement for such
18 notice shall apply to federally owned real property sales and
19 transfers between agencies of the United States, between the
20 United States and private parties, and between the United States
21 and State and local governments.

22 4.2 USACE will notify U.S. EPA and Ecology of
23 the identity of its contractors performing work under this
24 Agreement within thirty (30) days of selection of each
25 contractor. USACE shall provide copies of this Agreement to all
26 contractors performing work under this Agreement.

1 4.3 Under no condition shall a Party under this
2 Agreement utilize the services of any consultant, prime
3 contractor, or subcontractor who has been suspended, debarred, or
4 voluntarily excluded within the scope of 40 C.F.R. Part 32 or
5 under the Federal Acquisition Regulation ("FAR") at 48 C.F.R.
6 Subpart 9.4 et seq.

7 4.4 Each undersigned representative of a Party
8 certifies that he or she is fully authorized to enter into the
9 terms and conditions of this Agreement and to legally bind such
10 Party to this Agreement.

11
12 V. RCRA-CERCLA INTEGRATION

13 5.1 The Parties intend to integrate USACE's
14 CERCLA response obligations and RCRA corrective action
15 obligations that relate to the release(s) of hazardous
16 substances, hazardous wastes, hazardous constituents, pollutants,
17 or contaminants covered by this Agreement into this comprehensive
18 Agreement. Therefore, the Parties intend that activities covered
19 by this Agreement will achieve compliance with CERCLA, 42 U.S.C.
20 § 9601 et seq., and applicable state law; satisfy the corrective
21 action requirements of Sections 3004(u) and (v) of RCRA,
22 42 U.S.C. § 6924(u) and (v), for a RCRA permit, and Section
23 3008(h), 42 U.S.C. § 6928(h), for interim status facilities; and
24 meet or exceed all applicable or relevant and appropriate federal
25 and state laws and regulations, to the extent required by Section
26 121 of CERCLA, 42 U.S.C. § 9621.

1 5.2 Based upon the foregoing, the Parties intend
2 that any remedial action selected, implemented, and completed
3 under this Agreement will be protective of human health and the
4 environment such that remediation of releases covered by this
5 Agreement shall obviate the need for further corrective action.
6 The Parties agree that with respect to releases of hazardous
7 waste, hazardous constituents, or hazardous substances covered by
8 this Agreement, the substantive requirements of RCRA and Chapters
9 70.105 and 70.105D R.C.W. shall be considered ARARs pursuant to
10 Section 121 of CERCLA, 42 U.S.C. § 9621. Releases or other
11 hazardous waste activities not covered by this Agreement remain
12 subject to all applicable state and federal environmental
13 requirements. If any state ARARs are waived by the Record of
14 Decision ("ROD") pursuant to Section 121 of CERCLA, 42 U.S.C.
15 § 9621, Ecology shall have the right to withdraw from this
16 Agreement within sixty (60) days following the effective date of
17 the ROD and exercise any legal rights and remedies available
18 under law. If Ecology exercises its right to withdraw from this
19 Agreement, USACE expressly preserves its ability to assert any
20 defense that it may have under law in regard to the legal right
21 or remedies pursued by Ecology.

22 5.3 USACE recognizes that at the time this
23 Agreement is signed by all the Parties that there are no current
24 ongoing hazardous waste treatment, storage or disposal activities
25 occurring at the Hamilton Island Site. The Parties recognize
26 that the requirement to obtain permits for response actions

undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that ongoing hazardous waste management activities at Hamilton Island may require the issuance of permits under federal and state laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to USACE for ongoing hazardous waste management activities at the Site, U.S. EPA or Ecology shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such permit. With respect to those portions of this Agreement incorporated by reference into permits, the Parties intend that judicial review of the incorporated portions shall, to the extent authorized by law, be reviewed only under the provisions of CERCLA.

5.4. Nothing in this Agreement shall alter any Party's rights with respect to removal actions conducted pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. Any removal actions conducted at the Site shall be conducted in a manner consistent with this Agreement, CERCLA, the NCP, and Executive Order 12580.

VI. FINDINGS OF FACT

6.1 For purposes of this Agreement, the following constitutes a summary of the facts upon which this Agreement is based. None of the facts related herein are admissions nor are they legally binding upon any Party with

1 respect to any unrelated claims of persons not a Party to this
2 Agreement.

3 6.2 Hamilton Island was acquired with other
4 lands by USACE in 1975 for use during construction of the
5 Bonneville Second Powerhouse project. Portions of the island
6 were used for disposal of excavated material. Between 1976 and
7 1981 approximately nineteen million cubic yards of excavated soil
8 and rock were placed on the island and adjacent slough creating a
9 peninsula on the Washington shoreline. The site was seeded and
10 is currently managed as open space.

11 6.3 Construction debris estimated at less than
12 100,000 cubic yards were also placed on the Hamilton Island Site
13 which is located on land comprising approximately two hundred and
14 twenty (220) acres. The debris materials include wood forms,
15 concrete, tires, metal debris, and portions of the old city of
16 North Bonneville which was razed for this project. Other
17 construction wastes could include waste oils and solvents from
18 equipment maintenance. Disposal of a significant amount of the
19 construction debris occurred near the end of construction in an
20 approximately 12 acre area called the "knoll", located near the
21 top of the fill.

22 6.4 USACE identified the presence of solvents,
23 other organic compounds, and heavy metals in surface water at the
24 knoll area in 1986 and completed a Site Inspection Study (SIS)
25 for the Site in 1990. The purpose of the SIS was to identify and
26 assess areas at the Site that pose a potential threat to human

1
2 health or the environment caused by the release or threatened
3 release of hazardous substances, pollutants or contaminants.

4 6.5 Hamilton Island constitutes approximately
5 two hundred and twenty-six (226) acres of land adjacent to the
6 Columbia River in Skamania County, Washington, and for purposes
7 of this Agreement, is defined and designated as three parcels of
8 land, known as Parcels "1" and "B", and the "duck pond" site as
9 described in paragraph 2.1(aa). The City of North Bonneville,
10 Washington, is adjacent to Hamilton Island to the north..

11 6.6 The SIS confirmed the presence of
12 contamination at "the knoll" on Hamilton Island, and identified
13 potential contamination attributable to construction debris in
14 two other areas located on the east and west ends of the Site.
15 These areas are suspected to contain debris from the demolished
16 Town of North Bonneville and may pose a threat to human health or
17 the environment.

18 6.7 Hamilton Island was proposed for inclusion
19 on the CERCLA National Priorities List ("NPL") in July 1991.
20 56 Fed. Reg. 35840 (July 29, 1991). It was listed final in
21 October 1992. 57 Fed. Reg. 47180 (October 14, 1992).

22 6.8 The Site is a facility under the
23 jurisdiction, custody, or control of the United States Department
24 of the Army within the meaning of Executive Order 12580. 52 Fed.
25 Reg. 2923 (January 29, 1987). USACE is authorized to act on
26 behalf of the Secretary of the Army for all functions delegated
27

1 by the President through Executive Order 12580 which are relevant
2 to this Agreement.

3 6.9 USACE is authorized, pursuant to Executive
4 Order 12580, to receive notification of State ARARS as required
5 by Section 121(d)(2)(A)(ii) of CERCLA, 42 U.S.C.
6 § 9621(D)(2)(A)(ii).

7 6.10 The authority of USACE to exercise the
8 delegated removal authority of the President, pursuant to Section
9 104 of CERCLA, 42 U.S.C. § 9604, is not altered by this
10 Agreement.

11 VII. REGULATORY DETERMINATIONS

12 7.1 For purposes of this Agreement, the
13 following constitutes a summary of the Regulatory Determinations
14 upon which this Agreement is based. None of the Regulatory
15 Determinations related herein are admissions nor are they legally
16 binding upon any Party with respect to any unrelated claims of
17 person(s) not a Party to this Agreement.

18 7.2 Hamilton Island is a Site within the meaning
19 of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9);

20 7.3 Hazardous substances, pollutants, or
21 contaminants within the meaning of Sections 101(14) and 104(a)(2)
22 of CERCLA, 42 U.S.C. §§ 9601(14) and 9604(a)(2), have been
23 disposed of at the Site;

24 7.4 There have been releases of hazardous
25 substances, pollutants, or contaminants into the environment
26 within the meaning of Sections 101(22), 104, 106, and 107 of

1 CERCLA, 42 U.S.C. §§ 9601(22), 9604, 9606, and 9607, at and from
2 the Site;

3 7.5 With respect to those releases, USACE is an
4 owner and/or operator within the meaning of Section 107 of
5 CERCLA, 42 U.S.C. § 9607;

6 7.6 The actions to be taken pursuant to this
7 Agreement are reasonable and necessary to protect human health
8 and the environment; and

9 7.7 A reasonable time for beginning and/or
10 completing the actions has been, or will be, provided.

11 VIII. SCOPE OF AGREEMENT

12 A. Work to be Performed

13 8.1 The Parties intend that work done and data
14 generated prior to the effective date of this Agreement be
15 retained and utilized to the maximum extent technically feasible
16 in accordance with applicable law.

17 8.2 USACE will conduct and finance the cost of
18 each RI/FS or other consultant studies in accordance with each
19 RI/FS Management Plan or Work Plan and implement the RD/RA at the
20 Site in accordance with the appropriate RD and the RA Work Plan,
21 and all relevant statutes and regulations.

22 8.3 All work performed pursuant to this
23 Agreement shall be under the direction and supervision, or in
24 consultation with, a qualified engineer, geologist, or equivalent
25 expert with expertise in hazardous substances remedial
26 investigation and/or remediation.

1 8.4 USACE shall perform the tasks and submit
2 plans, reports, and other documents as required by the Plans
3 referenced in Paragraph 8.2.

4 8.5 These matters are set forth in more detail
5 below and in the subsequent RI/FS Management Plans and RA Work
6 Plans. This Agreement fully incorporates the provisions of these
7 Plans that relate to the implementation of this Agreement,
8 including, but not limited to, definitions and procedures for
9 submission, review, and approval of documents. In the event of
10 any inconsistency between this Agreement and the Plans, this
11 Agreement shall govern unless and until duly amended pursuant to
12 Part XXXIII of this Agreement.

13 B. Site Evaluation

14 8.6 USACE agrees to perform a Site evaluation,
15 to determine whether there are any other potential sources of
16 contamination that should be addressed under this Agreement. The
17 Site evaluation will consist of at least two (2) components:

18 (a) An effort to locate and interview currently known
19 or reasonably ascertainable current and past
20 employees who may have personal knowledge of
21 historical activities generating potential
22 sources of contamination; and

23 (b) An inspection of all available historical aerial
24 photographs.

25 USACE, through its Project Manager, will give EPA and Ecology the
26 opportunity to participate in all aspects of the Site evaluation.

1 USACE will prepare a written summary of the results of the Site
2 evaluation, to be submitted to U.S. EPA and Ecology by a date to
3 be decided by the Project Managers for all Parties. Potential
4 sources discovered as a result of the Site evaluation will be
5 evaluated pursuant to Paragraph 24.3 of this Agreement.

6 C. Interim Remedial Actions

7 8.7 USACE shall, where appropriate, develop and
8 implement Interim Remedial Actions ("IRAs") that shall be set
9 forth in an RI/FS Management Plan. The IRA(s) shall be
10 consistent with the purposes set forth in Part III of this
11 Agreement. USACE shall propose IRA(s) to U.S. EPA and Ecology.
12 Alternatively, U.S. EPA and Ecology may request IRA proposals.
13 USACE and U.S. EPA, in consultation with Ecology, shall select
14 appropriate IRA(s). U.S. EPA shall make the selection in the
15 event of disagreement, subject to Part XXI of this Agreement.
16 IRA(s) shall, to the greatest extent practicable, attain ARARs
17 and be consistent with and contribute to the efficient
18 performance of final response actions.

19 D. Remedial Investigations

20 8.8 USACE shall develop, implement, and report
21 upon remedial investigations of the Site. These investigations
22 shall comply with applicable requirements of CERCLA; the NCP; the
23 EPA/Ecology approved RI/FS Management Plan; and, to the extent
24 set forth in this Agreement, written national guidance pertinent
25 to CERCLA, and U.S. EPA national policy.

1 E. Feasibility Studies

2 8.9 USACE shall design, propose, undertake, and
3 report upon feasibility studies for the Site. These studies
4 shall comply with applicable requirements of CERCLA; the NCP;
5 and, to the extent set forth in this Agreement, written national
6 guidance pertinent to CERCLA and U.S. EPA national policy.

7 F. Remedial Actions

8 8.10 USACE shall develop and submit its proposed
9 RA alternative. Ecology may recommend to U.S. EPA the RA
10 alternative it deems appropriate. U.S. EPA, in consultation with
11 Ecology and USACE, shall make final selection of the RA(s) for
12 each OU. In the event of disagreement, U.S. EPA shall make final
13 selection of the RA(s). The selection of RA(s) by the U.S. EPA
14 Region 10 Regional Administrator shall be final, subject to Part
15 XXXVI.

16 G. Compliance With The Off-Site Policy

17 8.11 Any hazardous substance, pollutant or
18 contaminant transferred off-site as a result of this Agreement
19 must be taken to a facility acceptable under U.S. EPA's Off-Site
20 Policy (OSWER Directive 9834.11; November 13, 1987) in accordance
21 with Section 121(d)(3) of CERCLA, as amended, 42 U.S.C.
22 § 9621(d)(3).

23 H. Implementation of Remedial Actions

24 8.12 Following finalization of any ROD in
25 accordance with Part XXI, USACE shall design, propose, and
26 submit, where necessary, a detailed RD Work Plan or RA Work Plan

1 for implementation of each selected remedial action, including
2 appropriate schedules, to U.S. EPA and Ecology. Following review
3 by Ecology and U.S. EPA and finalization of the RD or RA Work
4 Plans in accordance with Part XX of this Agreement, USACE shall
5 implement the remedial action(s) in accordance with the
6 requirements and schedules set forth in this Agreement.

8 IX. PROJECT MANAGERS

9 9.1 U.S. EPA, Ecology, and USACE shall each
10 designate a Project Manager and Alternate (hereinafter jointly
11 referred to as Project Manager) for the purpose of overseeing the
12 implementation of this Agreement. Within five (5) days of the
13 effective date of this Agreement, each Party shall notify the
14 other Parties of the name and address of its Project Manager.
15 Any Party may change its designated Project Manager by notifying
16 the other Parties, in writing, within five (5) days of the
17 change. Communications between the Parties concerning the terms
18 and conditions of this Agreement shall be directed through the
19 Project Managers as set forth in Part XIV of this Agreement. Each
20 Project Manager shall be responsible for assuring that all
21 communications from the other Project Managers are appropriately
22 disseminated and processed by their respective Agencies.

23 9.2 The Project Manager for USACE shall be
24 responsible for day-to-day field activities at the Site, and
25 shall have all the authority vested in the On-Scene Coordinator
26 and Remedial Project Manager by the NCP, 40 C.F.R. Part 300. The

1 Project Manager for USACE shall be physically present at the
2 Site, or reasonably available to supervise work, during all hours
3 of work performed at the Site pursuant to this Agreement.

4 9.3 Project Managers shall have the authority
5 to: (1) take samples, request split samples, and ensure that
6 work is performed properly and in accordance with the terms of
7 any final Management Plan; (2) observe all activities performed
8 pursuant to this Agreement, take photographs, and make such other
9 reports on the progress of the work as the Project Managers deem
10 appropriate; (3) review records, files, and documents relevant to
11 this Agreement; (4) recommend and request minor field
12 modifications to the work to be performed pursuant to the
13 Agreement, or in techniques, procedures, or designs utilized in
14 carrying out this Agreement; (5) exercise the authorities granted
15 to them in this Part, and the NCP; and (6) act in accordance with
16 Paragraph 33.1 (Modification/Amendment of Agreement).

17 9.4 Each Project Manager shall be, or rely on, a
18 qualified and competent person with experience in hazardous
19 substances site investigations and remedial actions and having
20 the skills necessary to implement this Agreement.

21 9.5 The Project Managers may, in accordance with
22 Part XX(J) of this Agreement, make modifications to the work to
23 be performed pursuant to this Agreement, or in techniques,
24 procedures, or designs utilized in carrying out this Agreement.
25 Any minor field modification proposed by any Party pursuant to
26 this Part must be approved orally by all Parties' Project
27

1 Managers to be effective. The USACE Project Manager shall make a
2 contemporaneous record of such modification and approval in a
3 written log, and a summary of the log entry will be included in
4 the next progress report.

5 9.6 The Project Managers may, upon unanimous
6 agreement, make minor field modifications to the work to be
7 performed pursuant to this Agreement, or in techniques,
8 procedures, or design utilized in carrying out this Agreement,
9 which are necessary to the completion of the project without
10 resort to Part XXXIII of this Agreement. All modifications shall
11 be documented in writing.

12 9.7 The Project Managers for Ecology, U.S. EPA,
13 and USACE are authorized to take the following actions without
14 resort to Part XXXIII of this Agreement: Review, comment on, and
15 modify primary and secondary reports and documents pursuant to
16 Part XX; coordinate dispute resolution, invoke dispute
17 resolution, and issue written statements of dispute pursuant to
18 Part XXI; approve the establishment and extension of deadlines
19 pursuant to Part XXV; and approve the addition or redefinition of
20 operable units/hazardous waste areas.

21 9.8 When agreement among the Parties is
22 necessary to take any action set forth under paragraph 9.6 of
23 this Agreement, such agreement may be effected by the unanimous
24 written agreement of the Project Managers for Ecology, U.S. EPA,
25 and USACE.

1 9.9 All modifications agreed to by the Parties
2 or their Project Managers pursuant to this Part or Part XX(J) of
3 this Agreement which would further require modification to any
4 existing USACE contracts or incur obligations for additional
5 expenditures under such contracts, are subject to implementation
6 by the contractor under the direction of the USACE Contracting
7 Officer.

8 9.10 The Project Managers shall be reasonably
9 available to consult on work performed pursuant to this Agreement
10 and shall make themselves available to each other for the
11 pendency of this Agreement. The absence of the USACE, U.S. EPA,
12 or Ecology Project Managers from the Site shall not be cause for
13 work stoppage or delay.

14 X. ACCESS

15 10.1 Without limitation on any authority
16 conferred on them by law, U.S. EPA, Ecology, and/or their
17 authorized representatives, shall have authority to enter the
18 Site at all reasonable times for the purposes of, among other
19 things: (1) inspecting records, operating logs, contracts, and
20 other documents relevant to implementation of this Agreement;
21 (2) reviewing the progress of USACE, its response action
22 contractors, or agents in implementing this Agreement;
23 (3) conducting such tests as Ecology and U.S. EPA Project
24 Managers deem necessary; and (4) verifying the data submitted to
25 U.S. EPA and Ecology by USACE. The USACE shall honor all
26 requests for such access by U.S. EPA and Ecology, subject only to

1 any statutory or regulatory requirement as may be necessary to
2 protect national security or mission-essential activities.
3 To the extent possible, U.S. EPA and Ecology shall provide
4 reasonable notice to the USACE Project Manager prior to Site
5 visit.

6 10.2 All Parties with access to the Site pursuant
7 to this Part shall comply with all applicable health and safety
8 plans.

9 10.3 In the event that any access requested by
10 either U.S. EPA or Ecology is denied by USACE, USACE shall,
11 within forty-eight (48) hours, provide a written explanation of
12 the reason for the denial, including reference to the applicable
13 regulations, and, upon request, a copy of such regulations.
14 USACE shall, as expeditiously as possible, make alternative
15 arrangements for accommodating the requested access. USACE shall
16 not restrict the access rights of U.S. EPA or Ecology to any
17 greater extent than USACE restricts the access rights of its
18 contractors performing work pursuant to this Agreement.

19 10.4 To the extent that this Agreement requires
20 access to property not owned and controlled by USACE, USACE shall
21 exercise its authorities to obtain access pursuant to Section
22 104(e) of CERCLA, 42 U.S.C. § 9604(e), and will make every
23 reasonable effort to obtain signed access agreements for itself,
24 its contractors, agents, U.S. EPA, and Ecology, and provide U.S.
25 EPA and Ecology with copies of such agreements. USACE may
26 request the assistance of Ecology in obtaining such access, and,

upon such request, Ecology will use their best efforts to obtain the required access. With respect to the non-USACE property upon which monitoring wells, pumping wells, treatment facilities, or other response actions are to be located, the access agreements should provide that no conveyance of title, easement, or other interest in the property shall be consummated without provisions for the continued operation of such wells, treatment facilities, or other response actions on the property. The access agreements should also provide to the extent practicable that the owners of any property where monitoring wells, pumping wells, treatment facilities, or other response actions are located shall notify USACE, Ecology, and the U.S. EPA by certified mail, at least thirty (30) days prior to any conveyance, of the property owner's intent to convey any interest in the property and of the provisions made for the continued operation of the monitoring wells, treatment facilities, or other response actions installed pursuant to this Agreement.

10.5 To the extent that this Agreement requires access to property formerly owned and controlled by USACE, but transferred to another party pursuant to Section 120(h) of CERCLA, 42 U.S.C. § 9620(h), as amended, USACE shall ensure that the deed entered into for the sale or other transfer of any parcel of real property covered by the provisions of Section 120(h) contains a clause granting the United States and the State of Washington access to the property in any case in which a response action or corrective action is found by the United

1 states or the State of Washington to be necessary to protect the
2 human health or the environment.

3 10.6 Nothing in this Part shall be construed to
4 limit the discretion of USACE to exercise the authority of the
5 President under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), as
6 delegated by Executive Order 12580.

7
8 XI. SAMPLING AND DATA/DOCUMENT AVAILABILITY

9 11.1 The Parties shall make available to each
10 other quality-assured results of sampling, tests, or other data
11 generated by or on behalf of any Party under this Agreement
12 within sixty (60) days following completion of the field event.
13 If quality assurance is not completed within sixty (60) days,
14 preliminary data or results shall be made available within the
15 sixty (60) day period and quality assured data or results shall
16 be submitted as they become available but in no event later than
17 one hundred (100) days after the sampling or testing. These
18 periods can be extended upon mutual agreement among the Project
19 Managers.

20 11.2 At the request of either the Ecology or
21 U.S. EPA Project Manager, the USACE shall allow split or
22 duplicate samples to be taken by Ecology or U.S. EPA during
23 sample collection conducted during the implementation of this
24 Agreement. The USACE's Project Manager shall notify the U.S. EPA
25 and Ecology Project Managers not less than fourteen (14) business
26 days in advance of any scheduled well drilling, sample

1 collection, or other monitoring activity, conducted pursuant to
2 this Agreement. The Project Managers will be notified prior to
3 any unscheduled sampling event. The fourteen (14) day
4 notification can be waived upon mutual agreement among the
5 Project Managers.

6 11.3 If preliminary analysis indicates a
7 potential imminent and substantial endangerment to the public
8 health, all Project Managers shall be immediately notified.

9 11.4 Laboratory reports shall be made available
10 for review by the Parties immediately upon completion of
11 laboratory analysis.

12 XII. QUALITY ASSURANCE

13 12.1 Throughout all sample collection,
14 transportation, and analyses activities conducted in connection
15 with this Agreement, USACE shall use procedures for quality
16 assurance, for quality control, and for chain-of-custody in
17 accordance with approved U.S. EPA methods, including "Interim
18 Guidelines and Specifications for Preparing Quality Assurance
19 Project Plans," QAMS-005/80, "Data Quality Objective Guidance,"
20 U.S. EPA 1540/687/003 and 004, and subsequent amendments to such
21 guidelines. USACE shall require each laboratory it uses to
22 perform any analysis according to approved U.S. EPA methods and
23 to demonstrate a quality assurance/quality control program
24 consistent with that followed by U.S. EPA and consistent with
25 U.S. EPA document QAMS-005/80.

XIII. REPORTING

13.1 USACE shall submit to the other Parties quarterly written progress reports. The reports will include, but not be limited to, the following information:

(a) A detailed summary of all of the remedial, removal, and investigation activities during the previous quarter, including any analytical results, any community relations activities, and any community contacts or inquiries related to the hazardous substance contamination at the Site;

(b) An outline of the planned activities for the upcoming quarter;

(c) A detailed statement of the manner and the extent to which the timetables and deadlines are being met, including a discussion of any problems encountered in the implementation of the Management Plans and their status;

(d) The status of efforts to obtain rights-of-entry necessary for monitoring and well installation off-Site; and

(e) The status of any other activities proposed or underway that may affect any phase of the activities described in Attachment I.

f) The status of the critical path schedule of activities, showing how progress to date corresponds with the schedule for the project, including the impact, if any, on the upcoming primary and secondary deliverables.

13.2 The quarterly written progress reports shall be submitted on the twentieth (20th) day of March, June, September and December following the effective date of this Agreement.

XIV. NOTICE TO THE PARTIES

14.1 All Parties shall expeditiously transmit primary and secondary documents, and all notices required herein. Time limitations shall commence upon receipt.

14.2 Unless otherwise provided, notice to the individual Parties shall be provided under this Agreement to the following addresses:

(A) **For USACE:**

Norm Tolonen
CENPP-PM
U.S. Army Engineer District, Portland
P.O. Box 2946
Portland, Oregon 97208-2946
(503) 326-6919

Express Mail:
10th Floor, Robert Duncan Plaza Bldg.
333 S.W. 2nd Avenue
Portland, Oregon 97204

cc: Mark Ohlstrom
CENPS-EN-GT-HW
U.S. Army Engineer District, Seattle
4735 East Marginal Way South
Seattle, Washington 98124-2255
(206) 764-3457

(B) **For the U.S. EPA:**

Christopher Cora
U.S. Environmental Protection Agency
Superfund Federal Facility Branch
1200 Sixth Avenue, HW-124
Seattle, Washington 98101
(206) 553-1148

1 (C) For Ecology:

2 Chris Poindexter
3 Toxics Cleanup Program
4 Washington State Department of Ecology
5 P.O. Box 47600
6 Olympia, Washington 98504-7600
7 (206) 438-7346

8 Express Mail:
9 Toxics Cleanup Program
10 Washington State Department of Ecology
11 637 Woodland Square Loop S.E.
12 Lacey, Washington 98503

13 XV. PERMITS

14 15.1 The Parties recognize that the requirement
15 to obtain permits for response actions undertaken pursuant to
16 this Agreement shall be as provided for in CERCLA and the NCP.
17 The Parties further recognize other potential ongoing hazardous
18 waste management activities at the Site may require the issuance
19 of permits under federal and State laws. This Agreement does not
20 affect the requirements, if any, to obtain such permits.
21 However, if a permit is issued for ongoing hazardous waste
22 management activities at the Site, Ecology and U.S. EPA shall
23 reference and incorporate any appropriate provisions, including
24 appropriate schedules (and the provisions for extension of such
25 schedules), of this Agreement into such permit. The Parties
26 intend that the judicial review of any permit conditions which
27 reference this Agreement shall, to the extent authorized by law,
28 only be reviewed under the provisions of CERCLA.

1 XVI. RETENTION OF RECORDS

2 16.1 USACE shall preserve for a minimum of seven
3 (7) years after termination of this Agreement all records and
4 documents in its possession or in the possession of its
5 divisions, employees, agents, accountants, contractors, or
6 attorneys that relate to the presence of hazardous wastes and
7 constituents, hazardous substances, pollutants, and contaminants
8 at the Site or to the implementation of this Agreement, despite
9 any document retention policy to the contrary. After this
10 seven (7) year period, USACE shall notify Ecology and U.S. EPA at
11 least forty-five (45) days prior to destruction or disposal of
12 any such documents or records. Upon request by EPA or Ecology,
13 USACE shall make available such records or documents, or true
14 copies to EPA and Ecology. After termination of this Agreement,
15 documents may be converted to permanent electronic or optical
16 media and paper originals disposed of after forty-five (45) days
17 notification to U.S. EPA or Ecology, unless otherwise required by
18 law.

19 XVII. PUBLIC PARTICIPATION AND ADMINISTRATIVE RECORD

20 17.1 The Parties agree that this Agreement and
21 any subsequent plan(s) for remedial action at the Site arising
22 out of this Agreement shall comply with the administrative record
23 and public participation requirements of CERCLA, including
24 Sections 113(k) and 117 of CERCLA, 42 U.S.C. §§ 9613(k) and 9617,
25 the NCP, and U.S. EPA national guidance on public participation
26 and administrative records.

1 17.2 USACE shall develop and implement a
2 Community Relations Plan ("CRP") that responds to the need for an
3 interactive relationship with all interested community elements,
4 both on- and off-Site, regarding activities and elements of work
5 undertaken by USACE. USACE agrees to develop and implement the
6 CRP in a manner consistent with Section 117 of CERCLA, 42 U.S.C.
7 § 9617, the NCP, and U.S. EPA national guidance.

8 17.3 USACE shall establish and maintain an
9 administrative record at or near the City of Stevenson,
10 Washington, in accordance with Section 113(k) of CERCLA,
11 42 U.S.C. § 9613(k), and that a copy of this Agreement shall be
12 placed in the Administrative Record. The administrative record
13 shall be established and maintained in accordance with the NCP
14 and U.S. EPA national policy and guidelines. A copy of each
15 document included in the administrative record developed by USACE
16 shall expeditiously be provided to Ecology and/or U.S. EPA upon
17 written request. USACE shall provide to U.S. EPA and Ecology an
18 Index of documents in the administrative record on a quarterly
19 basis as provided in Part XIII, if changes have occurred.
20

21 XVIII. CREATION OF DANGER/EMERGENCY ACTION

22 18.1 In the event U.S. EPA or Ecology determine
23 that activities conducted pursuant to this Agreement, or any
24 other circumstances or activities, may create an imminent and
25 substantial endangerment to the health or welfare of the people
26 on the Site or in the surrounding area or to the environment,
27

1 U.S. EPA or Ecology may require or order USACE to stop further
2 implementation of this Agreement for such period of time as
3 needed to abate the danger. Any unilateral work stoppage for
4 longer than twenty-four (24) hours requires the concurrence of
5 the U.S. EPA Hazardous Waste Division Director, in accordance
6 with Paragraph 21.11.

7 18.2 In the event USACE determines that
8 activities undertaken in furtherance of this Agreement or any
9 other circumstances or activities at the Site may create an
10 imminent and substantial endangerment to the health or welfare of
11 the people on the Site or in the surrounding area or to the
12 environment, USACE may stop implementation of this Agreement for
13 such periods of time necessary for U.S. EPA and Ecology to
14 evaluate the situation and determine whether USACE should proceed
15 with implementation of the Agreement or whether the work stoppage
16 should be continued until the danger is abated. USACE shall
17 notify the other Parties as soon as is possible, but not later
18 than twenty-four (24) hours after such stoppage of work, and
19 provide U.S. EPA and Ecology with documentation of its analysis
20 in reaching this determination. If, after consultation with
21 Ecology, U.S. EPA disagrees with the USACE determination, it may
22 require USACE to resume implementation of this Agreement.

23 18.3 If U.S. EPA concurs in the work stoppage by
24 USACE, or if U.S. EPA or Ecology require or order a work
25 stoppage, USACE's obligations shall be suspended and the time
26 periods for performance of that work, as well as the time period

1 for any other work dependent upon the work that was stopped,
2 shall be extended, pursuant to Part XXV of this Agreement. Any
3 disagreements pursuant to this Part shall be resolved through the
4 dispute resolution procedures in Part XXI of the Agreement by
5 referral directly to the DRC.

6
7 XIX. FIVE YEAR REVIEW

8 19.1 Consistent with Section 121(c) of CERCLA,
9 42 U.S.C. § 9621(c), and in accordance with this Agreement, if a
10 remedial action is selected that results in any hazardous
11 substances, pollutants, or contaminants remaining at the Site,
12 the Parties shall review such remedial action no less often than
13 each five (5) years after the initiation of such remedial action
14 to assure that human health and the environment are being
15 protected by the remedial action being implemented. The U.S. EPA
16 Project Manager and the Ecology Project Manager shall advise the
17 USACE Project Manager of their findings in this regard. If any
18 Party determines that additional action is appropriate in
19 accordance with Sections 104 or 106 of CERCLA, 42 U.S.C. §§ 9604
20 or 9606, the Agreement may be amended pursuant to Part XXXIII.

21 If the Parties are unable to agree on the need to amend this
22 Agreement, dispute resolution under Part XXI shall be available
23 to any Party. In the event of dispute, the final determination
24 of additional remedial actions shall be by the EPA Administrator
25 in accordance with Part XXI of this Agreement and the final
26 decision by the Administrator shall not be subject to further

1 dispute by the Parties. USACE shall implement such additional or
2 modified action as finally determined.

4 XX. CONSULTATION WITH U.S. EPA AND ECOLOGY

5 A. Applicability

6 20.1 The provisions of this Part establish the
7 procedures that shall be used by the Parties to provide each
8 other with appropriate notice, review, comment, and response to
9 comments regarding RI/FS and RD/RA documents, specified herein as
10 either primary or secondary documents. In accordance with
11 Section 120 of CERCLA, 42 U.S.C. § 9620, USACE will normally be
12 responsible for issuing primary and secondary documents to
13 U.S. EPA and Ecology. As of the effective date of this
14 Agreement, all draft and draft final documents for any
15 deliverable document identified herein shall be prepared,
16 distributed, and subject to dispute in accordance with Paragraphs
17 20.3 through 20.24.

18 20.2 The designation of a document as "draft" or
19 "final" is solely for purposes of consultation with U.S. EPA and
20 Ecology in accordance with this Part. Such designation does not
21 affect the obligation of the Parties to issue documents, which
22 may be referred to herein as "final," to the public for review
23 and comment as appropriate and as required by law.

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

25 20.3 Primary documents include those documents
26 that are major, discrete portions of RI/FS or RD/RA activities.

1 Primary documents are initially issued by USACE in draft subject
2 to review and comment by U.S. EPA and Ecology. Following receipt
3 of comments on a particular draft primary document, USACE will
4 respond to the comments received and issue a draft final primary
5 document subject to dispute resolution. The draft final primary
6 document will become the final primary document either thirty
7 (30) days after the submittal of a draft final document if
8 dispute resolution is not invoked, unless otherwise agreed as
9 provided in Paragraph 20.18, or as modified by decision of the
10 dispute resolution process. U.S. EPA and Ecology shall, within
11 the first fifteen (15) days of this thirty (30) day period for
12 finalization of primary documents, identify to USACE any issues
13 or comments in order to provide sufficient time for review,
14 discussion, and modification of draft final documents as
15 necessary to resolve potential disputes.

16 20.4 Secondary documents include those documents
17 that are discrete portions of the primary documents and are
18 typically input or feeder documents. Secondary documents are
19 issued by USACE in draft subject to review and comment by
20 U.S. EPA and Ecology. Although USACE will respond to comments
21 received, the draft secondary documents may be finalized in the
22 context of the corresponding primary documents. A secondary
23 document may be disputed only at the time the corresponding draft
24 final primary document is issued.

1 C. Primary Documents

2 20.5 USACE shall complete and transmit draft
3 documents for the following primary documents to U.S. EPA and
4 Ecology for review and comment in accordance with the provisions
5 of this Part:

- 6 (a) RI/FS Management Plan, including Scope of Work,
7 Work Plan, Chemical Data Acquisition Plan
8 ("CDAP"), Community Relations Plan ("CRP"), and
9 Treatability Study Work Plan (as needed)
10 (b) Draft Final Remedial Investigation/Feasibility
11 Study ("RI/FS"), including Draft Final RI, Draft
12 Final Baseline Risk Assessment, Draft Final FS
13 (c) Record of Decision ("ROD")
14 (d) Remedial Design ("RD")
15 (e) Remedial Action Work Plan

16 20.6 Only the draft final documents for the
17 primary documents identified above shall be subject to dispute
18 resolution. USACE shall complete and transmit draft final
19 primary documents in accordance with the schedules and deadlines
20 established pursuant to Part XXIV of this Agreement. Primary
21 documents may include secondary document target dates as provided
22 for in Paragraph 20.8. The purpose of target dates is to assist
23 USACE in meeting deadlines, but target dates do not become
24 enforceable by their inclusion in the primary documents and are
25 not subject to Parts XXII, XXIII, XXIV, and/or XXV.

1 D. Secondary Documents

2 20.7 USACE shall complete and transmit draft
3 documents for the following secondary documents to U.S. EPA and
4 Ecology for review and comment in accordance with the provisions
5 of this Part:

- 6 (a) Statement of Work
7 (b) Source Characterization Summary, if appropriate
8 (c) Conceptual Site Model (typically, part of a Work
9 Plan)
10 (d) Initial Identification of ARARs and TBCs
11 (e) Health and Safety Plan ("HSP")
12 (f) Draft Baseline Risk Assessment
13 (g) Draft RI and Draft FS
14 (h) Treatability Study Report, as needed
15 (i) Proposed Plan
16 (j) Remedial Design Work Plan
17 (k) 35% Remedial Design, as needed
18 (l) 60% Remedial Design, as needed
19 (m) 90% Remedial Design
20 (n) Site-wide monitoring documents
21 (o) Sampling and Data Results
22 (p) Additional secondary documents, as agreed.

23 20.8 Although U.S. EPA and Ecology may comment on
24 the draft documents for the secondary documents listed above,
25 such documents shall not be subject to dispute resolution except
26 as provided by Paragraph 20.4. Target dates shall be established

1 pursuant to Part XXIV of this Agreement for the completion and
2 transmission of draft secondary documents.

3 E. Meetings of the Project Managers on Development of Documents

4 20.9 The Project Managers shall meet
5 approximately every thirty (30) days, except as otherwise agreed
6 by the Parties, to review and discuss the progress of work being
7 performed at the Site on the primary and secondary documents.
8 Prior to preparing any draft document specified in Paragraphs
9 20.5 and 20.7 above, the Project Managers shall meet to discuss
10 the document results in an effort to reach a common
11 understanding, to the maximum extent practicable, with respect to
12 the results to be presented in the draft document. To the extent
13 not already done, prior to the development of either a Statement
14 of Work, Management Plan, or Sampling and Analysis Plan, the
15 Project Managers shall meet to develop a Scope of Work that will
16 be used when preparing a Sampling and Analysis Plan or Management
17 Plan for a remedial site inspection or investigation.

18
19 F. Identification and Determination of Potential ARARs

20 20.10 For those primary or secondary documents
21 that consist of or include ARAR determinations, prior to the
22 issuance of a draft document the Project Managers shall meet to
23 identify and propose, to the best of their ability, all potential
24 ARARs pertinent to the document being addressed. Draft ARAR
25 determinations shall be prepared in accordance with Section
26 121(d)(2) of CERCLA, 42 U.S.C. § 9621(d)(2), the NCP, and

1 pertinent written guidance or policy issued by U.S. EPA or
2 Ecology, which is not inconsistent with CERCLA and the NCP.

3 20.11 Subject to Paragraph 5.2 of this Agreement,
4 the Parties recognize that ARARs are identified on a Site or
5 source-specific basis and that ARARs depend on the specific
6 hazardous substances, pollutants, and contaminants at the Site or
7 a source, the particular actions proposed as a remedy, and the
8 characteristics of the Site or a source. The Parties recognize
9 that ARAR identification is an iterative process and that
10 potential ARARs must be re-examined throughout the RI/FS process
11 until a ROD is issued.

12 G. Review and Comment on Draft Documents

13 20.12 USACE shall complete and transmit each draft
14 primary document to U.S. EPA and Ecology on or before the
15 corresponding deadline established for the issuance of the
16 document. USACE shall complete and transmit the draft secondary
17 document in accordance with the target dates established for the
18 issuance of such documents.

19 20.13 Unless the Parties mutually agree to another
20 time period, all draft documents shall be subject to a thirty
21 (30) day period for review and comment. Review of any document
22 by U.S. EPA or Ecology may concern all aspects of the document
23 (including completeness) and should include, but not be limited
24 to, technical evaluation of any aspect of the document, and
25 consistency with CERCLA, the NCP, applicable state laws, and any
26 pertinent guidance or policy issued by U.S. EPA or Ecology.

1 Comments by U.S. EPA and Ecology shall be provided with adequate
2 specificity so that USACE may respond to the comments and, if
3 appropriate, make changes to the draft document. Comments shall
4 refer to any pertinent sources of authority or references upon
5 which the comments are based, and, upon request of USACE,
6 U.S. EPA or Ecology shall provide a copy of the cited authority
7 or reference. In cases involving complex or unusually lengthy
8 reports, U.S. EPA or Ecology may extend the thirty (30) day
9 comment period for an additional twenty (20) days by written
10 notice to USACE prior to the end of the thirty (30) day period.
11 In unusual circumstances, U.S. EPA or Ecology may request USACE
12 to extend the current period for an additional twenty (20) days,
13 and USACE will not unreasonably deny such request. On or before
14 the close of the comment period, U.S. EPA and Ecology shall
15 transmit by next day mail their written comments to USACE.

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

22 20.15 In commenting on a draft document that
23 contains a proposed ARAR determination, U.S. EPA and Ecology
24 shall include a reasoned statement of whether they object to any
25 portion of the proposed ARAR determination. To the extent that
26 U.S. EPA or Ecology do object, they shall explain the basis for

1 their objection in detail and shall identify any ARARs that they
2 believe were not properly addressed in the proposed ARAR
3 determination.

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

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

24 H. Availability of Dispute Resolution for
25 Draft Final Primary Documents

26 20.18 Project Managers may agree to extend by
27 fifteen (15) days the period for finalization of the draft final

1 primary documents provided in Paragraph 20.3 for discussion and
2 modification of draft final primary documents as necessary to
3 resolve potential disputes.

4 20.19 Dispute resolution shall be available to the
5 Parties for draft final primary documents as set forth in
6 Part XXI.

7 20.20 When dispute resolution is invoked on a
8 draft final primary document, work may be stopped in accordance
9 with the procedures set forth in Part XXI.

10
11 I. Finalization of Documents

12 20.21 The draft final primary document shall serve
13 as the final primary document if no Party invokes dispute
14 resolution regarding the document or, if invoked, at completion
15 of the dispute resolution process should USACE's position be
16 sustained. If USACE's determination is not sustained in the
17 dispute resolution process, USACE shall prepare, within not more
18 than thirty-five (35) days, a revision of the draft final
19 document that conforms to the results of dispute resolution. In
20 appropriate circumstances, the time period for this revision
21 process may be extended in accordance with Part XXV hereof.

22
23 J. Subsequent Modifications

24 20.22 Following finalization of any primary
25 document pursuant to Paragraph 20.21 above, any Party may seek to
26 modify the document, including seeking additional field work,

1 pilot studies, computer modeling, or other supporting technical
2 work, only as provided in Paragraphs 20.23 and 20.24.

3 20.23 A Party may seek to modify a document after
4 finalization if it determines, based on new information (i.e.,
5 information that became available, or conditions that became
6 known, after the document was finalized) that the requested
7 modification is necessary. A Party may seek such a modification
8 by submitting a concise written request to the Project Managers
9 of the other Parties. The request shall specify the nature of
10 the requested modification and how the request is based on new
11 information.

12 20.24 In the event that a written consensus among
13 the Parties is reached, the modification shall be incorporated by
14 reference and become fully enforceable under the Agreement. In
15 the event that a consensus is not reached by the Project Managers
16 on the need for a modification, any Party may invoke dispute
17 resolution as provided in Part XXI to determine if such
18 modification shall be conducted. Modification of a document
19 shall be required only upon a showing that: (1) the requested
20 modification is based on significant new information, and (2) the
21 requested modification could be of significant assistance in
22 evaluating effects on human health or the environment, in
23 evaluating the selection of remedial alternatives, or in
24 protecting human health or the environment.

25 20.25 Nothing in this Part shall alter U.S. EPA's
26 or Ecology's ability to request the performance of additional

1 work that was not contemplated by this Agreement. USACE's
2 obligation to perform such work must be established by either a
3 modification of a document or by amendment to this Agreement.
4

5 XXI. RESOLUTION OF DISPUTES

6 21.1 The Parties intend to amend this Part to
7 reflect any changes made in the DOD-EPA Model Federal Facilities
8 Agreement to streamline the Dispute Resolution process, provided
9 that Ecology has agreed to such changes in the Model language.

10 21.2 Except as specifically set forth elsewhere
11 in this Agreement, if a dispute arises under this Agreement, the
12 procedures of this Part shall apply. All Parties to this
13 Agreement shall make reasonable efforts to informally resolve
14 disputes at the Project Manager or immediate supervisor level.
15 If resolution cannot be achieved informally, the procedures of
16 this Part shall be implemented to resolve a dispute.

17 21.3 Within thirty (30) days after: (1) the
18 issuance of a draft final primary document pursuant to this
19 Agreement, or (2) any action which leads to or generates a
20 dispute, the disputing Party shall submit to the other Parties a
21 written statement of dispute setting forth the nature of the
22 dispute, the work affected by the dispute, the disputing Party's
23 position with respect to the dispute, and the information the
24 disputing Party is relying upon to support its position.

25 21.4 Prior to any Party's issuance of a written
26 statement of dispute, the disputing Party shall engage the other
27

1 Parties in informal dispute resolution among the Project Managers
2 and/or their immediate supervisors. During this informal dispute
3 resolution period the Parties shall meet as many times as are
4 necessary to discuss and attempt resolution of the dispute.

5 21.5 The Dispute Resolution Committee ("DRC")
6 will serve as a forum for resolution of disputes for which
7 agreement has not been reached through informal dispute
8 resolution. The Parties shall each designate one individual and
9 an alternate to serve on the DRC. The individuals designated to
10 serve on the DRC shall be employed at the policy level (SES or
11 equivalent) or be delegated the authority to participate on the
12 DRC for the purposes of dispute resolution under this Agreement.
13 The U.S. EPA representative on the DRC is the Hazardous Waste
14 Division Director ("Division Director") of U.S. EPA's Region 10.
15 USACE's designated member is Commander, North Pacific Division or
16 his designate. Ecology's designated member is the Cleanup
17 Section Manager for the Toxics Cleanup Program ("TCP"). Written
18 notice of any delegation of authority from a Party's designated
19 representative on the DRC shall be provided to all other Parties
20 pursuant to the procedures of Part XIV, Notice to Parties.

21 21.6 Following elevation of a dispute to the DRC,
22 the DRC shall have twenty-one (21) days to unanimously resolve
23 the dispute and issue a written decision signed by all parties.
24 If the DRC is unable to unanimously resolve the dispute within
25 this twenty-one (21) day period the written statement of dispute
26 shall be forwarded to the Senior Executive Committee ("SEC") for
27

1 resolution, within seven (7) days after the close of the twenty-
2 one (21) day resolution period.

3 21.7 The SEC will serve as the forum for
4 resolution of disputes for which agreement has not been reached
5 by the DRC. The U.S. EPA representative on the SEC is the
6 Regional Administrator of the U.S. EPA's Region 10. The Ecology
7 representative on the SEC is the Deputy Director of the
8 Department of Ecology. The USACE representative on the SEC is
9 the Assistant Secretary of the Army (Civil Works) or his/her
10 designate. The SEC members shall, as appropriate, confer, meet
11 and exert their best efforts to resolve the dispute and issue a
12 written decision signed by all parties. If unanimous resolution
13 of the dispute is not reached within twenty-one (21) days, U.S.
14 EPA's Regional Administrator shall issue a written position on
15 the dispute. The USACE or Ecology may, within twenty-one (21)
16 days of the issuance of the U.S. EPA's position, issue a written
17 notice elevating the dispute to the Administrator of U.S. EPA for
18 resolution in accordance with all applicable laws and procedures.
19 In the event that a party elects not to elevate the dispute to
20 the Administrator of U.S. EPA within the designated twenty-one
21 (21) day escalation period, the party shall be deemed to have
22 agreed with the Regional Administrator's written position with
23 respect to the dispute.

24 21.8 It is the intent of the Parties to this
25 Agreement that all formal disputes brought under this Part be
26 resolved by the DRC or SEC. This Agreement provides that any

1 Party may elevate a formal dispute to the Administrator of U.S.
2 EPA for final resolution. However, it is intended that only
3 those disputes which any of the Parties determine to have
4 national policy implications will be so elevated.

5 21.9 Upon escalation of a dispute to the
6 Administrator of U.S. EPA pursuant to Paragraph 21.7, the
7 Administrator will review and resolve the dispute within twenty-
8 one (21) days. Upon request, and prior to resolving the dispute,
9 the U.S. EPA Administrator shall meet and confer with the
10 Assistant Secretary of the Army (Civil Works) and the Director of
11 the Department of Ecology to discuss the issue(s) under dispute.
12 Upon resolution, the Administrator shall provide the other
13 parties with a written final decision setting forth resolution of
14 the dispute. The duties of the Administrator set forth in this
15 Paragraph shall not be delegated.

16 21.10 The pendency of any dispute under this Part
17 shall not affect USACE's responsibility for timely performance of
18 the work required by this Agreement, except that the time period
19 for completion of work affected by such dispute shall be extended
20 for a period of time usually not to exceed the actual time taken
21 to resolve any good faith dispute in accordance with the
22 procedures specified herein. All elements of the work required
23 by this Agreement which are not affected by the dispute shall
24 continue and be completed in accordance with the applicable
25 schedule.

21.11 When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Hazardous Waste Division Director for U.S. EPA's Region 10 requests, in writing, that work related to the dispute be stopped because, in U.S. 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 U.S. EPA's Region 10 Division Director 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 U.S. EPA Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the U.S. EPA Division may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the party requesting dispute resolution.

21.12 Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Part, USACE shall incorporate the resolution and final determination

1 into the appropriate plan, schedule, or procedures and proceed to
2 implement this Agreement according to the amended plan, schedule,
3 or procedures.

4 21.13 Resolution of a dispute pursuant to this
5 Part of the Agreement constitutes a final resolution of any
6 dispute arising under this Agreement. All Parties shall abide by
7 all terms and conditions of any final resolution of dispute
8 obtained pursuant to this Part of this Agreement.

9 XXII. ENFORCEABILITY

10 22.1 The Parties agree that:

11 (a) Upon its effective date, this Agreement is
12 enforceable by any person pursuant to Section 310 of CERCLA,
13 42 U.S.C. § 9659, and any violation of any standard, regulation,
14 condition, requirement, or order contained herein will be subject
15 to civil penalties under Sections 109 and 310(c) of CERCLA,
16 42 U.S.C. §§ 9609 and 9659(c);

17 (b) All timetables and deadlines associated with
18 the RI/FS shall be enforceable by any person pursuant to Section
19 310 of CERCLA, 42 U.S.C. § 9659, and any violation of such
20 timetables and deadlines will be subject to civil penalties under
21 Sections 109 and 310(c) of CERCLA, 42 U.S.C. §§ 9609 and 9659(c);

22 (c) All terms and conditions of this Agreement
23 that relate to interim or final remedial actions, including
24 corresponding schedules and deadlines, and all work associated
25 with the interim or final remedial actions, shall be enforceable
26 by any person pursuant to Section 310 of CERCLA, 42 U.S.C.

1 § 9659, and any violation of such terms or conditions will be
2 subject to civil penalties under Sections 109 and 310(c) of
3 CERCLA, 42 U.S.C. §§ 9609 and 9659(c); and

4 (d) Any final resolution of a dispute pursuant
5 to Part XXI of this Agreement that establishes a term, condition,
6 schedule, or deadline shall be enforceable by any person pursuant
7 to Section 310 of CERCLA, 42 U.S.C. § 9659, and any violation of
8 such term, condition, schedule, or deadline will be subject to
9 civil penalties under Sections 109 and 310(c) of CERCLA,
10 42 U.S.C. §§ 9609 and 9659(c).

11 22.2 The Parties agree that all Parties shall
12 have the right to enforce the terms of this Agreement.

13 22.3 Nothing in this Agreement shall be construed
14 as authorizing any person to seek judicial review of any action
15 or work where review is barred by any provision of CERCLA,
16 including Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

17 XXIII. STIPULATED PENALTIES

18 23.1 In the event that USACE fails to submit a
19 primary document to U.S. EPA and Ecology pursuant to the
20 appropriate timetable or deadline in accordance with the
21 requirements of this Agreement, or fails to comply with a term or
22 condition of this Agreement that relates to an interim or final
23 remedial action, or fails to comply with the requirements of this
24 Agreement specified in Paragraph 23.4 below, the U.S. EPA, after
25 consultation with Ecology, may assess a stipulated penalty
26 against USACE. A stipulated penalty may be assessed in an amount

1 not to exceed five thousand dollars (\$5,000) for the first week
2 (or part thereof), and ten thousand dollars (\$10,000) for each
3 additional week (or part thereof) for which a failure set forth
4 in this paragraph occurs. "Compliance" by USACE shall include
5 completion of the activities under this Agreement or any work
6 plan or other plan approved under this Agreement (including, but
7 not limited to, the completion of the milestones and activities
8 identified in Paragraph 23.4 of this Agreement) in accordance
9 with all applicable requirements of law, this Agreement, the SOW,
10 and any plans or other documents approved by U.S. EPA pursuant to
11 this Agreement and within the specified time schedules
12 established by and approved under this Agreement.

13 23.2 Upon determining that the USACE has failed
14 in a manner set forth in Paragraph 23.1, U.S. EPA shall notify
15 USACE in writing. Ecology may, as it deems appropriate,
16 recommend that U.S. EPA issue a stipulated penalty pursuant to
17 this Part. If the failure in question is not already subject to
18 dispute resolution at the time such notice is received, USACE
19 shall have fifteen (15) days after receipt of the notice to
20 invoke dispute resolution on the question of whether the failure
21 did, in fact, occur. USACE shall not be liable for the
22 stipulated penalty assessed by U.S. EPA if the failure is
23 determined, through the dispute resolution process, not to have
24 occurred. No assessment of a stipulated penalty shall be final
25 until the conclusion of dispute resolution procedures related to
26 the assessment of the stipulated penalty.

1 23.3 The annual reports required by Section
2 120(e)(5) of CERCLA, 42 U.S.C. § 9620(e)(5), shall include, with
3 respect to each final assessment of a stipulated penalty against
4 USACE under this Agreement, each of the following:

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

18 23.4 Stipulated penalties shall be payable per
19 violation to the U.S. EPA for any noncompliance with deadlines
20 for the draft final primary documents: RI/FS Management Plan,
21 Remedial Investigation/Feasibility Study, Record of Decision,
22 Remedial Design, and Remedial Action Work Plan as set forth in
23 table I in Attachment II.

24 23.5 Stipulated penalties assessed pursuant to
25 this Part shall be payable to the Hazardous Substances Response
26 Trust Fund only in the manner and to the extent expressly
27 provided for in Acts authorizing funds for, and appropriations
28 to, the Secretary of the Army for this project.

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

23.7 This Part shall not affect USACE's ability to obtain an extension of a timetable, deadline, or schedule pursuant to Part XXV of this Agreement.

23.8 Nothing in this Agreement shall be construed to render any officer or employee of the USACE personally liable for the payment of any stipulated penalty assessed pursuant to this Part.

XXIV. DEADLINES

24.1 Enforceable deadlines (subject to extension pursuant to Parts XXV and XXXIII) for draft final primary documents are established in Attachment II (Table I).

24.2 USACE will propose secondary document target dates not otherwise established in Attachment II. Within twenty-one (21) days of issuance of each ROD, USACE shall propose target dates for completion of the applicable draft secondary documents and deadlines for completion of the following draft final primary documents:

(a) Remedial Design

(b) Remedial Action Work Plan

The Remedial Action Work Plan will establish additional primary and secondary documents, deadlines, and/or target dates. If the Parties agree on the proposed deadlines and/or target dates, the finalized deadlines and/or target dates shall be incorporated

1 into the Agreement. If the Parties fail to agree within thirty
2 (30) days of the proposed deadlines and/or target dates, the
3 matter shall immediately be submitted for dispute resolution
4 pursuant to Part XXI of this Agreement. The deadlines shall be
5 published by U.S. EPA, in conjunction with Ecology.

6 24.3 USACE shall provide notification to U.S. EPA
7 and Ecology within thirty (30) days of identifying a new
8 potential source area. Unless the Parties agree on another
9 disposition, new source areas will be addressed as described in
10 Attachment III.

11 XXV. EXTENSIONS

12 25.1 Either a deadline or a schedule shall be
13 extended upon receipt of a timely request for extension and when
14 good cause exists for the requested extension. Any request for
15 extension by USACE shall be submitted in writing to the Project
16 Managers and shall specify:

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

23 25.2 Good cause exists for an extension when
24 sought in regard to:

- 25 a. An event of Force Majeure;
26 b. A delay caused by another Party's failure to meet
27 any requirement of this Agreement;

- 1 c. A delay caused by the good faith invocation of
2 dispute resolution or the initiation of judicial
3 action;
4 d. A delay caused, or that is likely to be caused,
5 by the grant of an extension in regard to another
6 deadline or schedule; and
7 e. Any other event or series of events mutually
8 agreed to by the Parties as constituting good
9 cause.

10 25.3 Absent agreement of the Parties with respect
11 to the existence of good cause, USACE may seek a determination
12 through the dispute resolution process that good cause exists.

13 25.4 Within seven (7) days of receipt of a
14 request for an extension of a deadline or a schedule, the other
15 Parties shall advise USACE, in writing, of their respective
16 positions on the request. Any failure by the other Parties to
17 respond within fourteen (14) days shall be deemed to constitute
18 concurrence in the request for extension. If either U.S. EPA or
19 Ecology does not concur in the requested extension, it shall
20 include in its statement of nonconcurrence an explanation of the
21 basis for its position.

22 25.5 If there is written consensus among the
23 Parties that the requested extension is warranted, USACE shall
24 extend the affected deadline or schedule accordingly. If there
25 is no consensus among the Parties as to whether all or part of
26 the requested extension is warranted, the deadline or schedule
27 shall not be extended except in accordance with a determination
28 resulting from the dispute resolution process.

1 25.6 Within seven (7) days of receipt of a
2 statement of nonconcurrence with the requested extension, USACE
3 may invoke dispute resolution.

4 25.7 A timely and good faith request for an
5 extension shall toll any assessment of stipulated penalties or
6 application for judicial enforcement of the affected deadline or
7 schedule until a decision is reached on whether the requested
8 extension will be approved. If dispute resolution is invoked and
9 the requested extension is denied, stipulated penalties may be
10 assessed and may accrue from the date of the original deadline or
11 the date U.S. EPA or Ecology denied, in writing, USACE's
12 requested extension, whichever is later. Following the grant of
13 an extension, an assessment of stipulated penalties or an
14 application for judicial enforcement may be sought only to compel
15 compliance with the deadline or schedule as most recently
16 extended.

17
18 XXVI. FORCE MAJEURE

19 26.1 Force Majeure shall mean any event arising
20 from causes beyond the control of a Party that causes a delay in
21 or prevents the performance of any obligation under this
22 Agreement, including, but not limited to:

23 (a) acts of God; fire; war; insurrection; civil
24 disturbance; or explosion;
25
26

1
2 (b) unanticipated breakage or accident to machinery,
3 equipment, or lines of pipe despite reasonably diligent
4 maintenance;

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

7 (d) restraint by court order or order of public
8 authority;

9 (e) inability to obtain, at a reasonable cost and
10 after exercise of reasonable diligence, any necessary
11 authorizations, approvals, permits, or licenses due to action or
12 inaction of any governmental agency or authority other than
13 USACE;

14 (f) delays caused by compliance with applicable
15 statutes or regulations governing contracting, procurement, or
16 acquisition procedures, despite the exercise of reasonable
17 diligence; and

18 (g) insufficient availability of appropriated funds,
19 if USACE shall have made timely request for such funds as part of
20 the budgetary process as set forth in Part XXVII of this

21 Agreement. If such an event occurs, Ecology may exercise its
22 rights as provided in Paragraph 27.6, but U.S. EPA shall be bound
23 by this Force Majeure and shall not assess stipulated penalties.

24 26.2 Force Majeure shall also include any strike
25 or other labor dispute, whether or not within the control of the
26 Parties affected thereby. Force Majeure shall not include

1 increased costs or expenses of response actions, whether or not
2 anticipated at the time such response actions were initiated.

3 26.3 Any claim of Force Majeure shall be subject
4 to dispute resolution and, where applicable, to the limitations
5 of Paragraph 27.6.

6 XXVII. FUNDING

7 27.1 It is the expectation of the Parties to this
8 Agreement that all obligations of USACE arising under this
9 Agreement will be fully funded. USACE agrees to seek sufficient
10 funding to fulfill its obligations under this Agreement.

11 27.2 In accordance with Section 120(e)(5)(B) of
12 CERCLA, 42 U.S.C. § 9620(e)(5)(B), USACE shall include in its
13 annual report to Congress the specific cost estimates and
14 budgetary proposals associated with the implementation of this
15 Agreement.

16 27.3 Funds authorized and appropriated annually
17 by Congress under the "Energy and Water Resources Development
18 Appropriations Act" and allocated by the Assistant Secretary of
19 the Army (Civil Works) will be a source of funds for appropriate
20 activities required by this Agreement. The Bonneville Second
21 Powerhouse Project is authorized in accordance with the
22 requirements of the Act of August 30, 1935 (49 Stat. 1028); the
23 Act of August 20, 1937 (50 Stat 731); The Second Supplemental
24 Appropriation Act, PL 98-396; and Section 9147 of the Defense
25 Appropriation Act of FY 1993, PL 102-396. Should the
26 appropriation be inadequate for this project to meet the total

1 USACE CERCLA implementation requirements, the Project Managers
2 shall discuss the potential impact of the funding shortfall to
3 determine if reprioritization of actions, revision of schedules
4 or alternative actions may be implemented to resolve the problem.
5 If the receipt of additional funding is determined to be
6 necessary, the USACE Project Manager shall prepare a request for
7 reprogramming to obtain the additional funds required. As such
8 action may be significant and may require approvals within USACE,
9 U.S. Army, OMB, and the Congress, depending on the extent of the
10 reprogramming required, a minimum of 60 days should be allowed
11 for completion of the action.

12 27.4 Any requirement for the payment or
13 obligation of funds, including stipulated penalties, by USACE
14 established by the terms of this Agreement shall be subject to
15 the availability of appropriated funds, and no provision herein
16 shall be interpreted to require obligation or payment of funds in
17 violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. In cases
18 where payment or obligation of funds, including stipulated
19 penalties, would constitute a violation of the Anti-Deficiency
20 Act, the dates established requiring the payment or obligation of
21 such funds shall be appropriately adjusted.

22 27.5 If appropriated funds are not available to
23 fulfill USACE's obligations under this Agreement, U.S. EPA and
24 Ecology reserve the right to initiate an action against any other
25 person or to take any response action that would be appropriate
26 absent this Agreement.

1 27.6 USACE maintains that any requirement for the
2 payment or obligation of funds under this Agreement is subject to
3 the availability of appropriated funds, and that the
4 unavailability of such funds constitutes a valid defense to any
5 judicial action that might be brought to enforce the terms of
6 this Agreement. Notwithstanding Paragraphs 27.1, 27.2, 27.3,
7 27.4, and 27.5 above, Ecology does not agree that lack of
8 appropriation or funding constitutes a valid defense to
9 performance by USACE. However, the Parties agree and stipulate
10 that it is premature to raise and adjudicate the validity of such
11 a defense at this time. If sufficient funds are not available to
12 fulfill USACE's obligations under this Agreement, the Parties
13 shall meet to discuss the funding shortfall, the ways of
14 resolving it, and whether it is appropriate to adjust the
15 deadlines set forth pursuant to Part XXIV affected by the funding
16 shortfall. Any Party may elevate the issue(s) directly to the
17 DRC for resolution. Six (6) months following the failure of
18 USACE to meet a deadline because of lack of funding, Ecology
19 shall have the right to seek judicial enforcement of this
20 Agreement. This Paragraph is not subject to Part XXI, but does
21 not exclude the consensual use of Part XXV. Acceptance of this
22 Paragraph 27.6 does not constitute a waiver by USACE of the
23 applicability of any appropriate provisions of the Anti-
24 Deficiency Act, 31 U.S.C. § 1341, to the terms of this Agreement.

25 27.7 USACE shall keep U.S. EPA and Ecology
26 apprised of significant budget events related to this Agreement

1 so that the Project Managers may assist in developing estimates
2 of the resources needed to carry out this Agreement. The budget
3 information shall clearly establish that USACE has requested all
4 necessary funds to carry out its obligations under this Agreement
5 for the applicable budget year. USACE shall honor all reasonable
6 requests by U.S. EPA or Ecology to review information regarding
7 the budget, which relate to this Agreement. All budget
8 information related to this Agreement shall be retained and
9 shall, upon request, be provided to U.S. EPA and/or Ecology in
10 the event of an extension request, Force Majeure, or other event
11 based on a funding limitation.

12 XXVIII. RECOVERY OF EXPENSES

13 28.1 USACE and U.S. EPA agree to amend this Part
14 at a later date in accordance with any subsequent national
15 resolution of the currently contested issue of cost
16 reimbursement.

17 28.2 USACE agrees to fund and reimburse Ecology,
18 subject to the conditions and limitations set forth in this Part;
19 and subject to Section XXVII, for all reasonable costs it incurs
20 in providing services specifically related to USACE's
21 environmental restoration activities at the Site pursuant to this
22 Agreement.

23 28.3 Reimbursable costs shall consist of staff
24 costs and other costs incurred by Ecology in providing the
25 following assistance to USACE:
26
27

1 (a) Timely technical review and substantive comment
2 of reports or studies which USACE prepares in support of its
3 response action and submits to Ecology;

4 (b) Identification and explanation of unique state
5 requirements applicable to the Site in performing response
6 actions, especially state ARARs;

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

12 (d) Support and assistance to USACE in the conduct of
13 public participation activities in accordance with Federal and
14 state requirements for public involvement; and

15 (e) Other services specified in this Agreement.

16 28.4 Within ninety (90) days after the end of
17 each quarter of the Federal fiscal year, Ecology shall submit to
18 USACE an invoice with an accounting of all state costs incurred
19 during that quarter in providing direct support services under
20 this Part. Such accounting shall be accompanied by cost
21 summaries and be supported by documentation which meets Federal
22 auditing requirements. The summaries will set forth employee
23 hours and other expenses by major type of support service. All
24 costs submitted must be for work directly related to
25 implementation of the Agreement and not inconsistent with the NCP
26 or the requirements described in OMB Circulars A-87 (Cost

Principles for State and Local Governments) and A-128 (Audits for State and Local Cooperative Agreements with State and Local Governments) and Standard Forms 424 and 270. USACE has the right to audit cost reports used by the State to develop the cost summaries. Before the beginning of each Federal fiscal year, the State shall supply to the USACE Project Manager a budget estimate of what it plans to do in the next year in the same level of detail as billing documents.

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

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

28.7 The amount of reimbursement from USACE to Ecology shall not exceed FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) during the lifetime of this Agreement, and not more than ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) during any single fiscal year. Either USACE or Ecology may request, on the basis of significant upward or downward revisions in the USACE estimate of its total lifetime costs through construction, operation and maintenance (O&M), and delisting, a renegotiation of the above dollar amounts. Failing an agreement, either USACE

1 or Ecology may initiate dispute resolution in accordance with
2 Paragraph 28.9. Circumstances could arise whereby fluctuations
3 in USACE estimates or actual final costs through the construction
4 of the final remedial action, its O&M, and its delisting, creates
5 a situation where Ecology receives reimbursement in excess of the
6 estimated amount of these costs. Under these circumstances, the
7 state remains entitled to payment for services rendered prior to
8 the completion of a new estimate if the services are within the
9 ceiling applicable under the previous estimate. This negotiated
10 reimbursement amount reflects the judgment of USACE and Ecology
11 that support services should not be disproportionate to overall
12 project costs and budget.

13 28.8 Ecology agrees to seek reimbursement of
14 expenses solely through the mechanisms established in this Part,
15 and reimbursement provided under this Section shall be in
16 settlement of any claims for state response costs relative to
17 USACE's environmental restoration activities at the Site.

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

1 (a) USACE and Ecology Project Managers shall be the
2 initial points of contact for coordination of dispute resolution
3 under Paragraph 28.9.

4 (b) If USACE and Ecology Project Managers are unable
5 to resolve a dispute, the matter shall be referred to the USACE
6 Portland District Commander, or the designated representative,
7 and the Assistant Director, Waste Management, Washington
8 Department of Ecology, as soon as practicable, but in any event
9 within five (5) working days after the dispute is elevated by the
10 Project Managers.

11 (c) If the USACE Portland District Commander, and the
12 Assistant Director, Waste Management, Washington Department of
13 Ecology, are unable to resolve the dispute within ten (10)
14 working days, the matter shall be elevated to the Director,
15 Washington Department of Ecology, and the USACE North Pacific
16 Division Commander or the designated representative.

17 (d) In the event the Director, Washington Department
18 of Ecology, and the USACE North Pacific Division Commander are
19 unable to resolve a dispute, Ecology retains any legal and
20 equitable remedies it may have to recover its expenses as well as
21 the right to withdraw from this Agreement by giving ninety (90)
22 days notice to the other Parties.

23
24 XXIX. OTHER CLAIMS

25 29.1 Nothing in this Agreement shall constitute
26 or be construed as a bar or release from any claim, cause of

1 action, or demand in law or equity by or against any persons,
2 firm, partnership, or corporation not a signatory to this
3 Agreement for any liability it may have arising out of or
4 relating in any way to this Agreement or the generation, storage,
5 treatment, handling, transportation, release, or disposal of any
6 hazardous substances, hazardous wastes, hazardous constituents,
7 pollutants, or contaminants found at, taken to, or taken from the
8 Site.

9 29.2 U.S. EPA and Ecology shall not be held as a
10 Party to any contract entered into by USACE to implement the
11 requirements of this Agreement.

12 29.3 USACE shall notify the appropriate federal
13 and state natural resource trustees as required by Section
14 104(b)(2) of CERCLA, 42 U.S.C. § 9604(b)(2), and Section 2(e)(2)
15 of Executive Order 12580. Except as provided herein, USACE is
16 not released from any liability that it may have pursuant to any
17 provisions of state and federal law for any claim for damages or
18 liability for destruction of, or loss of, natural resources.

19 29.4 This Agreement shall not restrict U.S. EPA
20 and/or Ecology from taking any legal or response action for any
21 matter not specifically part of the work covered by this
22 Agreement.

23 XXX. OTHER APPLICABLE LAWS

24 30.1 All actions required to be taken pursuant to
25 this Agreement shall be undertaken in accordance with the
26 requirements of all applicable state and federal laws and

1 regulations unless an exemption from such requirements is
2 provided in this Agreement, CERCLA, or the NCP.

3 XXXI. CONFIDENTIAL INFORMATION

4 31.1 USACE may assert on its own behalf, or on
5 behalf of a contractor, subcontractor, or consultant, a
6 confidentiality claim covering all or part of the information
7 requested by any Party to this Agreement pursuant to Section
8 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 32 C.F.R. Part 806.
9 Analytical data shall not be claimed as confidential by USACE.
10 Information determined to be confidential by the U.S. EPA
11 pursuant to 40 C.F.R. Part 2 shall be afforded the protection
12 specified therein and such information shall be treated by
13 Ecology as confidential to the extent permitted by state law. If
14 Ecology is unable to afford the confidentiality protection, USACE
15 is not required to submit the data to Ecology. If no claim of
16 confidentiality accompanies the information when it is submitted
17 to either regulatory agency, the information may be made
18 available to the public without further notice to USACE.

19 XXXII. TRANSFER OF PROPERTY

20 32.1 Conveyance of title, easement, or other
21 interest in the Site shall be in accordance with Section 120(h)
22 of CERCLA, 42 U.S.C. § 9620(h), as amended.

23
24 XXXIII. MODIFICATION/AMENDMENT OF AGREEMENT

25 33.1 Modifications, extensions, and/or actions
26 taken pursuant to Parts XI (Sampling and Data/Document

1 Availability), XII (Quality Assurance), XIII (Reporting),
2 XX (Consultation with U.S. EPA and Ecology), XXIV (Deadlines),
3 and XXV (Extensions) may be effected by the unanimous agreement
4 of the Project Managers.

5 33.2 Modifications or amendments not permitted by
6 Paragraph 33.1 may be effected only by the unanimous written
7 agreement of the signatories or upon completion of Dispute
8 Resolution, as applicable.

9 33.3 Any modification or amendment allowed in
10 33.1 shall be reduced to writing; shall be effective as of the
11 date it is signed by all the Project Managers or signatories, as
12 applicable; and shall be incorporated into, and modify, this
13 Agreement.

14 XXXIV. SEVERABILITY

15 34.1 If any provision of this Agreement is ruled
16 invalid, illegal, or unconstitutional, the remainder of the
17 Agreement shall not be affected by such ruling.

18 XXXV. TERMINATION AND SATISFACTION

19 35.1 Except as set forth in this Paragraph, the
20 provisions of this Agreement shall be deemed satisfied and
21 terminated when USACE demonstrates in writing and certifies to
22 the satisfaction of U.S. EPA and Ecology that all activities
23 required under this Agreement, including any additional work,
24 payment of expenses or stipulated penalties demanded by U.S. EPA
25 or Ecology, have been performed and U.S. EPA and Ecology have
26 approved the certification in writing. Following the submittal

1 to U.S. EPA and Ecology of (1) all deliverables as may be
2 required under this Agreement; and (2) the certification as
3 required in Paragraph 35.2, USACE may request U.S. EPA and
4 Ecology, in writing, to make a determination that the
5 requirements of this Agreement have been satisfied. USACE's
6 certification shall not terminate USACE's obligation to comply
7 with Sections XVI (Retention of Records), XXVIII (Recovery of
8 Expenses), and XXXVI (Reservation of Rights) of this Agreement.

9 35.2 The certification shall be signed by the
10 Assistant Secretary of the Army (Civil Works), representing
11 USACE. USACE official shall make the following attestation: "I
12 certify that the information contained in and accompanying this
13 certification is true, accurate, and complete. Dated this ____
14 day of _____, 199__." Any Party may invoke dispute
15 resolution as to the decision to terminate this Agreement.

16 XXXVI. RESERVATION OF RIGHTS

17 36.1 Subject to Paragraph 36.2, Ecology reserves
18 its right to issue orders and/or penalties pursuant to available
19 statutory authority other than CERCLA, or to take any other
20 enforcement action allowable by law, under the following
21 circumstances:

- 22 (a) In the event or upon the discovery of a
23 release or threatened release not addressed
24 by this Agreement and which the Parties
25 choose not to address by Modification of
26 this Agreement;

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

6 (c) Upon the occurrence or discovery of a
7 situation beyond the scope of this
8 Agreement, to which Ecology would be
9 empowered to take an enforcement action and
10 which the Parties choose not to address by
11 modification of this Agreement.

12 36.2 In the event of the exercise of any of the
13 rights listed in Paragraph 36.1, the Parties reserve all of their
14 rights to contest any enforcement action brought under
15 Paragraph 36.1. Any work required or ordered pursuant to
16 Paragraph 36.1 is subject to the requirements of
17 Section 122(e)(6) of CERCLA, 42 U.S.C. § 9622(e)(6).

18 36.3 Nothing in this Agreement shall be construed
19 as a restriction or waiver of any rights that U.S. EPA or Ecology
20 may have under CERCLA, including, but not limited to, any rights
21 under Section 113 and 310 of CERCLA, 42 U.S.C. §§ 9613 and 9659.
22 USACE does not waive any rights it may have under CERCLA Sections
23 120 and 121(f)(3)(C), 42 U.S.C. §§ 9620 and 9621(f)(3)(C); and
24 Executive Order 12580.

25 36.4 Ecology reserves its right to maintain an
26 action under Section 121(f)(3)(B) of CERCLA, 42 U.S.C.

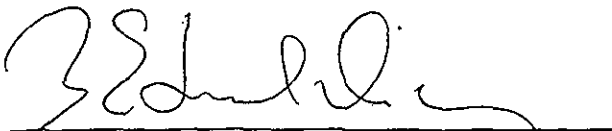
§ 9621(f)(3)(B), to challenge the selection of a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria, or limitation ("ARAR"). If Ecology exercises its right to withdraw from this Agreement, USACE expressly reserves any jurisdictional claim or defense that it may have in regard to any legal right or remedies pursued by Ecology.

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

XXXVII. EFFECTIVE DATE

37.1 This Agreement is effective upon signature by all the Parties to this Agreement.

Signature sheet for the foregoing Federal Facility
Agreement for the Hamilton Island Site, among the
U.S. Environmental Protection Agency, the USACE, and the
Washington State Department of Ecology.



DR. G. EDWARD DICKEY
Acting Assistant Secretary of the Army (Civil Works)

Aug. 11, 1993

Date

REPRESENTED BY:

Robert C. Turner, Esq.

Signature sheet for the foregoing Federal Facility
Agreement for Hamilton Island, among the U.S. Environmental
Protection Agency, the USACE, and the Washington State Department
of Ecology.

Mary Riveland

MARY RIVELAND
Director
Department of Ecology
State of Washington.

August 24, 1993
Date

Christine O. Gregoire

CHRISTINE O. GREGOIRE
Attorney General
State of Washington

Sept. 21, 1993
Date

REPRESENTED BY:

Jerry Ackerman, Esq.

Signature sheet for the foregoing Federal Facility
Agreement for Hamilton Island, among the U.S. Environmental
Protection Agency, the USACE, and the Washington State Department
of Ecology.



9-24-93

GERALD A. EMISON
Acting Regional Administrator
Region 10
United States Environmental Protection Agency

Date

REPRESENTED BY:

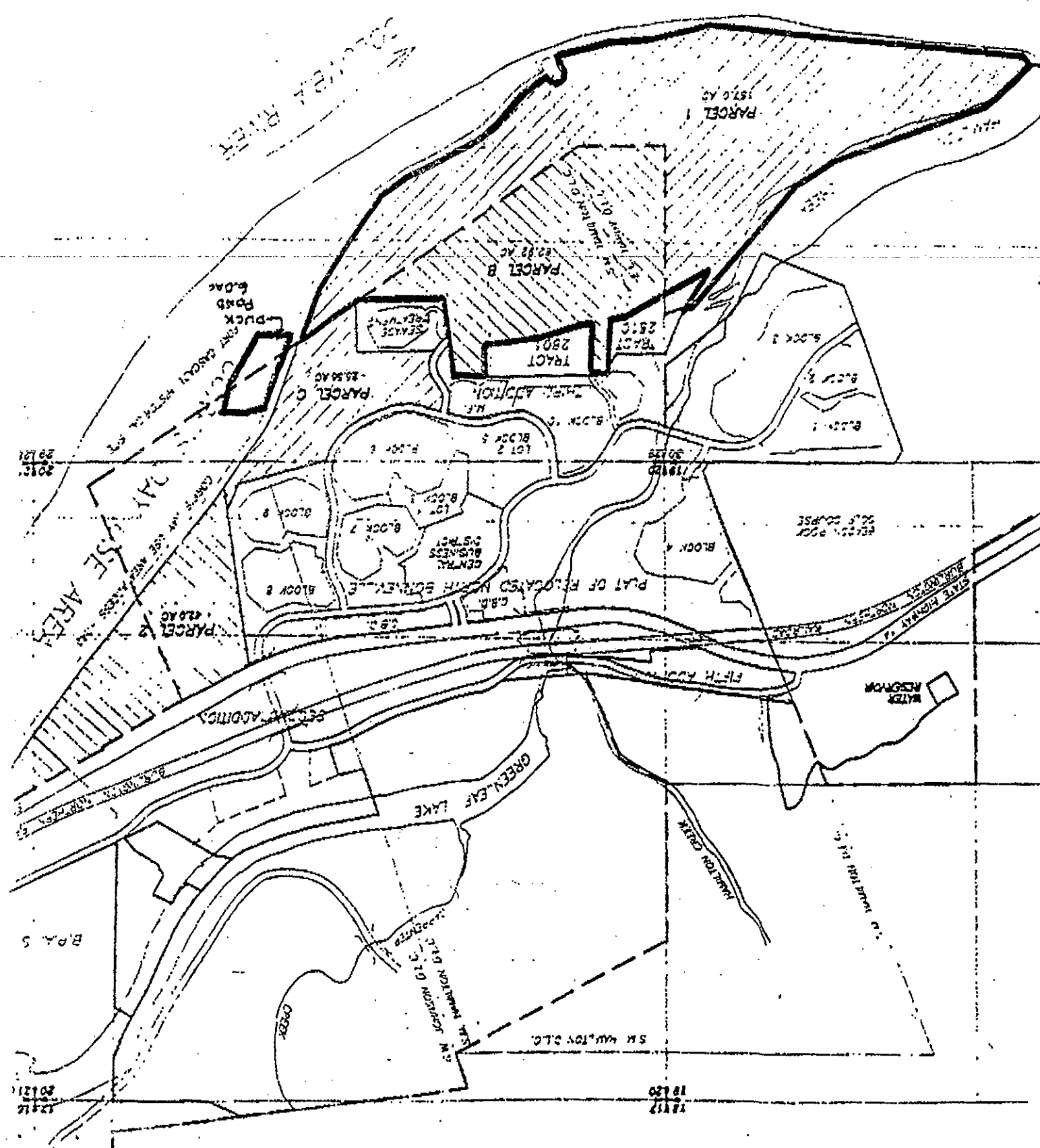
Dean B. Ingemansen, Esq.

ATTACHMENT I

**HAMILTON ISLAND NPL
FEDERAL FACILITIES AGREEMENT**

SITE DESCRIPTION

COLUMBIA RIVER



Project: Bonneville Lock and Dam
Second Powerhouse
Columbia River
Oregon and Washington

Owner: U.S. Army
Corps of Engineers

Parcel #1

A tract of land located in Sections 29 and 30, Township 2 North, Range 7 East, Willamette Meridian, Skamania County, Washington, described as follows:

Beginning at the Southeast corner of the Northeast quarter, of said Section 30;

Thence North $01^{\circ}19'11''$ East, along the East line of said Section 30, a distance of 1239.11 feet to the South line of a tract of land conveyed to the "Town of North Bonneville" by deed recorded in Book 69, Page 747, records of Skamania County, Washington;

Thence South $61^{\circ}33'16''$ West, 415.49 feet;

Thence North $33^{\circ}02'46''$ East, 380.00 feet more or less to the North line of Government Lot #5, of said Section 30;

Thence following the government meander line South $71^{\circ}30'00''$ West, 60.00 feet more or less, to an angle point in said meander line;

Thence South $42^{\circ}00'00''$ West, 1372.80 feet;

Thence South $60^{\circ}00'00''$ West, 396.00 feet;

Thence South $71^{\circ}45'00''$ West, 1336.50 feet;

Thence South $46^{\circ}30'00''$ West, 502.92 feet;

Thence South $37^{\circ}30'00''$ East, 76.56 feet;

Thence South $76^{\circ}15'00''$ East, 132.00 feet;

Thence South $83^{\circ}30'00''$ East, 2538.36 feet;

Thence North $77^{\circ}30'00''$ East, 462.00 feet more or less to the East line of said Section 30;

Thence North $85^{\circ}30'00''$ East, 389.40 feet;

Thence North $73^{\circ}15'00''$ East a distance of 538.38 feet more or less to a point that is 903.74 feet east of the west line of said Section 29, said point being on the westerly right-of-way line of the U.S. Army Corps of Engineers Day Use Area Road;

Thence North $31^{\circ}42'04''$ West, along the westerly right-of-way line of the U.S. Army Corps of Engineers Day Use Area Road, a distance of 129.88 feet to the beginning of a 81.50 foot radius curve to the right;

Thence along the arc of said curve to the right through a central angle of $180^{\circ}00'00''$ for an arc distance of 256.04 feet to the beginning of a 3.00 foot radius curve to the left;

Thence along the arc of said curve to the left through a central angle of $90^{\circ}00'00''$ for an arc distance of 4.71 feet, said point being 30.00 feet northerly as measured at a right angle from the centerline of said U.S. Army Corps of Engineers Day Use Area Road;

Thence continuing parallel with and 30.00 foot distant from the centerline of the U.S. Army Corps of Engineers Day Use Area Road the following courses and distances:

North $58^{\circ}17'55''$ East a distance of 116.80 feet to the beginning of a 788.45 foot radius curve to the left;

Thence along the arc of said curve to the left through a central angle of $5^{\circ}49'50''$ for an arc distance of 80.23 feet;

Thence North $52^{\circ}28'05''$ East a distance of 87.68 feet to the beginning of a 575.67 foot radius curve to the right;

Thence along the arc of said curve to the right through a central angle of $12^{\circ}46'07''$ for an arc distance of 128.29 feet;

Thence North $65^{\circ}14'12''$ East a distance of 181.75 feet to the beginning of a 924.93 foot radius curve to the left;

Thence along the arc of said curve to the left through a central angle of $11^{\circ}47'21''$ for an arc distance of 190.31 feet;

Thence North $53^{\circ}26'51''$ East a distance of 204.54 feet to the beginning of a 911.47 foot radius curve to the right;

Thence along the arc of said curve to the right through a central angle of $7^{\circ}30'49''$ for an arc distance of 119.53 feet

07.30.83 10:48AM *EXECUTIVE OFFICE
Thence North $60^{\circ}57'40''$ East a distance of 211.44 feet to the beginning of a 924.87 foot radius curve to the left;

Thence along the arc of said curve to the left thru a central angle of $09^{\circ}55'55''$ for an arc distance of 160.32 feet;

Thence North $51^{\circ}01'45''$ East a distance of 163.74 feet to the beginning of a 447.46 foot radius curve to the left;

Thence along the arc of said curve to the left through a central angle of $16^{\circ}36'45''$ for an arc distance of 129.74 feet;

Thence North $34^{\circ}25'00''$ East a distance of 805.82 feet to the beginning of a 788.51 foot radius curve to the left;

Thence along the arc of said curve to the left through a central angle of $12^{\circ}34'57''$ for an arc distance of 186.92 feet;

Thence North $20^{\circ}50'04''$ East a distance of 404.82 feet;

Thence leaving said right-of-way line South $55^{\circ}55'19''$ West, 585.02 feet to a point designated as "NB-13", on sheet 5, of the Plats of Relocated North Bonneville, as recorded in Volume "B" of plats at page 23, records of Skamania County, Washington;

Thence South $55^{\circ}55'19''$ West, 2265.28 feet to a point of intersection between the South line of the Northwest quarter of said Section 29, and the East line of the E.C. Hardy D.L.C. No. 41;

Thence North $89^{\circ}31'23''$ West, along the South line of said Northwest quarter to the Southwest corner of said Northwest quarter of said Section 29, said point being the POINT OF BEGINNING.

Also, all lands commonly designated as shorelands fronting and joining the premises above described;

The above described parcel contains 157.00 acres, more or less.

JUNE 30, 1993

PARCEL B

Description:

A parcel of land situated in the NW 1/4 of Section 29, Township 2 North, Range 7 East of the Willamette Meridian, Skamania County, Washington, described as follows:

BEGINNING at the southwest corner of Lot 5 in the NW 1/4 of said Section 29;

thence N. 01°03'03" E. along the west line of said Section 29, a distance of 1,243.25 feet to the south line of a tract of land conveyed to the Town of North Bonneville by deed recorded in Book 69, Page 747 of the records of said county;

thence N. 61°35'20" E. along the south line of said tract of land 376.06 feet;

thence N. 80°50'20" E. along the south line of said tract of land 155.14 feet to the west line of a 150-foot wide strip of land being a causeway in use as a roadway;

thence N. 03°35'50" E. along the west line of said causeway 434.47 feet to the south line of the Third Addition to the Plats of Relocated North Bonneville Block 10 as recorded in Volume B of plats at Page 34 of the records of said county;

thence N. 30°00'02" E. 37.90 feet to a point designated as NB-10 on the south line of said Third Addition;

thence East along the south line of said Third Addition 133.41 feet to the east line of the above mentioned causeway;

thence S. 03°35'50" W. along the east line of said causeway 442.83 feet to the south line of said tract of land conveyed to the Town of North Bonneville;

thence N. 80°50'20" E. along said south line of said tract of land 76.77 feet;

thence N. 73°21'20" E. along said south line of said tract of land 393.20 feet;

thence N. 84°01'20" E. along said south line of said tract of land 452.30 feet to the southeast corner of said tract of land;

Parcel B Con't.

thence N. $02^{\circ}31'10''$ W. along the east line of said tract of land 270.26 feet to the south line of said Third Addition to the Plats of Relocated North Bonneville Block 10;

thence East along said south line of said Third Addition 267.84 feet to a point designated as NB-11;

thence S. $06^{\circ}40'28''$ E. along the westerly line of said Third Addition and the southerly extension of said westerly line 654.45 feet to a point designated as NB-12 on sheet 5 of the Plat of Relocated North Bonneville - CBD as recorded in Volume B of plats at Page 23, of the records of said county;

thence East along the south line of said Plat of Relocated North Bonneville - CBD 720.00 feet to a point designated as NB-13;

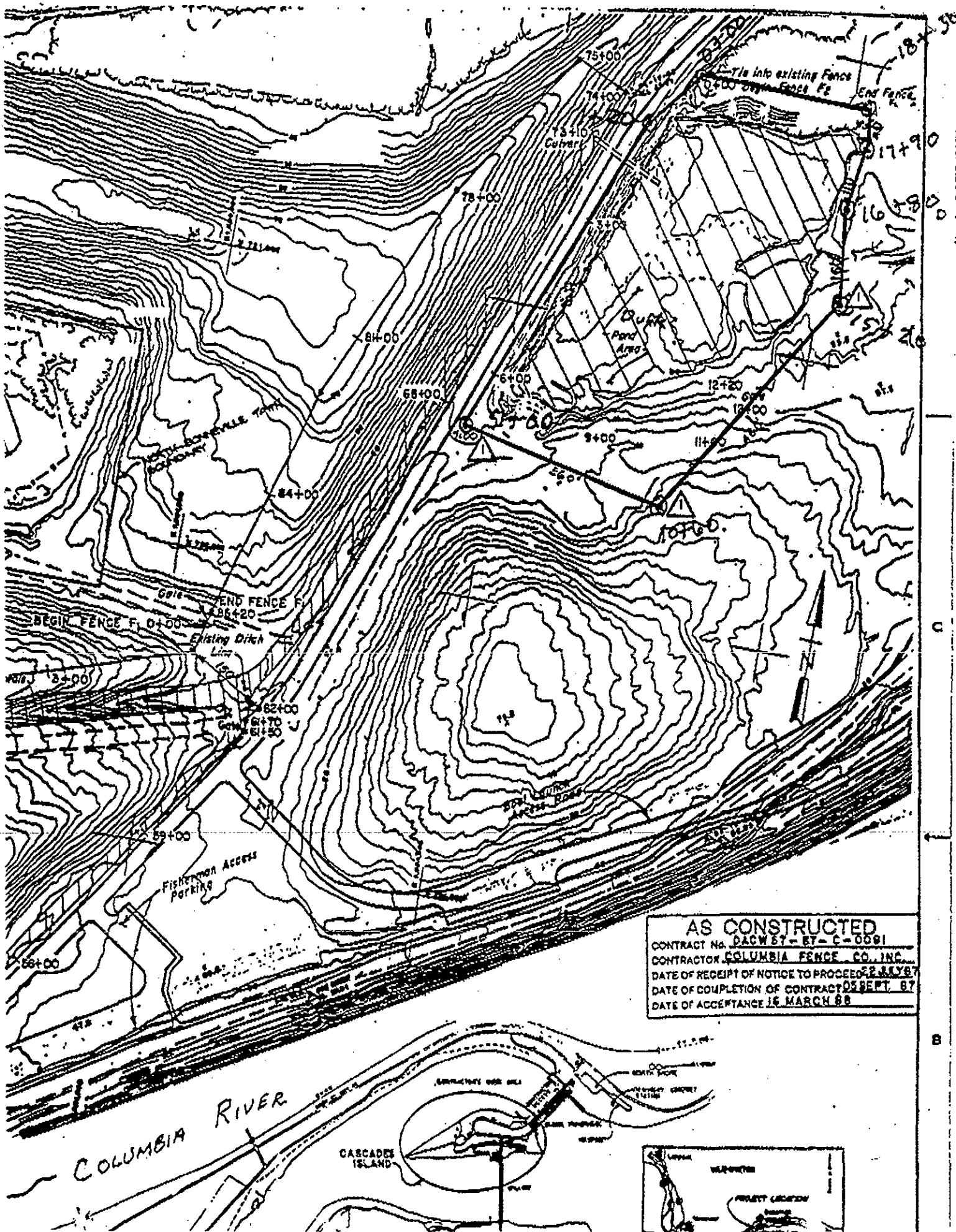
thence S. $55^{\circ}43'05''$ W. 2,265.34 feet to the intersection of the south line of the NW $1/4$ of said Section 29 with the east line of the E. C. Hardy D.L.C. No. 41;

thence N. $89^{\circ}00'14''$ W. along said south line of said NW $1/4$ to the southwest corner of said Lot 5 of Section 29 and the point of beginning;

The parcel of land above described contains 62.92 acres, more or less.

The north boundary of this parcel that is not adjacent to the south line of said Third Addition was based on found monumentation from the W.S.D.H. 1948 survey for P.S. Highway No. 8 Stockpile Site.

Note: All bearings and distances are based on the Oregon Coordinate System, North Zone.



Project: Bonneville Lock and Dam
Second Powerhouse
Columbia River
Oregon and Washington

Owner: U.S. Army
Corps of Engineers

Duck Pond Area

Description:

A tract of land located in the S. M. Hamilton Donation Land Claim No. 40 and the G.W. Johnson Donation Land Claim No. 38 in Section 29, Township 2 North Range 7 East, Willamette Meridian, Skamania County, Washington, being more particularly described as follows:

Commencing at a point on the platted boundary of Relocated North Bonneville, said point being designated as monument NB50, and being the most southeasterly corner of Open Space Lot S-34 as platted on the Plats of Relocated North Bonneville recorded in Volume B of Plats at Page 23, Auditor's No. 84429, of the records of said County; thence South $16^{\circ}06'$ West 505 feet to station 0+00 of a fence constructed under U.S. Army Corps of Engineers Contract Number DACW57-87-C-0091 and the true POINT OF BEGINNING;

thence South $41^{\circ}25'$ West along said fence line 120 feet to Station 1+20;

thence continuing along said fence line South $21^{\circ}52'$ West 580 feet to Station 7+00;

thence continuing along said fence line South $78^{\circ}13'$ East 360 feet to Station 10+60;

thence continuing along said fence line North $32^{\circ}08'$ East 460 feet to Station 15+20;

thence continuing along said fence line North $05^{\circ}21'$ West 160 feet to Station 16+80;

thence continuing along said fence line North $07^{\circ}46'$ East 110 feet to Station 17+90;

thence continuing along said fence line North $05^{\circ}36'$ West 40 feet to Station 18+30;

thence North $89^{\circ}13'$ West 300 feet, more or less, to Station 0+00 and the point of beginning.

The tract of land above described contains 6.30 acres, more or less.

DES 30 JUN 93

ATTACHMENT II

**HAMILTON ISLAND NPL
FEDERAL FACILITIES AGREEMENT**

SCHEDULE

**Table I. Enforceable Deadlines for Federal Facilities Agreement
Hamilton Island, Washington**

<u>Schedule Item</u>	<u>Document</u>	<u>Deadline</u>
04	Draft Final RI/FS Management Plan	13 Jul 93
71	Draft Final RI/FS	28 Aug 95
89	Record of Decision	26 Feb 96
	Draft Final Remedial Design	-----
	Draft Final Remedial Action Work Plan	-----

**Table II. Secondary Document Submittal Dates for Remedial
Investigation and Feasibility Study
Hamilton Island, Washington**

<u>Schedule Item</u>	<u>Document</u>	<u>Target Date</u>
02	Draft Management Plan	14 May 93
21A	Statement of Work	27 Aug 93
36	Site Characterization Technical Memo	08 Jun 94
02	Conceptual Site Model	14 May 93
35	Initial Identification of ARARs & TBCs	24 Jun 94
02	Health and Safety Plan	14 May 93
48	Draft Baseline Risk Assessment	20 Dec 94
55	Draft Remedial Investigation	02 Mar 95
69	Draft Feasibility Study	08 Jun 95
80	Proposed Plan	14 Nov 95

Sampling and Data Results are numerous and will be submitted separately or within quarterly reports.

ATTACHMENT III

**HAMILTON ISLAND NPL
FEDERAL FACILITIES AGREEMENT
POTENTIAL NEW SOURCE AREAS**

Procedure for addressing new source areas at Hamilton Island

Upon discovery of any new potential source area at Hamilton Island, the USACE will notify EPA and Ecology in writing within seven (7) days of discovery of the potential source. This notification shall, at a minimum, include the following information: the circumstances in which the source area was discovered, the location of the new source area, and potential contaminants. Within seven (7) days of receipt of this written notification, the three parties will discuss procedures for addressing the new source area. The following procedures should be reviewed for their application to the particular situation:

1. If the source area is discovered prior to submittal of the Site Characterization Technical Memorandum (SCTM), April 1994, then the SCTM should address the location and potential threat(s) of the contaminants within the new source area. If additional work is necessary to evaluate the new source area, this work shall be conducted expeditiously as part of the RI field investigation.

2. If the source area is discovered after submittal of the SCTM, but prior to completion of the field investigation, then a supplemental SCTM report will be submitted which shall address the new source area. The report shall present all available information and potential threats from the new source area. The report shall also propose any additional sampling which will be done to characterize the new source. If additional work is deemed to be necessary, the work shall be conducted expeditiously as part of the RI field investigation.

3. If new source areas are discovered during or after the culmination of the field investigation, the following options may be utilized:

a. conduct additional field work for the new source area while proceeding with preparation of RI/FS, PP, or ROD deliverables and attach additional studies as an addendum or attachment to these draft or final deliverables;

b. perform additional studies during RD to define and characterize all new source areas;

c. assess new source areas with knowledge of the anticipated remedy and evaluate the anticipated remedies application to the new source area(s). This assessment would be based on comparison to [EPA Region 10 Risk Screening numbers and similarity to] other source areas at Hamilton Island; or

d. separate a new source area as an Operable Unit. This would entail development of a Management Plan and separate schedule through completion of RD/RA. This process would be subject to Part XXI of the FFA.

Schedule for addressing new source areas at Hamilton Island

- ♦ USACE notifies other parties within seven (7) days of discovery
- ♦ All parties discuss alternatives for addressing site within fourteen (14) days of discovery
- ♦ Within thirty (30) days of discovery a schedule will be submitted by USACE to address new source areas (if applicable). This schedule will be developed with input from EPA and Ecology and is subject to the dispute resolution process outlined in Part XXI of the FFA.