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

IN THE MATTER OF:

U.S. Department of the Navy,
Naval Submarine Base Bangor,
Bangor, Washington

FEDERAL FACILITY AGREEMENT
UNDER CERCLA SECTION 120

Administrative Docket Number:
1088-06-15-120

TABLE OF CONTENTS

| | Page |
|---|------|
| I. Jurisdiction | 3 |
| II. Definitions | 4 |
| III. Purpose | 7 |
| IV. Parties Bound | 9 |
| V. Statutory Compliance | 10 |
| VI. Statement of Facts | 11 |
| A. Findings of Fact | 11 |
| B. Site History | 13 |
| VII. Regulatory Determinations | 14 |
| VIII. Scope of Agreement | 15 |
| A. Work to be Performed | 15 |
| B. Interim Remedial Actions | 16 |
| C. Remedial Investigations | 16 |
| D. Feasibility Studies | 17 |
| E. Remedial Actions | 17 |
| F. Implementation of Remedial Actions | 17 |
| IX. Project Managers | 18 |
| X. Access | 20 |

| | | | |
|----|---------|--|----|
| 1 | XI. | Sampling and Data/Document Availability. | 21 |
| | XII. | Quality Assurance. | 22 |
| 2 | XIII. | Reporting. | 23 |
| | XIV. | Notice to the Parties. | 23 |
| 3 | XV. | Permits. | 24 |
| | XVI. | Retention of Records | 26 |
| 4 | XVII. | Public Participation and Administrative Record . | 27 |
| | XVIII. | Creation of Danger/Emergency Action. | 28 |
| 5 | XIX. | Five (5) Year Review | 29 |
| | XX. | Consultation with U.S. EPA and Ecology | 30 |
| 6 | | A. Applicability. | 30 |
| | | B. General Process for RI/FS and RD/RA Documents | 31 |
| 7 | | C. Primary Reports. | 32 |
| | | D. Secondary Documents. | 32 |
| 8 | | E. Meetings of the Project Managers on | |
| | | Development of Reports. | 33 |
| 9 | | F. Identification and Determination of | |
| | | Potential ARARS | 33 |
| 10 | | G. Review and Comment on Draft Reports. | 34 |
| | | H. Availability of Dispute Resolution | |
| 11 | | for Draft Final Primary Documents | 37 |
| | | I. Finalization of Reports. | 37 |
| 12 | | J. Subsequent Modifications of Final Reports. . | 37 |
| | XXI. | Resolution of Disputes | 39 |
| 13 | XXII. | Enforceability | 44 |
| | XXIII. | Stipulated Penalties | 45 |
| 14 | XXIV. | Deadlines. | 47 |
| | XXV. | Extensions | 50 |
| 15 | XXVI. | Force Majeure. | 52 |
| | XXVII. | Funding. | 53 |
| 16 | XXVIII. | Recovery of Expenses | 56 |
| | XXIX. | Other Claims | 61 |
| 17 | XXX. | Other Applicable Laws. | 62 |
| | XXXI. | Confidential Information | 62 |
| 18 | XXXII. | Transfer of Property | 63 |
| | XXXIII. | Amendment of Agreement | 63 |
| 19 | XXXIV. | Severability | 64 |
| | XXXV. | Reservation of Rights. | 64 |
| 20 | XXXVI. | Termination. | 65 |
| | XXXVII. | Effective Date | 65 |

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

I.

JURISDICTION

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

1.1 The United States Environmental Protection Agency ("U.S. EPA"), Region 10, enters into those portions of this Agreement that relate to each Remedial Investigation/Feasibility Study ("RI/FS") pursuant to Section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. 99-499 (hereinafter referred to as "CERCLA"), and Executive Order 12580;

1.2 U.S. EPA Region 10 enters into those portions of this Agreement that relate to interim remedial actions and final remedial actions pursuant to Section 120(e)(2) of CERCLA, 42 U.S.C. § 9620(e)(2), and Executive Order 12580;

1.3. The United States Navy ("Navy") enters into those portions of this Agreement that relate to the RI/FS pursuant to Section 120(e)(1) of CERCLA, 42 U.S.C. § 9620(e)(1), Executive Order 12580, the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., and the Defense Environmental Restoration Program ("DERP"), 10 U.S.C. § 2701 et seq.;

1.4 The Navy enters into those portions of this Agreement that relate to interim remedial actions and final

remedial actions pursuant to Section 120(e)(2) of CERCLA,
42 U.S.C. § 9620(e)(2), Executive Order 12580, and the DERP.

1.5 The State of Washington Department of
Ecology ("Ecology") enters into this Agreement pursuant to
Section 120 of CERCLA, 42 U.S.C. § 9620, Chapters 90.48, 70.105,
and 43.21(A) of the Revised Code of Washington ("RCW"), and the
Model Toxics Control Act which was enacted by the voters as
Initiative 97 in November 1988.

II.

DEFINITIONS

2.1 The terms used in this Agreement shall have
the same definition as the terms defined in Section 101 of
CERCLA, 42 U.S.C. § 9601, and the NCP, 40 CFR Part 300. In
addition:

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

(b) "ARAR" or "Applicable or Relevant and Appropriate
Requirements" shall be as provided in Section 121(d)(2) of
CERCLA, 42 U.S.C. § 9621(d)(2);

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

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

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

4 (e) "Days" shall mean calendar days, unless otherwise
5 specified. In computing any period of time prescribed or allowed
6 by this Agreement, the day of the act, event, or default from
7 which the designated period of time begins to run shall not be
8 included. The last day of the period so computed shall be
9 included, unless it is a Saturday, Sunday, or a federal or state
10 holiday, in which event the period runs until the next day which
11 is not a Saturday, Sunday, or federal or state holiday;

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

15 (g) "Interim Remedial Actions" or "IRA" shall mean
16 all discrete response actions implemented prior to a final
17 remedial action which are taken to prevent or minimize the
18 release of hazardous substances, pollutants, or contaminants so
19 that they do not migrate or endanger public health, welfare, or
20 the environment. All interim remedial actions shall be
21 undertaken in accordance with 40 C.F.R. Part 300, as amended, and
22 with the requirements of CERCLA;

23 (h) "Navy" shall mean the Department of the Navy, its
24 employees, and authorized representatives;

(i) "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, as set forth at 40 C.F.R. Part 300, as amended;

(j) "Paragraph" shall mean a numbered paragraph of this Agreement;

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

(l) "Parties" shall mean the Navy, U.S. EPA, and Ecology, subject to Part XXXVI of this Agreement;

(m) "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;

(n) "Site" shall mean the Naval Submarine Base Bangor ("SUBASE Bangor"), which covers seven thousand (7,000) acres on Hood Canal near Silverdale, Kitsap County, Washington;

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

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

QAPP, Community Relations Plan, Data Management Plan, and Health and Safety Plan.

III.

PURPOSE

3.1 The general purposes of this Agreement are to:

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

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

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

3.2 Specifically, the purposes of this Agreement are to:

(a) Identify Interim Remedial Action ("IRA") alternatives which are appropriate at the Site prior to the implementation of final remedial action(s) for the Site. IRA alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of IRA(s) to U.S. EPA pursuant to CERCLA. This process is designed to promote

1 cooperation among the Parties in identifying IRA alternatives
2 prior to selection of final IRA(s);

3 (b) Establish requirements for the performance of
4 Remedial Investigations to determine fully the nature and extent
5 of the threat to the public health or welfare or the environment
6 caused by the release or threatened release of hazardous
7 substances, pollutants, or contaminants at the Site and to
8 establish requirements for the performance of Feasibility Studies
9 for the Site to identify, evaluate, and select alternatives for
10 the appropriate remedial action(s) to prevent, mitigate, or abate
11 the release or threatened release of hazardous substances,
12 pollutants, or contaminants at the Site in accordance with
13 CERCLA;

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

18 (d) Implement the selected interim and final remedial
19 action(s) in accordance with CERCLA and meet the requirements of
20 Section 120(e)(2) of CERCLA, 42 U.S.C. § 6920(e)(2), for an
21 interagency Agreement between U.S. EPA and the Navy;

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

25 (f) Coordinate response actions at the Site with the
26 mission and support activities at SUBASE Bangor;

1 (g) Expedite the cleanup process to the extent
2 consistent with protection of human health and the environment;
3 and

4 (h) Identify removal actions which are appropriate to
5 the Site and provide timely notice to the other Parties of these
6 proposed actions.

7
8 IV.

9 PARTIES BOUND

10 4.1 This Agreement is entered into by the Parties
11 to enable the Navy to meet the provisions of CERCLA, 42 U.S.C.
12 § 9601 et seq.

13 4.2 The Navy will notify U.S. EPA and Ecology of
14 the identity of its contractors performing work under this
15 Agreement. The Navy shall provide copies of this Agreement to
16 all contractors performing any work pursuant to this Agreement.
17 Each undersigned representative of a Party certifies that he or
18 she is fully authorized to enter into the terms and conditions of
19 this Agreement and to legally bind such Party to this Agreement.

20 4.3 In selecting contractors to perform work
21 associated with the Site, the Parties will comply with the
22 Federal Acquisition Regulation ("FAR") Subpart 9.4, 48 C.F.R.
23 Subpart 9.4 and 40 C.F.R. Part 32.

V.

STATUTORY COMPLIANCE

5.1 Based on available knowledge, there have been no and presently are no RCRA-regulated units at the Site. The Parties intend to integrate the Navy's CERCLA response obligations and corrective action obligations of other statutes which relate to the release(s) of hazardous substances, hazardous wastes, pollutants, or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. § 9601, et seq., and meet or exceed all applicable or relevant and appropriate federal and state laws and regulations, to the extent required by Section 121 of CERCLA, 42 U.S.C. § 9621, and applicable state law.

5.2 Based upon the foregoing, the Parties intend that any remedial action selected, implemented, and completed under this Agreement will be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action. The Parties agree that with respect to releases of hazardous waste covered by this Agreement that have occurred on Site, RCRA and Ch. 70.105 et seq. of the Revised Code of Washington ("RCW") shall be considered ARARs pursuant to Section 121 of CERCLA, 42 U.S.C. § 9621. If RCRA or RCW Ch. 70.105 et seq. ARARs are waived by the Records of Decision ("ROD") pursuant to Section 121 of CERCLA, 42 U.S.C. § 9621, Ecology shall have the right to

1 withdraw from this Agreement within sixty (60) days following the
2 effective date of the ROD and exercise any legal rights and
3 remedies available under law. If Ecology exercises its right to
4 withdraw from this Agreement, the Navy expressly preserves its
5 ability to assert any defense that it may have under the law in
6 regard to the legal right or remedies pursued by Ecology.
7 Releases or other hazardous waste activities not covered by this
8 Agreement remain subject to all applicable state and federal
9 environmental requirements.

10 5.3 The Parties recognize that the requirement to
11 obtain permits for response actions undertaken pursuant to this
12 Agreement shall be as provided for in CERCLA and the NCP.

13 5.4. Nothing in this Agreement shall alter the
14 Navy's authority with respect to removal actions conducted
15 pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.
16

17 VI.

18 STATEMENT OF FACTS

19 A. Findings of Fact

20 6.1 SUBASE Bangor ("Site") is located in Kitsap
21 County, Washington, is owned by the United States of America, and
22 is operated by the Navy.

23 6.2 On July 22, 1987, Bangor Ordinance Disposal
24 Site A ("Area A") was listed on the National Priorities List
25 ("NPL"). 52 Fed. Reg. 27,620 (July 22, 1987).
26

6.3 On July 14, 1987, the remainder of SUBASE Bangor was proposed for listing on the NPL. 54 Fed. Reg. 29,820 (July 14, 1989).

6.4 The Site is a facility under the jurisdiction, custody, or control of the Department of Defense ("DOD") within the meaning of Executive Order 12580. 52 Fed. Reg. 2923 (January 29, 1987). The Navy is authorized to act on behalf of the Secretary of Defense for all functions delegated by the President through Executive Order 12580 which are relevant to this Agreement.

6.5 The Site is a facility under the jurisdiction of the Secretary of Defense within the meaning of Section 211 of SARA, 42 U.S.C. 2701.

6.6 Under Executive Order No. 12088, 43 Fed. Reg. 47,707 (October 13, 1978), U.S. EPA is required to provide timely technical advice and assistance to the Navy.

6.7 The Navy is authorized, pursuant to Executive Order 12580, to receive notification of state ARARs as required by CERCLA Section 121(d)(2)(A)(ii), 42 U.S.C. § 9621(d)(2)(A)(ii).

6.8 The authority of the Navy to exercise the delegated removal authority of the President, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, is not altered by this Agreement.

1 B. Site History

2 6.9 Prior to being selected as the homeport for
3 the Trident Ballistic Missile System, the Navy property at SUBASE
4 Bangor was used as a Naval Ammunition Depot from about 1945 until
5 1973. Functions of the Depot included storage, transshipment,
6 inspection, and demilitarization of Navy ordnance items such as
7 rocket warheads, projectiles, bombs, mines, and depth charges.
8 The demilitarization process, known as demilling, involved
9 defusing the ordnance items and removing explosive components
10 from the casings. Limited historical documents, along with
11 information from current and prior employees, indicated that most
12 of the removed ordnance compounds (such as TNT, RDX, Ammonium
13 Picrate, etc.) were either recycled or taken off-base for thermal
14 destruction.

15 6.10 Some waste products from the demilling
16 process and other related industrial functions were disposed
17 on-base. Soil contamination of several areas was suspected as
18 early as 1970. Monitoring wells were installed in and around
19 four (4) areas in 1977 and 1978. An Initial Assessment Study
20 ("IAS") was conducted during 1981 and early 1982 to identify all
21 previous waste disposal areas. The IAS was completed and a
22 report written in 1983 concluded that none of the areas pose an
23 immediate danger to human health or the environment, but that
24 some areas warranted further study.

25 6.11 In October 1984, the area known as the Bangor
26 Explosive Ordnance Range (more recently known as "Site A" and now

known as "Area A") was nominated by U.S. EPA for inclusion on the NPL. The Navy retained a consultant to further study Area A, characterize the contamination, and determine appropriate cleanup actions.

6.12 With the enactment of SARA in 1986, the Navy began preparations for modification of the contract study to include SARA procedures and terminology. On September 28, 1987, the consulting contract was modified, directing the contractor to conduct a Remedial Investigation/Feasibility Study for Area A and to prepare a Current Situation Report ("CSR") for other areas of concern at SUBASE Bangor.

6.13 On July 14, 1989, U.S. EPA proposed to nominate the entire SUBASE Bangor property for inclusion on the NPL. In anticipation of the need to fully evaluate other suspect sites, the Navy had retained a second consultant. Proposed Work Plans, Current Situation Reports, and Remedial Investigation/Feasibility Studies will be conducted for other areas, as required, in accordance with the schedule shown in Part XX of this Agreement.

VII.

REGULATORY DETERMINATIONS

7.1 On the basis of the results of the testing and analysis described in the Statement of Facts, U.S. EPA and Ecology have determined that:

1 (a) The Site is a facility within the meaning of
2 Section 101(9) of CERCLA, 42 U.S.C. § 9601(9);

3 (b) Hazardous substances, pollutants, or contaminants
4 within the meaning of Section 101(14) and 104(a)(2) of CERCLA,
5 42 U.S.C. §§ 9601(14) and 9604(a)(2), have been disposed of at
6 the Site;

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

13 (d) With respect to those releases and threatened
14 releases, the Navy is a responsible person within the meaning of
15 Section 107 of CERCLA, 42 U.S.C. § 9607;

16 (e) The actions to be taken pursuant to this Agreement
17 are reasonable and necessary to protect the public health,
18 welfare, or the environment.

20 VIII.

21 SCOPE OF AGREEMENT

22 A. Work to be Performed

23 8.1. For each operable unit, the Navy will conduct
24 and finance the cost of an RI/FS consultant study in accordance
25 with the RI/FS Work Plan and implement the Remedial Design and
26 Remedial Action Work Plan ("RA Work Plan") at the Site in

1 accordance with the RA Work Plan, and all relevant statutes,
2 regulations, policies, guidance, and criteria.

3 8.2 The Navy shall perform the tasks and submit
4 plans, reports, and other documents as required by those
5 provisions of the Work Plan.

6 8.3 This Agreement fully incorporates the
7 provisions of the Work Plan. In the event of any inconsistency
8 between this Agreement and the Work Plan, this Agreement shall
9 govern unless and until duly modified pursuant to Part XXXIII of
10 this Agreement.

11 B. Interim Remedial Actions

12 8.4 The Navy shall develop and implement IRA(s)
13 as set forth in this Agreement. The IRA(s) shall be consistent
14 with the purposes set forth in Part III of this Agreement. The
15 Navy shall propose IRA(s) to U.S. EPA and Ecology.
16 Alternatively, U.S. EPA and Ecology may request IRA proposals.
17 The Navy and U.S. EPA, in consultation with Ecology, shall select
18 appropriate IRA(s). U.S. EPA shall make the selection in the
19 event of disagreement, subject to Part XXI of this Agreement.
20 IRA(s) shall, to the greatest extent practicable, attain ARARs
21 and be consistent with and contribute to the efficient
22 performance of final response actions.

23 C. Remedial Investigations

24 8.5 The Navy shall develop, implement, and report
25 upon remedial investigations for each operable unit at the Site
26 which comply with applicable requirements of CERCLA, the NCP,

1 written guidance and U.S. EPA policy, and which is in accordance
2 with the requirements and deadlines set forth in this Agreement.

3 D. Feasibility Studies

4 8.6 The Navy shall design, propose, undertake,
5 and report upon feasibility studies for each operable unit which
6 comply with applicable requirements of CERCLA, the NCP, and
7 relevant written guidance and established U.S. EPA policy, and
8 which is in accordance with the requirements and deadlines set
9 forth in this Agreement.

10 E. Remedial Actions

11 8.7 The Navy shall develop and submit its
12 proposed remedial action alternative following completion and
13 approval of each RI/FS Report. Ecology may recommend the
14 remedial action alternative it deems appropriate to U.S. EPA.
15 The Navy and U.S. EPA, in consultation with Ecology, shall make
16 final selection of the remedial action(s) for each operable unit.
17 U.S. EPA shall make the selection in the event of disagreement,
18 subject to Part XXI of this Agreement. The selection of remedial
19 action(s) by the U.S. EPA Administrator shall be final and not
20 subject to dispute. Notwithstanding this Part, or any other Part
21 of this Agreement, Ecology may seek judicial review of an interim
22 or final remedial action in accordance with Sections 113 and
23 121(f)(3)(A) of CERCLA, 42 U.S.C. §§ 9613 and 9621(f)(3)(A).

24 F. Implementation of Remedial Actions

25 8.8 Following finalization of any ROD in
26 accordance with Part XXI, the Navy shall design, propose, and
27

1 submit, where necessary, a detailed Remedial Design and a
2 Remedial Action Work Plan ("RA Work Plan") for implementation of
3 each selected remedial action, including appropriate schedules,
4 to U.S. EPA and Ecology. Following review by Ecology and
5 U.S. EPA and finalization of the Remedial Design and RA Work Plan
6 in accordance with Part XX of this Agreement, the Navy shall
7 implement the remedial action(s) in accordance with the
8 requirements and schedules set forth in this Agreement.

9
10 IX.

11 PROJECT MANAGERS

12 9.1 Not later than five (5) days after the
13 effective date of this Agreement, the Navy, Ecology, and U.S. EPA
14 shall each designate a Project Manager and alternate. Each
15 Project Manager shall be responsible for overseeing the
16 principal's duties concerning the implementation of this
17 Agreement. All written communications between the Parties
18 (including communication by letter, reports, notices, etc.)
19 concerning activities related to this Agreement shall be directed
20 or a copy sent to the appropriate Project Manager(s).

21 9.2 Each Project Manager shall be, or rely on, a
22 qualified and competent person with experience in hazardous
23 substances site investigations and remedial actions and having
24 the skills necessary to implement this Agreement. All technical
25 work performed pursuant to this Agreement shall be under the
26 direction and supervision of, or in consultation with, a

1 qualified engineer, geologist, scientist, or equivalent expert
2 with expertise in hazardous substances site investigation and
3 remediation.

4 9.3 The Navy, Ecology, and U.S. EPA may
5 unilaterally change their respective Project Manager(s) by
6 sending a written notification to the other Parties no later than
7 five (5) days before the date of such change, without resort to
8 Part XXXIII.

9 9.4 The Project Managers may, upon unanimous
10 agreement, make minor field modifications to the work to be
11 performed pursuant to this Agreement, or in techniques,
12 procedures, or design utilized in carrying out this Agreement,
13 which are necessary to the completion of the project, without
14 resort to Part XXXIII. All modifications shall be documented in
15 writing.

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

1 X.

2 ACCESS

3 10.1 Without limitation on any authority conferred
4 on them by law, U.S. EPA, Ecology, and/or their authorized
5 representatives, shall have authority to enter the Site at all
6 reasonable times consistent with the terms of the Agreement, for
7 purpose of, among other things: (1) inspecting records,
8 operating logs, contracts, and other documents; (2) reviewing the
9 progress of the Navy or its response action contractors in
10 implementing this Agreement; (3) conducting such tests as the
11 Ecology and U.S. EPA Project Managers deem necessary; and
12 (4) verifying the data submitted to U.S. EPA and Ecology by the
13 Navy.

14 10.2 The Navy shall honor all requests for such
15 access by U.S. EPA and Ecology, conditioned only upon
16 presentation of proper credentials, and conformance with security
17 regulations. The Navy reserves the right to require an escort
18 for representatives of U.S. EPA and Ecology when visiting the
19 Site. The Parties agree that conformance with security
20 regulations and the provision of an escort will not delay access.
21 However, access may be delayed to portions of the Site that are
22 closed.

23 10.3 To the extent that this Agreement requires
24 access to property not owned and controlled by the Navy, the Navy
25 shall take all reasonable steps to obtain access including, but
26 not limited to, relying on its authority under Section 104(e) of

1 CERCLA, 42 U.S.C. § 9604(e). If the Navy obtains access to the
2 property by agreement with the property owner, the Navy shall
3 make every effort to obtain identical access rights for U.S. EPA
4 and Ecology and shall also make every effort to include in the
5 access agreement a provision requiring the property owner to give
6 the Parties notice at least thirty (30) days prior to conveyance
7 of the property owner's interests.

8
9 XI.

10 SAMPLING AND DATA/DOCUMENT AVAILABILITY

11 11.1 If requested, the Project Managers shall make
12 available to each other quality assured results of sampling,
13 tests, or other data generated by any Party, or on their behalf,
14 with respect to the implementation of this Agreement within
15 forty-five (45) days of their collection or field testing. If
16 quality assurance is not completed within forty-five (45) days,
17 preliminary data or results shall be made available within the
18 forty-five (45) day period and quality assured data or results
19 shall be submitted as they become available but in no event later
20 than ninety (90) days after the sampling or testing. These
21 periods can be extended upon mutual agreement among the Project
22 Managers.

23 11.2 At the request of either the Ecology or
24 U.S. EPA Project Manager, the Navy shall allow split or duplicate
25 samples to be taken by Ecology or U.S. EPA during sample
26 collection conducted during the implementation of this Agreement.

1 The Navy's Project Manager shall notify, whenever possible, the
2 U.S. EPA and Ecology Project Managers not less than fourteen (14)
3 business days in advance of any well drilling, sample collection,
4 or other monitoring activity conducted pursuant to this
5 Agreement. The fourteen (14) day notification requirement can be
6 waived upon mutual agreement among the Project Managers.

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

10 XII.

11 QUALITY ASSURANCE

12 12.1 Throughout all sample collection,
13 transportation, and analyses activities conducted in connection
14 with this Agreement, the Navy shall use procedures for quality
15 assurance, and for quality control, and for chain-of-custody in
16 accordance with approved U.S. EPA methods, including "Interim
17 Guidelines and Specifications for Preparing Quality Assurance
18 Project Plans," QAMS-005/80, "Data Quality Objective Guidance,"
19 U.S. EPA 1540/687/003 and 004, and subsequent amendments to such
20 guidelines. The Navy shall require each laboratory it uses to
21 perform any analysis according to approved U.S. EPA methods and
22 to participate in a quality assurance/quality control program
23 equivalent to that which is followed by U.S. EPA and which is
24 consistent with U.S. EPA document, QAMS-005/80.

XIII.

REPORTING

13.1 The Navy shall submit to Ecology and the U.S. EPA quarterly written progress reports which describe the actions which the Navy has taken during the previous quarter to implement the requirements of this Agreement. Progress reports shall also describe the activities scheduled to be taken during the upcoming quarter. Progress reports shall be prepared and submitted in accordance with the Work Plan.

XIV.

NOTICE TO THE PARTIES

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

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

(a) For the Navy:

Commander (Code 09E)
Engineering Field Activity, Northwest
Naval Facilities Engineering Command
3505 N.W. Anderson Hill Road
Silverdale, Washington 98383-9130

(b) For the U.S. EPA:

Wayne Pierre
SUBASE Bangor Project Manager
U.S. Environmental Protection Agency Reg. 10
1200 Sixth Avenue, HW-114
Seattle, Washington 98101

1 (c) For Ecology:

2 Duane R. Goodman
3 Washington Department of Ecology
4 Mail Stop PV-11
5 Olympia, Washington 98504-8711

6 14.3 Unless otherwise requested, the Parties shall
7 send all routine correspondence by regular mail to the persons
8 identified above.

9 XV.

10 PERMITS

11 15.1 The Parties recognize that under Sections
12 121(d) and 121(e)(1) of CERCLA, 42 U.S.C. §§ 9621(d) and
13 9621(e)(1), and the NCP, CERCLA response actions called for by
14 this Agreement and conducted entirely on the Site and in
15 compliance with CERCLA are exempted from the procedural
16 requirement to obtain federal, state, or local permits, but must
17 satisfy all ARARs which would have been included in any such
18 permit.

19 15.2 When the Navy proposes a CERCLA response
20 action that in the absence of Section 121(e)(1) of CERCLA,
21 42 U.S.C. § 9621(e)(1), and the NCP would require a federal or
22 state permit, the Navy shall include in the Submittal:

23 (a) Identification of each permit which would
24 otherwise be required;

25 (b) Identification of the standards, requirements,
26 criteria, or limitations which would have had to have been met to
27 obtain each such permit; and

1 (c) Explanation of how the response action proposed
2 will meet the standards, requirements, criteria, or limitations
3 identified in (b) immediately above.

4 15.3 Upon request of the Navy, U.S. EPA and
5 Ecology will provide their position with respect to (b) and (c)
6 above in a timely manner.

7 15.4 This Part is not intended to relieve the Navy
8 from any applicable requirements for the off-site shipment or
9 movement of a hazardous waste or substance including Section
10 121(d)(3) of CERCLA, 42 U.S.C. 9621(d)(3). The Navy shall obtain
11 all permits and comply with all appropriate federal, state, or
12 local laws, and shall submit timely applications and requests for
13 such permits and approvals.

14 15.5 The Navy shall notify Ecology and U.S. EPA in
15 writing of any permits required for off-site activities as soon
16 as it becomes aware of the requirement. Upon request, the Navy
17 shall provide Ecology and U.S. EPA copies of all such permit
18 applications and other documents related to the permit process.
19 U.S. EPA and Ecology shall, upon request and to the extent
20 practicable and allowed by law, expedite the review of such
21 off-site permits.

22 15.6 If a permit necessary for implementation of
23 this Agreement is not issued, or is issued or renewed in a manner
24 which is materially inconsistent with the requirements of this
25 Agreement, the Parties shall meet to consider any modification of
26

1 (c) Explanation of how the response action proposed
2 will meet the standards, requirements, criteria, or limitations
3 identified in (B) immediately above.

4 15.3 Upon request of the Navy, U.S. EPA and
5 Ecology will provide their position with respect to (B) and (C)
6 above in a timely manner.

7 15.4 This Part is not intended to relieve the Navy
8 from any applicable requirements for the off-site shipment or
9 movement of a hazardous waste or substance including Section
10 121(d)(3) of CERCLA, 42 U.S.C. 9621(d)(3). The Navy shall obtain
11 all permits and comply with all appropriate federal, state, or
12 local laws, and shall submit timely applications and requests for
13 such permits and approvals.

14 15.5 The Navy shall notify Ecology and U.S. EPA in
15 writing of any permits required for off-site activities as soon
16 as it becomes aware of the requirement. Upon request, the Navy
17 shall provide Ecology and U.S. EPA copies of all such permit
18 applications and other documents related to the permit process.
19 U.S. EPA and Ecology shall, upon request and to the extent
20 practicable and allowed by law, expedite the review of such
21 off-site permits.

22 15.6 If a permit necessary for implementation of
23 this Agreement is not issued, or is issued or renewed in a manner
24 which is materially inconsistent with the requirements of this
25 Agreement, the Parties shall meet to consider any modification of
26

1 this Agreement that is necessary either to obtain a permit or to
2 conform to an issued permit.

3 15.7 During any appeal of any permit required to
4 implement this Agreement or during review of any Party's proposed
5 modifications as provided above, all Parties shall continue to
6 implement those portions of this Agreement which can reasonably
7 be implemented pending final resolution of any permit issues.
8 However, as to work which cannot be so implemented, any
9 corresponding timetable, deadlines, and schedule will be
10 automatically extended until all necessary permits are issued or
11 the need for the permit is eliminated. Additional extensions may
12 be granted for good cause under Part XXV.

13 XVI.

14 RETENTION OF RECORDS

15 16.1 The Navy shall preserve, during the duration
16 of this Agreement and for a minimum of ten (10) years after
17 termination and satisfaction of this Agreement, the complete
18 Administrative Record, post-ROD primary and secondary documents,
19 and annual reports. After this ten (10) year period, the Navy
20 shall notify U.S. EPA and Ecology at least forty-five (45) days
21 prior to the destruction or disposal of any such records or
22 documents.

23 16.2 Except for those records or documents that
24 are classified under federal law as privileged or exempt from
25 release under the Freedom of Information Act, 5 U.S.C. § 552, or
26 the Privacy Act, 5 U.S.C. § 552(a), upon request by U.S. EPA or
27

Ecology, the Navy shall make available any such records in its possession which relate in any way to the presence of hazardous wastes and constituents, hazardous substances, pollutants, and contaminants at the Site, or to the implementation of this Agreement, despite any document retention policy to the contrary.

XVII.

PUBLIC PARTICIPATION AND ADMINISTRATIVE RECORD

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

17.2 The Navy agrees it shall establish and maintain an Administrative Record(s) at or near SUBASE Bangor in accordance with Section 113(k) of CERCLA, 42 U.S.C. § 9613(k) and that a copy of this Agreement will be placed in the Administrative Record(s). The Administrative Record(s) developed by the Navy shall be periodically updated and a copy of each document included in the Administrative Record(s) will be provided, upon request, to U.S. EPA and Ecology.

17.3 The Navy shall implement a Community Relations Plan which responds to the need for an interactive relationship with all interested community elements, both on SUBASE Bangor and off, regarding environmental activities conducted pursuant to this Agreement by the Navy. The Parties

1 agree to comply with all relevant U.S. EPA policy and written
2 guidance on community relations programs which are in accordance
3 with CERCLA and consistent with the NCP.

4
5 XVIII.

6 CREATION OF DANGER/EMERGENCY ACTION

7 18.1 In the event U.S. EPA or Ecology determine
8 that activities or circumstances related to this Agreement are
9 creating a danger to the health or welfare of the people on the
10 Site or in the surrounding area or to the environment, U.S. EPA
11 or Ecology may require or order the Navy to stop such activities
12 for such period of time as the Project Managers determine is
13 needed to abate the danger. Any unilateral work stoppage for
14 longer than twenty-four (24) hours requires a written Notice of
15 Observation, or its equivalent.

16 18.2 In the event the Navy determines that
17 activities or circumstances related to this Agreement or any
18 other circumstances or activities at the Site are creating an
19 imminent and substantial endangerment to the people on the Site
20 or in the surrounding area or to the environment, the Navy may
21 stop such activities for such periods of time necessary for
22 U.S. EPA and Ecology to evaluate the situation and determine
23 whether the Navy should proceed with such activities or whether
24 the work stoppage should be continued until the danger is abated.
25 The Navy shall notify the Project Managers as soon as is
26 possible, but not later than twenty-four (24) hours after such

1 stoppage of work. Any unilateral work stoppage for longer than
2 twenty-four (24) hours requires a written Notice of Observation,
3 or its equivalent. If U.S. EPA, in consultation with Ecology,
4 disputes the Navy's determination, it may require the Navy to
5 resume work or activities under this Agreement.

6 18.3 If the U.S. EPA and Ecology concur in the
7 work stoppage by the Navy, or if U.S. EPA or Ecology require or
8 order a work stoppage, the Navy's obligations shall be suspended
9 and the time periods for performance of that work, as well as the
10 time period for any other work dependent upon the work which was
11 stopped, shall be extended, pursuant to Part XXV of this
12 Agreement.

13
14 XIX.

15 FIVE (5) YEAR REVIEW

16 19.1 Consistent with Section 121(c) of CERCLA,
17 42 U.S.C. § 9621(c), and in accordance with this Agreement, the
18 Parties will review remedial actions that allow hazardous
19 substances, pollutants, or contaminants to remain on-site no less
20 often than each five (5) years after the initiation of a final
21 remedial action to assure that human health and the environment
22 are being protected by the remedial action being implemented.
23 Upon the completion of such review, and in accordance with Part
24 XX of this Agreement, the Navy shall submit a report to U.S. EPA
25 and Ecology, including a recommendation as to whether additional
26 action or modification of the remedial action is appropriate in

1 accordance with Sections 104 or 106 of CERCLA, 42 U.S.C. §§ 9604
2 or 9606. The Parties shall determine the necessary remedial
3 actions or modifications, if any. In the event of dispute, the
4 final determination of additional remedial actions shall be by
5 the U.S. EPA Administrator in accordance with Part XXI of this
6 Agreement and the final decision by the Administrator shall not
7 be subject to further dispute by the Parties. The Navy shall
8 implement such additional or modified action as finally
9 determined.

10
11 XX.

12 CONSULTATION WITH U.S. EPA AND ECOLOGY

13 A. Applicability

14 20.1 The provisions of this Part establish the
15 procedures that shall be used by the Navy, U.S. EPA, and Ecology
16 to provide the Parties with appropriate notice, review, comment,
17 and response to comments regarding RI/FS and RD/RA documents,
18 specified herein as either primary or secondary documents. In
19 accordance with Section 120 of CERCLA, 42 U.S.C. § 9620, and
20 10 U.S.C. § 2705, the Navy will normally be responsible for
21 issuing primary and secondary documents to U.S. EPA and Ecology.
22 As of the effective date of this Agreement, all draft and final
23 reports for any deliverable document identified herein shall be
24 prepared, distributed, and subject to dispute in accordance with
25 Part XXI of this Agreement.

1 20.2 The designation of a document as "draft" or
2 "final" is solely for purposes of consultation with U.S. EPA and
3 Ecology in accordance with this Part. Such designation does not
4 affect the obligation of the Parties to issue documents, which
5 may be referred to herein as "final," to the public for review
6 and comment as appropriate and as required by law.

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

8 20.3 Primary documents include those reports that
9 are major, discrete portions of RI/FS or RD/RA activities.
10 Primary documents are initially issued by the Navy in draft
11 subject to review and comment by U.S. EPA and Ecology. Following
12 receipt of comments on a particular draft primary document, the
13 Navy will respond to the comments received and issue a draft
14 final primary document subject to dispute resolution. The draft
15 final primary document will become the final primary document
16 either thirty (30) days after the period established for review
17 of a draft final document if dispute resolution is not invoked or
18 as modified by decision of the dispute resolution process.

19 20.4 Secondary documents include those reports
20 that are discrete portions of the primary documents and are
21 typically input or feeder documents. Secondary documents are
22 issued by the Navy in draft subject to review and comment by
23 U.S. EPA and Ecology. Although the Navy will respond to comments
24 received, the draft secondary documents may be finalized in the
25 context of the corresponding primary documents. A secondary
26

document may be disputed at the time the corresponding draft final primary document is issued.

C. Primary Reports

20.5 The Navy shall complete and transmit draft reports for the following Operable Unit primary documents to U.S. EPA and Ecology for review and comment in accordance with the provisions of this Part:

(a) Scope of Work

(b) RI/FS Work Plan, including Sampling and Analysis Plan, QAPP, Community Relations Plan, Data Management Plan, and Health and Safety Plan

(c) RI/FS Report

(d) ROD

(e) Remedial Design

(f) Remedial Action Work Plan

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

D. Secondary Documents

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

(a) Site Characterization Summary

(b) RI Report with Baseline Risk Assessment

- (c) Initial Screening of Alternatives
- (d) Detailed Analysis of Alternatives
- (e) ARARs and TBC Evaluation
- (f) Treatability Study Work Plan, as needed
- (g) Treatability Studies Report, as needed
- (h) Sampling and Data Results
- (i) Technical Memorandum on Adjunct Sites
- (j) Proposed RA Plan

20.8 Although U.S. EPA and Ecology may comment on the draft reports for the secondary documents listed above, such documents shall not be subject to dispute resolution. Target dates shall be established for the completion and transmission of draft secondary reports pursuant to Part XXIV of this Agreement.

E. Meetings of the Project Managers on Development of Reports

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

F. Identification and Determination of Potential ARARs

20.10 For those primary reports or secondary documents that consist of or include ARAR determinations, prior

1 to the issuance of a draft report, the Project Managers shall
2 meet to identify and propose, to the best of their ability, all
3 potential ARARs pertinent to the report being addressed. Draft
4 ARAR determinations shall be prepared by the Navy in accordance
5 with Section 121(d)(2) of CERCLA, 42 U.S.C. § 9621(d)(2), the
6 NCP, and pertinent written guidance issued by U.S. EPA and
7 Ecology, which is not inconsistent with CERCLA and the NCP.

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

16 G. Review and Comment on Draft Reports

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

24 20.13 Unless the Parties mutually agree to another
25 time period, all draft reports shall be subject to a thirty (30)
26 day period for review and comment. The thirty (30) day period.

1 shall commence with receipt of the documents or the designated
2 deadline in Part XXIV, whichever is later. Review of any
3 document by U.S. EPA or Ecology may concern all aspects of the
4 report (including completeness) and should include, but is not
5 limited to, technical evaluation of any aspect of the document,
6 and consistency with CERCLA, the NCP, and any pertinent written
7 guidance or policy issued by U.S. EPA or Ecology. Comments by
8 U.S. EPA and Ecology shall be provided with adequate specificity
9 so that the Navy may respond to the comments and, if appropriate,
10 make changes to the draft report. Comments shall refer to any
11 pertinent sources of authority or references upon which the
12 comments are based, and, upon request of the Navy, U.S. EPA and
13 Ecology shall provide a copy of the cited authority or reference.
14 In cases involving complex or unusually lengthy reports, U.S. EPA
15 and Ecology may extend the thirty (30) day comment period for an
16 additional twenty (20) days by written notice to the Navy prior
17 to the end of the thirty (30) day period. In appropriate
18 circumstances, the time period may be further extended in
19 accordance with Part XXV. On or before the close of the comment
20 period, U.S. EPA and Ecology shall transmit by next day mail
21 their written comments to the Navy.

22 20.14 Representatives of the Navy shall make
23 themselves readily available to U.S. EPA and Ecology during the
24 comment period for purposes of informally responding to questions
25 and comments on draft reports. Oral comments made during such
26
27

1 discussions need not be the subject of a written response by the
2 Navy on the close of the comment period.

3 20.15 In commenting on a draft report which
4 contains a proposed ARAR determination, U.S. EPA and Ecology
5 shall include a reasoned statement of whether they object to any
6 portion of the proposed ARAR determination. To the extent that
7 U.S. EPA and Ecology do object, they shall explain the basis for
8 their objection in detail and shall identify any ARARs which they
9 believe were not properly addressed in the proposed ARAR
10 determination.

11 20.16 Following the close of the comment period for
12 a draft report, the Navy shall give full consideration to all
13 written comments on the draft report submitted during the comment
14 period. Within thirty (30) days of the close of the comment
15 period on a draft secondary report, the Navy shall transmit to
16 U.S. EPA and Ecology its written response to comments received
17 within the comment period. Within thirty (30) days of the close
18 of the comment period on a draft primary report, the Navy shall
19 transmit to U.S. EPA and Ecology a draft final primary report,
20 which shall include the Navy's response to all written comments
21 received within the comment period. While the resulting draft
22 final report shall be the responsibility of the Navy, it shall be
23 the product of consensus to the maximum extent possible.

24 20.17 The Navy may extend the thirty (30) day
25 period for either responding to comments on a draft report or for
26 issuing the draft final primary report for an additional twenty

1 (20) days by providing notice to U.S. EPA and Ecology. In
2 appropriate circumstances, this time period may be further
3 extended in accordance with Part XXV.

4 H. Availability of Dispute Resolution for
5 Draft Final Primary Documents

6 20.18 Dispute resolution shall be available to the
7 Parties for draft final primary reports as set forth in Part XXI.

8 20.19 When dispute resolution is invoked on a draft
9 primary report, work may be stopped in accordance with the
10 procedures set forth in Part XXI regarding dispute resolution.

11 I. Finalization of Reports

12 20.20 The draft final primary report shall serve as
13 the final primary report if no Party invokes dispute resolution
14 regarding the document or, if invoked, at completion of the
15 dispute resolution process should the Navy's position be
16 sustained. If the Navy's determination is not sustained in the
17 dispute resolution process, the Navy shall prepare, within not
18 more than thirty-five (35) days, a revision of the draft final
19 report which conforms to the results of dispute resolution. In
20 appropriate circumstances, the time period for this revision
21 period may be extended in accordance with Part XXV hereof.

22 J. Subsequent Modifications of Final Reports

23 20.21 Following finalization of any primary report
24 pursuant to Paragraph 20.20 above, U.S. EPA, Ecology, or the Navy
25 may seek to modify the report, including seeking additional field
26 work, pilot studies, computer modeling, or other supporting

1 technical work, only as provided in Paragraphs 20.22 and 20.23
2 below.

3 20.22 U.S. EPA, Ecology, or the Navy may seek to
4 modify a report after finalization if it determines, based on new
5 information (i.e., information that became available, or
6 conditions that became known, after the report was finalized)
7 that the requested modification is necessary. U.S. EPA, Ecology,
8 or the Navy may seek such a modification by submitting a concise
9 written request to the Project Managers of the other Parties.
10 The request shall specify the nature of the requested
11 modification and how the request is based on new information.

12 20.23 In the event that a consensus is not reached
13 by the Project Managers on the need for a modification, either
14 U.S. EPA, Ecology, or the Navy may invoke dispute resolution to
15 determine if such modification shall be conducted. Modification
16 of a report shall be required only upon a showing that: (1) the
17 requested modification is based on significant new information,
18 and (2) the requested modification could be of significant
19 assistance in evaluating impacts on the public health or the
20 environment, in evaluating the selection of remedial
21 alternatives, or in protecting human health and the environment.

22 20.24 Nothing in this Subpart shall alter
23 U.S. EPA's or Ecology's ability to request the performance of
24 additional work which was not contemplated by this Agreement.
25 The Navy's obligation to perform such work must be established by
26

1 either a modification of a report or document or by amendment to
2 this Agreement.

4 XXI.

5 RESOLUTION OF DISPUTES

6 21.1 Except as specifically set forth elsewhere in
7 this Agreement, if a dispute arises under this Agreement, the
8 procedures of this Part shall apply. All Parties to this
9 Agreement shall make reasonable efforts to informally resolve
10 disputes at the Project Manager or immediate supervisor level.
11 If resolution cannot be achieved informally, the procedures of
12 this Part shall be implemented to resolve a dispute.

13 21.2 Within thirty (30) days after: (1) the period
14 established for review of a draft final primary document pursuant
15 to Parts XX and XXIV of this Agreement; or (2) any action which
16 leads to or generates a dispute, the disputing Party shall submit
17 to the Dispute Resolution Committee ("DRC") a written statement
18 of dispute setting forth the nature of the dispute, the work
19 affected by the dispute, the disputing Party's position with
20 respect to the dispute and the technical, legal, or factual
21 information the disputing Party is relying upon to support its
22 position.

23 21.3 Prior to any Party's issuance of a written
24 statement of dispute, the disputing Party shall engage the other
25 Party in informal dispute resolution among the Project Managers
26 and/or their immediate supervisors. During this informal dispute

1 resolution period the Parties shall meet as many times as are
2 necessary to discuss and attempt resolution of the dispute.

3 21.4 The DRC will serve as a forum for resolution
4 of disputes for which agreement has not been reached through
5 informal dispute resolution. The Parties shall each designate
6 one individual and an alternate to serve on the DRC. The
7 individuals designated to serve on the DRC shall be employed at
8 the policy level (SES or equivalent) or be delegated the
9 authority to participate on the DRC for the purposes of dispute
10 resolution under this Agreement. The U.S. EPA representative on
11 the DRC is the Hazardous Waste Division Director ("Division
12 Director") of U.S. EPA's Region 10. The Navy's designated member
13 is the Officer in charge of Construction Northwest, Western
14 Division Naval Facilities Engineering Command
15 ("WESTNAVFACENGCOM"). Ecology's designated member is the Ecology
16 Program Manager for Hazardous Waste Investigation and Cleanup
17 ("HWIC"). Written notice of any delegation of authority from a
18 Party's designated representative on the DRC shall be provided to
19 all other Parties.

20 21.5 Following elevation of a dispute to the DRC,
21 the DRC shall have twenty-one (21) days to unanimously resolve
22 the dispute and issue a written decision. If the DRC is unable to
23 unanimously resolve the dispute within this twenty-one (21) day
24 period, the written statement of dispute shall be forwarded to
25 the Senior Executive Committee ("SEC") for resolution, within
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1 seven (7) days after the close of the twenty-one (21) day
2 resolution period.

3 21.6 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 U.S. EPA's Region 10. The Navy's
7 representative on the SEC is the Commander, WESTNAVFACENGCOM.
8 Ecology's representative on the SEC is the Assistant Director for
9 Waste Management. The SEC members shall, as appropriate, confer,
10 meet, and exert their best efforts to resolve the dispute and
11 issue a written decision. If unanimous resolution of the dispute
12 is not reached within twenty-one (21) days, U.S. EPA's Regional
13 Administrator shall issue a written position on the dispute. The
14 Navy or Ecology may, within fourteen (14) days of the Regional
15 Administrator's issuance of U.S. EPA's position, issue a written
16 notice elevating the dispute to the Administrator of U.S. EPA for
17 resolution in accordance with all applicable laws and procedures.
18 In the event that the Navy or Ecology elect not to elevate the
19 dispute to the Administrator within the designated fourteen (14)
20 day escalation period, the Navy and/or Ecology shall be deemed to
21 have agreed with the Regional Administrator's written position
22 with respect to the dispute.

23 21.7 Upon escalation of a dispute to the
24 Administrator of U.S. EPA pursuant to Subparagraph 21.6, the
25 Administrator will review and resolve the dispute within
26 twenty-one (21) days. Upon request, and prior to resolving the

1 dispute, the U.S. EPA Administrator shall meet and confer with
2 the Navy's Secretariat Representative and a representative from
3 Ecology to discuss the issue(s) under dispute. The Administrator
4 will provide notice to all Parties of any Party's request to meet
5 or confer with respect to any such dispute and will provide an
6 adequate opportunity for all Parties to participate in any
7 meeting or conference convened to resolve such dispute. Upon
8 resolution, the Administrator shall provide the Navy and Ecology
9 with a written final decision setting forth resolution of the
10 dispute. The duties of the Administrator set forth in this Part
11 shall not be delegated.

12 21.8 The pendency of any dispute under this Part
13 shall not affect the Navy's responsibility for timely performance
14 of the work required by this Agreement, except that the time
15 period for completion of work affected by such dispute shall be
16 extended for a period of time usually not to exceed the actual
17 time taken to resolve any good faith dispute in accordance with
18 the procedures specified herein. All elements of the work
19 required by this Agreement which are not affected by the dispute
20 shall continue and be completed in accordance with the applicable
21 schedule.

22 21.9 When dispute resolution is in progress, work
23 affected by the dispute will immediately be discontinued if the
24 Division Director for U.S. EPA's Region 10 or Ecology request, in
25 writing, that work related to the dispute be stopped because, in
26 U.S. EPA's or Ecology's opinion, such work is inadequate or

1 defective, and such inadequacy or defect is likely to yield an
2 adverse effect on human health or the environment, or is likely
3 to have a substantial adverse effect on the remedy selection or
4 implementation process. To the extent possible, U.S. EPA and
5 Ecology shall consult with all Parties prior to initiating a work
6 stoppage request. After stoppage of work, if the Navy believes
7 that the work stoppage is inappropriate or may have potential
8 significant adverse impacts, the Navy may meet with the U.S. EPA
9 Division Director and Ecology equivalent to discuss the work
10 stoppage. Following this meeting, and further consideration of
11 the issues, the U.S. EPA Division Director will issue, in
12 writing, a final decision with respect to the work stoppage. The
13 final written decision of the U.S. EPA Division Director may
14 immediately be subjected to formal dispute resolution. Such
15 dispute may be brought directly to either the DRC or the SEC,
16 at the discretion of the Navy or Ecology.

17 21.10 Within twenty-one (21) days of resolution of
18 a dispute pursuant to the procedures specified in this Part, the
19 Navy shall incorporate the resolution and final determination
20 into the appropriate plan, schedule, or procedures, and proceed
21 to implement this Agreement according to the amended plan,
22 schedule, or procedures.

23 21.11 Resolution of a dispute pursuant to this Part
24 of the Agreement constitutes a final resolution of that dispute
25 arising under this Agreement. All Parties shall abide by all
26

1 terms and conditions of any final resolution of dispute obtained
2 pursuant to this Part of this Agreement.

4 XXII.

5 ENFORCEABILITY

6 22.1 The Parties agree that:

7 (a) Upon its effective date, this Agreement is
8 enforceable by any person pursuant to Section 310 of CERCLA,
9 42 U.S.C. § 9659, and any violation of such standard, regulation,
10 condition, requirement, or order contained herein will be subject
11 to civil penalties under Sections 310(c) and 109 of CERCLA,
12 42 U.S.C. §§ 9659 and 9609;

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

18 (c) All terms and conditions of this Agreement which
19 relate to interim or final remedial actions, including
20 corresponding timetables, deadlines, or schedules, and all work
21 associated with the interim or final remedial actions, shall be
22 enforceable by any person pursuant to Section 310(c) of CERCLA,
23 42 U.S.C. § 9659(c), and any violation of such terms and
24 conditions will be subject to civil penalties under Sections
25 310(c) and 109 of CERCLA, 42 U.S.C. §§ 9659 and 9609; and
26

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

8 22.2 Nothing in this Agreement shall be construed
9 as authorizing any person to seek judicial review of any action
10 or work where review is barred by any provision of CERCLA,
11 including Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

12 22.3 The Parties agree that all Parties shall have
13 the right to enforce the terms of this Agreement.

14 XXIII.

15 STIPULATED PENALTIES

16 23.1 In the event that the Navy fails to submit a
17 primary document to U.S. EPA and Ecology pursuant to the
18 appropriate timetable or deadline in accordance with the
19 requirements of this Agreement, or fails to comply with a term or
20 condition of this Agreement which relates to an interim or final
21 remedial action, U.S. EPA may assess, after consultation with
22 Ecology, a stipulated penalty against the Navy. A stipulated
23 penalty may be assessed in an amount not to exceed five thousand
24 dollars (\$5,000) for the first week (or part thereof), and ten
25 thousand dollars (\$10,000) for each additional week (or part
26 thereof) for which a failure set forth in this Paragraph occurs.

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

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

- (a) The facility responsible for the failure;
- (b) A statement of the facts and circumstances giving rise to the failure;
- (c) A statement of any administrative or other corrective action taken at the relevant facility, or a statement of why such measures were determined to be inappropriate;

(d) A statement of any additional action taken by or at the facility to prevent recurrence of the same type of failure; and

(e) The total dollar amount of the stipulated penalty assessed for the particular failure.

23.4 Stipulated penalties assessed pursuant to this Part shall be payable to the Hazardous Substances Response Trust Fund only in the manner and to the extent expressly provided for in Acts authorizing funds for, and appropriations to, DOD.

23.5 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.

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

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

XXIV.

DEADLINES

24.1 The deadlines for submittal, pursuant to this Agreement, of the RI/FS Work Plan for each operable unit are as follows:

| OPERABLE UNIT | HAZARDOUS WASTE AREAS | RI/FS WORK PLAN |
|------------------|--|--------------------|
| 1 | A | submitted |
| 2 | F | 1/30/90 |
| 3 | 24, 25, 16 | 5/31/90 |
| 4 | C | 6/29/90 |
| 5 | E, F, 11 | 7/31/90 |
| 6 | D | 8/31/90 |
| 7 | Hood Canal Sediments | 10/31/90 |
| 8 | B, 4 | 10/31/90 |
| 9 | 2, 10, 18, B-1014, B-1032, PW Garage, Railroad Tracks | 11/30/90 |
| 10 | 7 | 12/28/90 |

24.2 The Navy shall submit the draft RI/FS Report for each operable unit within five hundred and forty (540) days after the final RI/FS Work Plan becomes effective.

24.3 The Navy shall submit the draft ROD for each operable unit within one hundred and twenty (120) days after the final RI/FS Report becomes effective.

24.4 The Project Managers shall amend this Part to provide deadlines for any new operable units, such as the Naval Undersea Warfare Engineering Station Ordnance Annex, which are not identified above.

24.5 The final deadlines established in this Part shall be published by U.S. EPA, in conjunction with Ecology.

1 24.6 Within twenty-one (21) days of issuance of
2 the ROD(s), the Navy shall propose deadlines for submittal of
3 draft secondary documents for each operable unit, and completion
4 of the following draft primary documents:

5 (a) RD Report

6 (b) RA Work Plan

7 24.7 Within fifteen (15) days of receipt,
8 U.S. EPA, in conjunction with Ecology, shall review and provide
9 comments to the Navy regarding the deadlines proposed in
10 Paragraphs 24.4 and 24.6. Within fifteen (15) days following
11 receipt of the comments the Navy shall, as appropriate, make
12 revisions and reissue the proposal. The Parties shall meet as
13 necessary to discuss and finalize the proposed deadlines. If the
14 Parties agree on proposed deadlines, the finalized deadlines
15 shall be incorporated into the appropriate Work Plans. If the
16 Parties fail to agree within thirty (30) days on the proposed
17 deadlines, the matter shall immediately be submitted for dispute
18 resolution pursuant to Part XXI of this Agreement.

19 24.8 The deadlines set forth in this Part, or to
20 be established as set forth in this Part, may be extended
21 pursuant to Part XXV of this Agreement. The Parties recognize
22 that one possible basis for extension of the deadlines for
23 completion of the Remedial Investigation and Feasibility Study
24 Reports is the identification of significant new conditions
25 during the performance of the Remedial Investigation.

XXV.

EXTENSIONS

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

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

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

- (a) An event of force majeure;
- (b) A delay caused by another Party's failure to meet any requirement of this Agreement;
- (c) A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;
- (d) A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule; and
- (e) Any other event or series of events mutually agreed to by the Parties as constituting good cause.

25.3 Absent agreement of the Parties with respect to the existence of good cause, the Navy may seek and obtain a

determination through the dispute resolution process that good cause exists.

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

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

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

25.7 A timely and good faith request for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected timetable and deadline or schedule until a decision is reached on whether the requested extension will be approved. If dispute resolution

1 is invoked and the requested extension is denied, stipulated
2 penalties may be assessed and may accrue from the date of the
3 original timetable and deadline or schedule. Following the grant
4 of an extension, an assessment of stipulated penalties or an
5 application for judicial enforcement may be sought only to compel
6 compliance with the timetable and deadline or schedule as most
7 recently extended.

8
9 XXVI.

10 FORCE MAJEURE

11 26.1 Force Majeure shall mean any event arising
12 from causes beyond the control of a Party that causes a delay in
13 or prevents the performance of any obligation under this
14 Agreement, including, but not limited to:

15 a. acts of God; fire, war; insurrection; civil
16 disturbance; or explosion;

17 b. unanticipated breakage or accident to machinery,
18 equipment, or lines of pipe despite reasonably diligent
19 maintenance;

20 c. adverse weather conditions that could not be
21 reasonably anticipated, or unusual delay in transportation;

22 d. restraint by court order or order of public
23 authority;

24 e. inability to obtain, at a reasonable cost and after
25 exercise of reasonable diligence, any necessary authorizations,
26

1 approvals, permits, or licenses due to action or inaction of any
2 governmental agency or authority other than the Navy;

3 f. delays caused by compliance with applicable
4 statutes or regulations governing contracting, procurement, or
5 acquisition procedures, despite the exercise of reasonable
6 diligence; and

7 g. insufficient availability of appropriated funds, if
8 the Navy shall have made timely request for such funds as part of
9 the budgetary process as set forth in Part XXVII of this
10 Agreement. If such an event occurs, Ecology may exercise its
11 rights as provided in Paragraph 27.6, but U.S. EPA shall be bound
12 by this Force Majeure and shall not assess stipulated penalties.

13 26.2 Force Majeure shall also include any strike or
14 other labor dispute, whether or not within the control of the
15 Parties affected thereby. Force Majeure shall not include
16 increased costs or expenses of response actions, whether or not
17 anticipated at the time such response actions were initiated.

18 26.3 Any claim of Force Majeure shall be subject to
19 dispute resolution and, where applicable, to the limitations of
20 Paragraph 27.6.

21 XXVII.

22 FUNDING

23 27.1 It is the expectation of the Parties to this
24 Agreement that all obligations of the Navy arising under this
25 Agreement will be fully funded. The Navy agrees to seek
26

1 sufficient funding through the DOD budgetary process to fulfill
2 its obligations under this Agreement.

3 27.2 In accordance with Section 120(e)(5)(B) of
4 CERCLA, 42 U.S.C. § 9620(e)(5)(B), the Navy shall provide to DOD
5 for its annual report to Congress the specific cost estimates and
6 budgetary proposals associated with the implementation of this
7 Agreement.

8 27.3 Funds authorized and appropriated annually by
9 Congress under the "Environmental Restoration, Defense"
10 appropriation in the U.S. Department of Defense Appropriation Act
11 and allocated by the DASD(E) to the Navy will be the source of
12 funds for activities required by this Agreement consistent with
13 Section 211 of SARA, 10 U.S.C. Chapter 160. However, should the
14 Environmental Restoration, Defense appropriation be inadequate in
15 any year to meet the total Navy CERCLA implementation
16 requirements, DOD shall employ and the Navy shall follow a
17 standardized DOD prioritization process which allocates that
18 year's appropriations in a manner which maximizes the protection
19 of human health and the environment. A standardized DOD
20 prioritization model shall be developed and utilized with the
21 assistance of U.S. EPA and Ecology.

22 27.4 Any requirement for the payment or obligation
23 of funds, including stipulated penalties, by the Navy established
24 by the terms of this Agreement shall be subject to the
25 availability of appropriated funds, and no provision herein shall
26 be interpreted to require obligation or payment of funds in

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

6 27.5 If appropriated funds are not available to
7 fulfill the Navy's obligations under this Agreement, U.S. EPA and
8 Ecology reserve the right to initiate an action against any other
9 person or to take any response action which would be appropriate
10 absent this Agreement.

11 27.6 The Navy maintains that any requirement for
12 the payment or obligation of funds under this Agreement is
13 subject to the availability of appropriated funds, and that the
14 unavailability of such funds constitutes a valid defense to any
15 judicial action that might be brought to enforce the terms of
16 this Agreement. Notwithstanding Paragraphs 27.1, 27.2, 27.3,
17 27.4, and 27.5 above, Ecology does not agree that lack of
18 appropriation or funding constitutes a valid defense to
19 performance by the Navy. However, the Parties agree and
20 stipulate that it is premature to raise and adjudicate the
21 validity of such a defense at this time. If sufficient funds are
22 not available to fulfill the Navy's obligations under this
23 Agreement, the Parties shall meet to discuss the funding
24 shortfall, the ways of resolving it, and whether it is
25 appropriate to adjust the deadlines set forth pursuant to Part
26 XXIV affected by the funding shortfall. Any Party may elevate

1 the issue(s) directly to the SEC for resolution. Six (6) months
2 following the failure of the Navy to meet a deadline because of
3 lack of funding, Ecology shall have the right to seek judicial
4 enforcement of this Agreement. This Paragraph is not subject to
5 Part XXI, but does not exclude the consensual use of Part XXV.
6 Acceptance of this Paragraph 27.6 does not constitute a waiver by
7 the Navy of the applicability of any appropriate provisions of
8 the Anti-Deficiency Act, 31 U.S.C. § 1341, to the terms of this
9 Agreement.

10 XXVIII.

11 RECOVERY OF EXPENSES

12 28.1 The Navy and U.S. EPA agree to amend this
13 Part at a later date in accordance with any subsequent resolution
14 of the currently contested issue of cost reimbursement.

15 28.2 The Navy agrees to request funding and
16 reimburse Ecology, subject to the conditions and limitations set
17 forth in this Part; and subject to Part XXVII, for all reasonable
18 costs it incurs in providing services in direct support of the
19 Navy's environmental restoration activities at the Site pursuant
20 to this Agreement.

21 28.3 Reimbursable expenses shall consist only of
22 actual expenditures required to be made and actually made by
23 Ecology in providing the following assistance to the Navy:

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

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

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

8 (d) Support and assistance to the Navy in the conduct
9 of public participation activities in accordance with federal and
10 state requirements for public involvement;

11 (e) Participation in the review and comment functions
12 of the Navy Technical Review Committees; and

13 (f) Other services specified in this Agreement.

14 28.4 Within ninety (90) days after the end of each
15 quarter of the federal fiscal year, Ecology shall submit to the
16 Navy an accounting of all state costs actually incurred during
17 that quarter in providing direct support services under this
18 Part. Such accounting shall be accompanied by cost summaries and
19 be supported by documentation which meets federal auditing
20 requirements. The summaries will set forth employee hours and
21 other expenses by major type of support service. All costs
22 submitted must be for work directly related to implementation of
23 this Agreement and not inconsistent with either the NCP or the
24 requirements described in OMB Circulars A-87 (Cost Principles for
25 State and Local Governments), A-128 (Audits for State and Local
26 Cooperative Agreements with State and Local Governments), and

Standard Forms 424 and 270. The Navy has the right to audit cost reports used by Ecology to develop the cost summaries. Before the beginning of each fiscal year, Ecology shall supply a budget estimate of what it plans to do in the next year in the same level of detail as the 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, the Navy shall reimburse Ecology in the amount set forth in the accounting.

28.6 In the event the Navy 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 the Navy to Ecology for oversight activities shall not exceed \$241,850.00 during the lifetime of this Agreement and not more than \$60,463.00 during any single fiscal year. Either the Navy or Ecology may request, on the basis of significant upward or downward revisions in the Navy estimate of its total lifetime costs through construction used above, a renegotiation of the Cap. Failing an agreement, either the Navy or Ecology may initiate dispute resolution in accordance with Paragraph 28.9. Circumstances could arise whereby fluctuations in the Navy estimates or actual final costs through the construction of the final remedial action creates a situation where Ecology receives

1 reimbursement in excess of the estimated amount of these costs.
2 Under these circumstances, Ecology remains entitled to payment
3 for services rendered prior to the completion of a new estimate
4 if the services are within the ceiling applicable under the
5 previous estimate. This negotiated reimbursement amount reflects
6 the judgment of the Navy and Ecology that:

7 (a) Funding of support services must be constrained so
8 as to avoid unnecessary diversion of the limited Defense
9 Environmental Restoration Account funds available for the overall
10 cleanup; and

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

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

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

1 (a) The Navy 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 the Navy and Ecology Project Managers are unable
5 to resolve a dispute, the matter shall be referred to the
6 Commander, WESTNAVFACENGCOM, or his 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 Commander, WESTNAVFACENGCOM, 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 Deputy Director,
16 Environmental Conservation Policy, Office of the Assistant
17 Secretary of the Navy (S&L).

18 (d) In the event the Director, Washington Department
19 of Ecology, and the Deputy Director, Environmental Conservation
20 Policy, Office of the Assistant Secretary of the Navy (S&L), are
21 unable to resolve a dispute, Ecology retains any legal and
22 equitable remedies it may have to recover its expenses. In
23 addition, Ecology may withdraw from this Agreement by giving
24 ninety (90) days notice to the other Parties.

25 28.10 Nothing herein shall be construed to limit
26 the ability of the Navy to contract with Ecology for technical

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

- 3 (a) Identification, investigation, and cleanup of any
4 contamination beyond the boundaries of SUBASE
Bangor;
- 5 (b) Laboratory analysis; or
- 6 (c) Data collection for field studies.

7
8 28.11 The Navy and Ecology agree that the terms and
9 conditions of this Part shall become null and void when Ecology
10 enters into a Defense/State Memorandum of Agreement ("DSMOA")
11 with DOD which addresses Ecology reimbursement.

12
13 XXIX.

14 OTHER CLAIMS

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

24 29.2 The U.S. EPA and Ecology shall not be held as
25 a Party to any contract entered into by the Navy to implement the
26 requirements of this Agreement.

1 29.3 The Navy shall notify the appropriate federal
2 and state natural resource trustees as required by Section
3 104(b)(2) of CERCLA, 42 U.S.C. § 9604(e), and Section 2(e)(2) of
4 Executive Order 12580. The Navy is not released from any claim
5 for damages for liability to destruction of, or loss of, natural
6 resources.

7 29.4 This Agreement shall not restrict the Parties
8 from taking any legal or response action for any matter not
9 specifically part of the work covered by this Agreement.

10
11 XXX.

12 OTHER APPLICABLE LAWS

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

18
19 XXXI.

20 CONFIDENTIAL INFORMATION

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

1 be confidential by U.S. EPA pursuant to 40 C.F.R. Part 2 shall be
2 afforded the protection specified therein and such information
3 shall be treated by Ecology as confidential to the extent
4 permitted by state law. If Ecology is unable to afford the
5 confidentiality protection, the Navy is not required to submit
6 the data to Ecology. If no claim of confidentiality accompanies
7 the information when it is submitted to either regulatory agency,
8 the information may be made available to the public without
9 further notice to the Navy.

10
11 XXXII. TRANSFER OF PROPERTY

12 32.1 Conveyance of title, easement, or other
13 interest in the Site shall be in accordance with Section 120(h)
14 of CERCLA, 42 U.S.C. § 9620(h), and shall notify U.S. EPA and
15 Ecology of any such transfer at least ninety (90) days prior to
16 such transfer.

17 XXXIII.

18 AMENDMENT OF AGREEMENT

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

1 XXXIV.

2 SEVERABILITY

3 34.1 If any provision of this Agreement is ruled
4 invalid, illegal, or unconstitutional, the remainder of the
5 Agreement shall not be affected by such ruling.
6

7 XXXV.

8 RESERVATION OF RIGHTS

9 35.1 Ecology reserves the right to issue orders
10 and/or penalties pursuant to available statutory authority, or to
11 take any other enforcement action allowable by law, under the
12 following circumstances:

- 13 (a) In the event or upon the discovery of a release or
14 threatened release not addressed by this Agreement
15 and which the Parties choose not to address by
16 modification of this Agreement;
- 17 (b) Upon Ecology's determination that action beyond
18 the terms of this Agreement is necessary to abate
19 an emergency situation which threatens the public
20 health or the environment; or
- 21 (c) Upon the occurrence or discovery of a situation
22 beyond the scope of this Agreement, to which
23 Ecology would be empowered to take an enforcement
24 action and which the Parties choose not to address
25 by modification of this Agreement.
26

1 35.2 The Navy reserves all of its rights to
2 contest any enforcement action brought under this Paragraph.

4 XXXVI.

5 TERMINATION

6 36.1 The provisions of this Agreement shall be
7 deemed satisfied and terminated upon receipt by the Navy of
8 written notice from U.S. EPA and Ecology that the Navy has
9 demonstrated, to the satisfaction of U.S. EPA and Ecology, that
10 all the terms of this Agreement have been completed.

11 36.2 Upon a showing of satisfaction of this
12 Agreement, the Navy may request that U.S. EPA and Ecology
13 terminate this Agreement.

15 XXXVII.

16 EFFECTIVE DATE

17 37.1 This Agreement is effective upon signature by
18 all the Parties to this Agreement.

Signature sheet for the foregoing Federal Facility
Agreement for U.S. Naval Submarine Base Bangor among the
U.S. Environmental Protection Agency, the U.S. Department of the
Navy, and the Washington State Department of Ecology.

Nancy S. Stehle
NANCY STEHLE
Deputy Director (Environment)
Office of the Assistant Secretary
of the Navy (S&L)

January 29, 1990
Date


Represented By:

Judy A. Conlow, Esq.
Alison D. Ling, Esq.

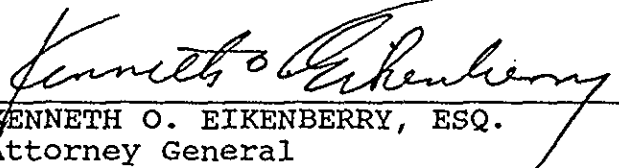
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Signature sheet for the foregoing Federal Facility Agreement for U.S. Naval Submarine Base Bangor among the U.S. Environmental Protection Agency, the U.S. Department of the Navy, and the Washington State Department of Ecology.


CHRISTINE O. GREGOIRE
Director
Department of Ecology
State of Washington

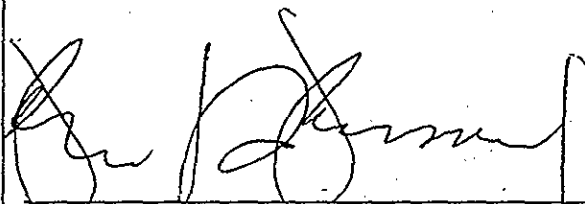
1/25/90
Date


KENNETH O. EIKENBERRY, ESQ.
Attorney General
State of Washington

1/29/90
Date

Represented by:
Jay Manning, Esq.

Signature sheet for the foregoing Federal Facility
Agreement for U.S. Naval Submarine Base Bangor among the
U.S. Environmental Protection Agency, the U.S. Department of the
Navy, and the Washington State Department of Ecology.



ROBIE G. RUSSELL
Regional Administrator, Region 10
U.S. Environmental Protection Agency

Jan 29, 1990
Date

Represented By:

Monica Kirk, Esq.

January 29, 1990