

Attest: Carolyn J. Glover

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, ) FEDERAL FACILITY AGREEMENT  
Naval Underseas Warfare ) UNDER CERCLA SECTION 120  
Engineering Station, )  
Keyport, Washington ) Administrative Docket Number:  
1088-08-21-120

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

I.

JURISDICTION

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

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

1 Sections 6001, 3008(h), and 3004(u) and (v) of RCRA, 42 U.S.C. §§  
2 6961, 6928(h), and 6924(u) and (v); Executive Order 12580; the  
3 National Environmental Policy Act, 42 U.S.C. § 4321 et seq.; and  
4 the Defense Environmental Restoration Program ("DERP"), 10 U.S.C.  
5 § 2701 et seq.;

6 1.4 The Navy enters into those portions of this  
7 Agreement that relate to interim remedial actions and final  
8 remedial actions pursuant to Section 120(e)(2) of CERCLA,  
9 42 U.S.C. § 9620(e)(2); Sections 6001, 3008(h), and 3004(u) and  
10 (v) of RCRA, 42 U.S.C. §§ 6961, 6928(h), and 6924(u) and (v);  
11 Executive Order ("Exec. Order") 12580, and the DERP.

12 1.5 The State of Washington Department of Ecology  
13 ("Ecology") enters into this Agreement pursuant to Sections 107,  
14 120(e)(2), 120(f), and 121(f) of CERCLA, 42 U.S.C. §§ 9607,  
15 9620(e)(2), 9620(f), and 9621(f), and Titles 70 and 43 of the  
16 revised Code of Washington ("RCW").

## 17 18 II.

### 19 DEFINITIONS

20 2.1 The terms used in this Agreement shall have  
21 the same definition as the terms defined in Section 101 of  
22 CERCLA, 42 U.S.C. § 9601, and the National Oil and Hazardous  
23 Substances Pollution Contingency Plan ("NCP"), 40 CFR Part 300.  
24 In addition:

25 (a) "Agreement" shall mean this document and shall  
26 include all Attachments to this document. All such Attachments

1 shall be appended to and are an integral and enforceable part of  
2 this document;

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

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

8 (d) "CERCLA" shall mean the Comprehensive  
9 Environmental Response, Compensation, and Liability Act,  
10 42 U.S.C. § 9601 et seq., as amended by the Superfund Amendments  
11 and Reauthorization Act of 1986, Pub. L. 99-499, or as further  
12 amended;

13 (e) "Days" shall mean calendar days, unless otherwise  
14 specified. In computing any period of time prescribed or allowed  
15 by this Agreement, the day of the act, event, or default from  
16 which the designated period of time begins to run shall not be  
17 included. The last day of the period so computed shall be  
18 included, unless it is a Saturday, Sunday, or a federal or state  
19 holiday, in which event the period runs until the next day which  
20 is not a Saturday, Sunday, or federal holiday;

21 (f) "Ecology" shall mean the State of Washington, as  
22 represented by the Department of Ecology, its employees, and  
23 authorized representatives;

24 (g) "Interim Remedial Actions" or "IRA" shall mean all  
25 discrete response actions implemented prior to a final remedial  
26 action which are taken to prevent or minimize the release of

1 hazardous substances, pollutants, or contaminants so that they do  
2 not migrate or endanger public health, welfare, or the  
3 environment. All interim remedial actions shall be undertaken in  
4 accordance with 40 C.F.R. Part 300, as amended, and with the  
5 requirements of CERCLA;

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

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

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

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

15 (l) "Parties" shall mean the Navy, U.S. EPA, and  
16 Ecology;

17 (m) "RCRA" shall mean the Resource Conservation and  
18 Recovery Act, 42 U.S.C. § 6901 et seq., as amended by the  
19 Hazardous and Solid Waste Amendments of 1984 ("HSWA"), Pub. L.  
20 98-616, or as further amended;

21 (n) "Site" shall mean the Naval Underseas Warfare  
22 Engineering Station at Keyport ("NUWES Keyport") facility, which  
23 covers approximately two hundred (200) acres near Keyport, Kitsap  
24 County, Washington, and any off-base contiguous area contaminated  
25 by the migration of hazardous substances, pollutants, or  
26 contaminants from NUWES Keyport;

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

4 (p) "Work Plan" shall mean the RI/FS Management Plan  
5 or RI/FS Work Plan and the RA Work Plan, incorporated herein by  
6 reference, which are to be prepared in accordance with the Office  
7 of Solid Waste and Emergency Response ("OSWER") Directives  
8 9355.3-01 (October 1988) and 9355.0-4A (June 1986), and the NCP.  
9 The RI/FS Work Plan shall include the Sampling and Analysis Plan,  
10 QAPP, Community Relations Plan, Data Management Plan, and Health  
11 and Safety Plan.

12 III.

13 PURPOSE

14 3.1 The general purposes of this Agreement are  
15 to:

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

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

25 (c) Facilitate cooperation, exchange of information,  
26 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 cooperation among the Parties in identifying IRA alternatives prior to selection of final IRA(s);

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

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

(d) Implement the selected interim and final remedial



1 action(s) in accordance with CERCLA and meet the requirements of  
2 Section 120(e)(2) of CERCLA, 42 U.S.C. § 6920(e)(2), for an  
3 interagency Agreement between U.S. EPA and the Navy;

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

7 (f) Coordinate response actions at the Site with the  
8 mission and support activities at NUWES Keyport;

9 (g) Expedite the cleanup process to the extent  
10 consistent with protection of human health and the environment;  
11 and

12 (h) Identify removal actions which are appropriate to  
13 the Site and provide timely notice to the other Parties of these  
14 proposed actions.

15  
16 IV.

17 PARTIES BOUND

18 4.1 This Agreement is entered into by the Parties  
19 to enable the Navy to meet the provisions of CERCLA, 42 U.S.C.  
20 § 9601 et seq.

21 4.2 The Navy will notify U.S. EPA and Ecology of  
22 the identity of its contractors performing work under this  
23 Agreement. The Navy shall provide copies of this Agreement to  
24 all contractors performing any work pursuant to this Agreement.  
25 Each undersigned representative of a Party certifies that he or  
26 she is fully authorized to enter into the terms and conditions of

this Agreement and to legally bind such Party to this Agreement.

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

V.

## STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

5.1           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 applicable state law; satisfy the corrective action requirements of Sections 3004(u) and (v), 42 U.S.C. § 6924(u) and (v), for a RCRA permit, and Section 3008(h), 42 U.S.C. § 6928(h), for interim status facilities; 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.

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

1 Agreement shall obviate the need for further corrective action.  
2 The Parties agree that with respect to releases of hazardous  
3 waste covered by this Agreement that have occurred on the Site,  
4 RCRA and Ch. 70.105 et seq. of the Revised Code of Washington  
5 ("RCW") shall be considered ARARs to Section 121 of CERCLA,  
6 42 U.S.C. § 9621. If RCRA or RCW Ch. 70.105 et seq. ARARs are  
7 waived by the Record of Decision ("ROD") pursuant to Section 121  
8 of CERCLA, 42 U.S.C. § 9621, Ecology shall have the right to  
9 withdraw from this Agreement within sixty (60) days following the  
10 effective date of the ROD and exercise any legal rights and  
11 remedies available under law. If Ecology exercises its right to  
12 withdraw from this Agreement, the Navy expressly preserves its  
13 ability to assert any defense that it may have under the law in  
14 regard to the legal right or remedies pursued by Ecology.  
15 Releases or other hazardous waste activities not covered by this  
16 Agreement remain subject to all applicable state and federal  
17 environmental requirements.

18           5.3       The Parties recognize that the requirement to  
19 obtain permits for response actions undertaken pursuant to this  
20 Agreement shall be as provided for in CERCLA and the NCP.

21           5.4.       Nothing in this Agreement shall alter the  
22 Navy's authority with respect to removal actions conducted  
23 pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

VI.

STATEMENT OF FACTS

6.1 For purposes of this Agreement, the following constitutes a summary of the facts upon which this Agreement is based. None of the facts related herein are admissions nor are they legally binding upon any Party with respect to any unrelated claims of persons not a Party to this Agreement.

A. Site History

6.2 The Naval Underseas Warfare Engineering Station at Keyport ("NUWES Keyport") facility is located in Kitsap County on the Kitsap Peninsula in the north-central portion of Puget Sound. It has been the property of the Navy since 1913. The principal industrial activities conducted at the Site have been the design and testing of torpedoes. Specific industrial processes involved welding, plating, machining, sheet metal work, stripping, landfilling, pest control, and wastewater treatment. These activities generated a variety of wastes that included fuels, oils, various metals, plating baths, paints, thinners, solvents, resins, acids, caustics, chromate and cyanide salts, pesticides, treatment sludges, and miscellaneous trash.

6.3 The Initial Assessment Study of the Site was completed in September 1984, and identified six (6) sub-sites for further study and possible remediation. These sub-sites are:

(a) Sub-Site 1 - NUWES Keyport Landfill

(b) Sub-Site 2 - NUWES Keyport Van Meter Road

Spill/Drum Storage Area

1 (c) Sub-Site 3 - NUWES Keyport Otto Fuel Leak

2 (d) Sub-Site 5 - NUWES Keyport Sludge Disposal Area

3 (e) Sub-Site 8 - NUWES Keyport Plating Shop Waste/Oil  
4 Spill Area

5 (f) Sub-Site 9 - NUWES Keyport Liberty Bay

6 Numerous studies have been conducted around the Site since that  
7 time. Initial sampling has detected contamination of  
8 groundwater, marsh and estuarine sediments, and shellfish.

9 6.4 The Site was proposed for listing on the  
10 National Priorities List ("NPL") on June 10, 1986; it was listed  
11 on October 4, 1989.

12 B. Findings of Fact

13 6.5 The Site is located in Keyport, Kitsap  
14 County, Washington, is owned by the United States of America, and  
15 is operated by the Navy.

16 6.6 On June 10, 1986, the Site was proposed for  
17 inclusion on the National Priorities List ("NPL"), 52 Fed. Reg.  
18 21,099 (June 10, 1986).

19 6.7 On October 4, 1989, the Site was listed on  
20 the NPL, 54 Fed. Reg. 41,021 (October 4, 1989).

21 6.8 The Site is a facility under the  
22 jurisdiction, custody, or control of the Department of Defense  
23 ("DOD") within the meaning of Executive Order 12580. 52 Fed.  
24 Reg. 2923 (January 29, 1987). The Navy is authorized to act on  
25 behalf of the Secretary of Defense for all functions delegated by  
26 the President through Exec. Order 12580 which are relevant to

1 this Agreement.

2 6.9 The Site is a facility under the jurisdiction  
3 of the Secretary of Defense within the meaning of Section 211 of  
4 SARA, 42 U.S.C. 2701.

5 6.10 Under Exec. Order No. 12088, 43 Fed.  
6 Reg. 47,707 (October 13, 1978), U.S. EPA is required to provide  
7 timely technical advice and assistance to the Navy.

8 6.11 The Navy is authorized, pursuant to Exec.  
9 Order 12580, to receive notification of state ARARs as required  
10 by CERCLA Section 121(d)(2)(A)(ii), 42 U.S.C.  
11 § 9621(d)(2)(A)(ii).

12 6.12 The authority of the Navy to exercise the  
13 delegated removal authority of the President, pursuant to Section  
14 104 of CERCLA, 42 U.S.C. § 9604, is not altered by this  
15 Agreement.

16  
17 VII.

18 REGULATORY DETERMINATIONS

19 7.1 For purposes of this Agreement, the following  
20 constitutes a summary of the Regulatory Determinations upon which  
21 this Agreement is based. None of the Regulatory Determinations  
22 related herein are admissions nor are they legally binding upon  
23 any Party with respect to any unrelated claims of person(s) not a  
24 Party to this Agreement.

25 7.2 On the basis of the results of the testing  
26 and analysis described in the Statement of Facts, U.S. EPA and

1 Ecology have determined that:

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

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

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

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

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

20 VIII.

21 SCOPE OF AGREEMENT

22 A. Work to be Performed

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

1 Plan and all relevant statutes, regulations, policies, guidance,  
2 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 Plans.

6 8.3 This Agreement fully incorporates the  
7 provisions of the Work Plans. In the event of any inconsistency  
8 between this Agreement and the Work Plans, 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 of the Site which comply with  
26 applicable requirements of CERCLA, the NCP, written guidance and



1 U.S. EPA policy, and which is in accordance with the requirements  
2 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 the Site which comply  
6 with applicable requirements of CERCLA, the NCP, and relevant  
7 written guidance and established U.S. EPA policy, and which is in  
8 accordance with the requirements and deadlines set forth in this  
9 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 an RI and FS Report. Ecology may recommend the  
14 remedial action alternative it deems appropriate to U.S. EPA.  
15 Pursuant to Part XXI, the U.S. EPA Administrator, in consultation  
16 with the Navy and Ecology, shall make final selection of the  
17 remedial actions(s) for the Site. The final selection of  
18 remedial action(s) by the U.S. EPA Administrator shall be final  
19 and not subject to dispute. Notwithstanding this Part, or any  
20 other Part of this Agreement, Ecology may seek judicial review of  
21 an interim or final remedial action in accordance with Sections  
22 113 and 121(f)(3)(A) of CERCLA, 42 U.S.C. §§ 9613 and  
23 9621(f)(3)(A).

1 F. Implementation of Remedial Actions

2 8.8 Following finalization of any ROD in  
3 accordance with Part XXI, the Navy shall design, propose, and  
4 submit, where necessary, a detailed RA Work Plan for  
5 implementation of each selected remedial action, including  
6 appropriate schedules, to U.S. EPA and Ecology. Following review  
7 by Ecology and U.S. EPA and finalization of the RA Work Plan in  
8 accordance with Part XX of this Agreement, the Navy shall  
9 implement the remedial action(s) in accordance with the  
10 requirements and schedules set forth in this Agreement.

11  
12 IX.

13 PROJECT MANAGERS

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

23 9.2 Each Project Manager shall be, or rely on, a  
24 qualified and competent person with experience in hazardous  
25 substances site investigations and remedial actions and having  
26 the skills necessary to implement this Agreement. All technical

1 work performed pursuant to this Agreement shall be under the  
2 direction and supervision of, or in consultation with, a  
3 qualified engineer, geologist, scientist, or equivalent expert  
4 with expertise in hazardous substances site investigation and  
5 remediation.

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

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

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

X.

ACCESS

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

10.2 The Navy shall honor all requests for such access by U.S. EPA and Ecology, conditioned only upon presentation of proper credentials, and conformance with security and safety regulations. The Navy reserves the right to require an escort for representatives of U.S. EPA and Ecology when visiting the Site. The Parties agree that conformance with security regulations and the provision of an escort will not delay access.

10.3 To the extent that this Agreement requires access to property not owned and controlled by the Navy, the Navy shall take all reasonable steps to obtain access including, but not limited to, relying on its authority under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). If the Navy obtains access to the

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

7  
8 XI.

9 SAMPLING AND DATA/DOCUMENT AVAILABILITY

10 11.1 If requested, the Project Managers shall make  
11 available to each other quality assured results of sampling,  
12 tests, or other data generated by any Party, or on their behalf,  
13 with respect to the implementation of this Agreement within  
14 forty-five (45) days of their collection or field testing. If  
15 quality assurance is not completed within forty-five (45) days,  
16 preliminary data or results shall be made available within the  
17 forty-five (45) day period and quality assured data or results  
18 shall be submitted as they become available but in no event later  
19 than ninety (90) days after the sampling or testing. These  
20 periods can be extended upon mutual agreement among the Project  
21 Managers.

22 11.2 At the request of either the Ecology or  
23 U.S. EPA Project Manager, the Navy shall allow split or duplicate  
24 samples to be taken by Ecology or U.S. EPA during sample  
25 collection conducted during the implementation of this Agreement.  
26 The Navy's Project Manager shall notify, whenever possible, the

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

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

9  
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 Plans.

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:  
Commanding Officer  
Engineering Field Activity  
Northwest Division  
Naval Facilities Engineering Command  
3505 Anderson Hill Road  
Silverdale, Washington 98383  
Attn: (Code 09E)

(B) For the U.S. EPA:  
Nancy Harney  
NUWES Keyport Project Manager  
U.S. Environmental Protection Agency Reg. 10  
1200 Sixth Avenue, HW-074  
Seattle, Washington 98101

(C) For Ecology:  
Robert A. Poss  
Washington Department of Ecology  
Mail Stop PV-11  
Olympia, Washington 98504-8711

Express Mail:  
Washington Department of Ecology  
4415 Woodview Drive, S.E.  
Lacey, Washington 98503

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

## XV.

### PERMITS

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



1           15.2       If a permit which is necessary for  
2 implementation of this Agreement is not issued, or is issued or  
3 renewed in a manner which is materially inconsistent with the  
4 requirements of this Agreement, the Navy agrees it shall notify  
5 Ecology and U.S. EPA of its intention to propose necessary  
6 modifications to this Agreement to obtain conformance with the  
7 permit (or lack thereof). Notification by Navy of its intention  
8 to propose modifications shall be submitted within seven (7)  
9 calendar days of receipt by Navy of notification that: (1) a  
10 permit will not be issued; (2) a permit has been issued or  
11 reissued; or (3) a final determination with respect to any appeal  
12 related to the issuance of a permit has been entered. Within  
13 thirty (30) days from the date it submits its notice of intention  
14 to propose modifications, the Navy shall submit to Ecology and  
15 U.S. EPA its proposed modifications to this Agreement with an  
16 explanation of its reasons in support thereof.

17           15.3       Ecology and U.S. EPA shall review the Navy's  
18 proposed modifications to this Agreement made pursuant to this  
19 Part. If Navy submits proposed modifications prior to a final  
20 determination of any appeal taken on a permit needed to implement  
21 this Agreement, Ecology and U.S. EPA may elect to delay review of  
22 the proposed modifications until after such final determination  
23 is entered. If Ecology and U.S. EPA elect to delay review, the  
24 Navy shall continue implementation of this Agreement which can be  
25 reasonably implemented pending final resolution of the permit  
26 issue(s).

1           15.4       During any appeal of any permit required to  
2 implement this Agreement or during review of any of Navy's  
3 proposed modifications as provided in Paragraph 15.2 above, the  
4 Navy shall continue to implement those portions of this Agreement  
5 which can be reasonably implemented pending final resolution of  
6 the permit issue(s).

7  
8                               XVI.

9                               RETENTION OF RECORDS

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

18           16.2       Upon request by U.S. EPA or Ecology, the Navy  
19 shall make available any records in its possession which relate  
20 in any way to the presence of hazardous wastes and constituents,  
21 hazardous substances, pollutants, and contaminants at the Site,  
22 or to the implementation of this Agreement, unless withholding is  
23 authorized and determined appropriate by law.

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 at or near the Site 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. The Administrative Record developed by the Navy shall be periodically updated and a copy of each document included in the Administrative Record 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 and off the Site, regarding environmental activities conducted pursuant to this Agreement by the Navy. The Parties agree to comply with all relevant U.S. EPA policy and written guidance on community relations programs which are in accordance with CERCLA and consistent with the NCP.

XVIII.

CREATION OF DANGER/EMERGENCY ACTION

18.1 In the event U.S. EPA or Ecology determine that activities or circumstances related to this Agreement are creating a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, U.S. EPA or Ecology may require or order the Navy to stop such activities for such period of time as the Project Managers determine is needed to abate the danger. Any unilateral order to stop work for longer than twenty-four (24) hours requires a written explanation by U.S. EPA or Ecology.

18.2 In the event the Navy determines that activities or circumstances related to this Agreement or any other circumstances or activities at the Site are creating an imminent and substantial endangerment to the people on the Site or in the surrounding area or to the environment, the Navy may stop such activities for such periods of time necessary for U.S. EPA and Ecology to evaluate the situation and determine whether the Navy should proceed with such activities or whether the work stoppage should be continued until the danger is abated. The Navy shall notify the Project Managers as soon as is possible, but not later than twenty-four (24) hours after such stoppage of work. Any unilateral order to stop work for longer than twenty-four (24) hours requires a written explanation by the Navy. If U.S. EPA, in consultation with Ecology, disputes the Navy's determination, it may require the Navy to resume work or

1 activities under this Agreement.

2           18.3           If the U.S. EPA and Ecology concur in the  
3 work stoppage by the Navy, or if U.S. EPA or Ecology require or  
4 order a work stoppage, the Navy's obligations shall be suspended  
5 and the time periods for performance of that work, as well as the  
6 time period for any other work dependent upon the work which was  
7 stopped, shall be extended, pursuant to Part XXV of this  
8 Agreement.

9  
10   XIX.

11   FIVE (5) YEAR REVIEW

12           19.1           Consistent with Section 121(c) of CERCLA,  
13 42 U.S.C. § 9621(c), and in accordance with this Agreement, the  
14 Parties will review remedial actions that allow hazardous  
15 substances, pollutants, or contaminants to remain on-site no less  
16 often than each five (5) years after the initiation of a final  
17 remedial action to assure that human health and the environment  
18 are being protected by the remedial action being implemented.  
19 Upon the completion of such review, and in accordance with Part  
20 XX of this Agreement, the Navy shall submit a report to U.S. EPA  
21 and Ecology, including a recommendation as to whether additional  
22 action or modification of the remedial action is appropriate in  
23 accordance with Sections 104 or 106 of CERCLA, 42 U.S.C. §§ 9604  
24 or 9606. The Parties shall determine the necessary remedial  
25 actions or modifications, if any. In the event of dispute, the  
26 final determination of additional remedial actions shall be by

1 the U.S. EPA Administrator in accordance with Part XXI of this  
2 Agreement and the final decision by the Administrator shall not  
3 be subject to further dispute by the Parties. The Navy shall  
4 implement such additional or modified action as finally  
5 determined.

6  
7 XX.

8 CONSULTATION WITH U.S. EPA AND ECOLOGY

9 A. Applicability

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

22 20.2 The designation of a document as "draft" or  
23 "final" is solely for purposes of consultation with U.S. EPA and  
24 Ecology in accordance with this Part. Such designation does not  
25 affect the obligation of the Parties to issue documents, which  
26 may be referred to herein as "final," to the public for review

1 and comment as appropriate and as required by law.

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

3 20.3 Primary documents include those reports that  
4 are major, discrete portions of RI/FS or RD/RA activities.  
5 Primary documents are initially issued by the Navy in draft  
6 subject to review and comment by U.S. EPA and Ecology. Following  
7 receipt of comments on a particular draft primary document, the  
8 Navy will respond to the comments received and issue a draft  
9 final primary document subject to dispute resolution. The draft  
10 final primary document will become the final primary document  
11 either thirty (30) days after the period established for review  
12 of a draft final document if dispute resolution is not invoked or  
13 as modified by decision of the dispute resolution process.

14 20.4 Secondary documents include those reports  
15 that are discrete portions of the primary documents and are  
16 typically input or feeder documents. Secondary documents are  
17 issued by the Navy in draft subject to review and comment by  
18 U.S. EPA and Ecology. Although the Navy will respond to comments  
19 received, the draft secondary documents may be finalized in the  
20 context of the corresponding primary documents. A secondary  
21 document may be disputed at the time the corresponding draft  
22 final primary document is issued.

23 C. Primary Reports

24 20.5 The Navy shall complete and transmit draft  
25 reports for the following primary documents to U.S. EPA and  
26 Ecology for review and comment in accordance with the provisions

of this Part:

- (a) RI/FS Work Plan, including the Sampling and Analysis Plan, QAPP, Data Management Plan, Data Quality Objectives, Community Relations Plan, and Health and Safety Plan
- (b) RI Report, including initial screening of alternatives
- (c) Baseline Risk Assessment
- (d) FS Report
- (e) Record of Decision ("ROD")
- (f) Remedial Design ("RD")
- (g) Remedial Action ("RA") 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) Risk Assessment Conceptual Site Model
- (c) Detailed Analysis of Alternatives
- (d) Identification of ARARs and TBC Evaluation
- (e) Treatability Study Work Plan, as needed
- (f) Treatability Studies Report, as needed



- (g) Sampling and Data Results
- (h) Proposed Plan
- (i) Proposed RA Work Plan
- (j) Conceptual RD Report
- (k) Sixty (60) Percent Completion RD Report
- (l) Other items as needed.

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 to the issuance of a draft report, the Project Managers shall meet to identify and propose, to the best of their ability, all

1 potential ARARs pertinent to the report being addressed. Draft  
2 ARAR determinations shall be prepared by the Navy in accordance  
3 with Section 121(d)(2) of CERCLA, 42 U.S.C. § 9621(d)(2), the  
4 NCP, and pertinent written guidance issued by U.S. EPA and  
5 Ecology, which is not inconsistent with CERCLA and the NCP.

6           20.11       In identifying potential ARARs, the Parties  
7 recognize that actual ARARs can be identified only on a sub-site  
8 specific basis and that ARARs depend on the specific hazardous  
9 substances, pollutants, contaminants, the particular actions  
10 proposed as a remedy, and the characteristics of the sub-site.  
11 The Parties recognize that ARAR identification is necessarily an  
12 iterative process and that potential ARARs must be re-examined  
13 throughout the RI/FS process until a Record of Decision ("ROD")  
14 is issued.

15           G. Review and Comment on Draft Reports

16           20.12       The Navy shall complete and transmit each  
17 draft primary report to U.S. EPA and Ecology on or before the  
18 corresponding deadline established for the issuance of the  
19 report. The Navy shall complete and transmit the draft secondary  
20 document in accordance with the target dates established for the  
21 issuance of such reports established pursuant to Part XXIV of  
22 this Agreement.

23           20.13       Unless the Parties mutually agree to another  
24 time period, all draft reports shall be subject to a thirty (30)  
25 day period for review and comment. The thirty (30) day period  
26 shall commence with receipt of the documents or the designated

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

21           20.14       Representatives of the Navy shall make  
22 themselves readily available to U.S. EPA and Ecology during the  
23 comment period for purposes of informally responding to questions  
24 and comments on draft reports. Oral comments made during such  
25 discussions need not be the subject of a written response by the  
26 Navy on the close of the comment period.

1           20.15       In commenting on a draft report which  
2 contains a proposed ARAR determination, U.S. EPA and Ecology  
3 shall include a reasoned statement of whether they object to any  
4 portion of the proposed ARAR determination. To the extent that  
5 U.S. EPA and Ecology do object, they shall explain the basis for  
6 their objection in detail and shall identify any ARARs which they  
7 believe were not properly addressed in the proposed ARAR  
8 determination.

9           20.16       Following the close of the comment period for  
10 a draft report, the Navy shall give full consideration to all  
11 written comments on the draft report submitted during the comment  
12 period. Within thirty (30) days after the close of the comment  
13 period on a draft secondary report, the Navy shall transmit to  
14 U.S. EPA and Ecology its written response to comments received  
15 within the comment period. Within thirty (30) days after the  
16 close of the comment period on a draft primary report, the Navy  
17 shall transmit to U.S. EPA and Ecology a draft final primary  
18 report, which shall include the Navy's response to all written  
19 comments, received within the comment period. While the  
20 resulting draft final report shall be the responsibility of the  
21 Navy, it shall be the product of consensus to the maximum extent  
22 possible.

23           20.17       The Navy may extend the thirty (30) day  
24 period for either responding to comments on a draft report or for  
25 issuing the draft final primary report for an additional twenty  
26 (20) days by providing notice to U.S. EPA and Ecology. In

1 appropriate circumstances, this time period may be further  
2 extended in accordance with Part XXV.

3 H. Availability of Dispute Resolution for

4 Draft Final Primary Documents

5 20.18 Dispute resolution shall be available to the  
6 Parties for draft final primary reports as set forth in Part XXI.

7 20.19 When dispute resolution is invoked on a draft  
8 primary report, work may be stopped in accordance with the  
9 procedures set forth in Part XXI regarding dispute resolution.

10 I. Finalization of Reports

11 20.20 The draft final primary report shall serve as  
12 the final primary report if no Party invokes dispute resolution  
13 regarding the document or, if invoked, at completion of the  
14 dispute resolution process should the Navy's position be  
15 sustained. If the Navy's determination is not sustained in the  
16 dispute resolution process, the Navy shall prepare, within not  
17 more than thirty-five (35) days, <sup>(SINCE WHEN?)</sup> a revision of the draft final  
18 report which conforms to the results of dispute resolution. In  
19 appropriate circumstances, the time period for this revision  
20 period may be extended in accordance with Part XXV hereof.

21 J. Subsequent Modifications of Final Reports

22 20.21 Following finalization of any primary report  
23 pursuant to Paragraph 20.20 above, U.S. EPA, Ecology, or the Navy  
24 may seek to modify the report, including seeking additional field  
25 work, pilot studies, computer modeling, or other supporting  
26 technical work, only as provided in Paragraphs 20.22 and 20.23.

1 below.

2           20.22       U.S. EPA, Ecology, or the Navy may seek to  
3 modify a report after finalization if it determines, based on new  
4 information (i.e., information that became available, or  
5 conditions that became known, after the report was finalized)  
6 that the requested modification is necessary. U.S. EPA, Ecology,  
7 or the Navy may seek such a modification by submitting a concise  
8 written request to the Project Managers of the other Parties.  
9 The request shall specify the nature of the requested  
10 modification and how the request is based on new information.

11           20.23       In the event that a consensus is not reached  
12 by the Project Managers on the need for a modification, either  
13 U.S. EPA, Ecology, or the Navy may invoke dispute resolution to  
14 determine if such modification shall be conducted. Modification  
15 of a report shall be required only upon a showing that: (1) the  
16 requested modification is based on significant new information,  
17 and (2) the requested modification could be of significant  
18 assistance in evaluating impacts on the public health or the  
19 environment, in evaluating the selection of remedial  
20 alternatives, or in protecting human health and the environment.

21           20.24       Nothing in this Subpart shall alter  
22 U.S. EPA's or Ecology's ability to request the performance of  
23 additional work which was not contemplated by this Agreement.  
24 The Navy's obligation to perform such work must be established by  
25 either a modification of a report or document or by amendment to  
26 this Agreement.

XXI.

RESOLUTION OF DISPUTES

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

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

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

21.4 The DRC will serve as a forum for resolution

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

17           21.5           Following elevation of a dispute to the DRC,  
18 the DRC shall have twenty-one (21) days to unanimously resolve  
19 the dispute and issue a written decision. If the DRC is unable to  
20 unanimously resolve the dispute within this twenty-one (21) day  
21 period, the written statement of dispute shall be forwarded to  
22 the Senior Executive Committee ("SEC") for resolution, within  
23 seven (7) days after the close of the twenty-one (21) day  
24 resolution period.

25           21.6           The SEC will serve as the forum for  
26 resolution of disputes for which agreement has not been reached



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

19           21.7           Upon escalation of a dispute to the  
20 Administrator of U.S. EPA pursuant to Subparagraph 21.6, the  
21 Administrator will review and resolve the dispute within  
22 twenty-one (21) days. Upon request, and prior to resolving the  
23 dispute, the U.S. EPA Administrator shall meet and confer with  
24 the Navy's Secretariat Representative and a representative from  
25 Ecology to discuss the issue(s) under dispute. The Administrator  
26 will provide notice to all Parties of any Party's request to meet

1 or confer with respect to any such dispute and will provide an  
2 adequate opportunity for all Parties to participate in any  
3 meeting or conference convened to resolve such dispute. Upon  
4 resolution, the Administrator shall provide the Navy and Ecology  
5 with a written final decision setting forth resolution of the  
6 dispute. The duties of the Administrator set forth in this Part  
7 shall not be delegated.

8           21.8           The pendency of any dispute under this Part  
9 shall not affect the Navy's responsibility for timely performance  
10 of the work required by this Agreement, except that the time  
11 period for completion of work affected by such dispute shall be  
12 extended for a period of time usually not to exceed the actual  
13 time taken to resolve any good faith dispute in accordance with  
14 the procedures specified herein. All elements of the work  
15 required by this Agreement which are not affected by the dispute  
16 shall continue and be completed in accordance with the applicable  
17 schedule.

18           21.9           When dispute resolution is in progress, work  
19 affected by the dispute will immediately be discontinued if the  
20 Division Director for U.S. EPA's Region 10 or Ecology request, in  
21 writing, that work related to the dispute be stopped because, in  
22 U.S. EPA's or Ecology's opinion, such work is inadequate or  
23 defective, and such inadequacy or defect is likely to yield an  
24 adverse effect on human health or the environment, or is likely  
25 to have a substantial adverse effect on the remedy selection or  
26 implementation process. To the extent possible, U.S. EPA and

1 Ecology shall consult with all Parties prior to initiating a work  
2 stoppage request. After stoppage of work, if the Navy believes  
3 that the work stoppage is inappropriate or may have potential  
4 significant adverse impacts, the Navy may meet with the U.S. EPA  
5 Division Director and Ecology equivalent to discuss the work  
6 stoppage. Following this meeting, and further consideration of  
7 the issues, the U.S. EPA Division Director will issue, in  
8 writing, a final decision with respect to the work stoppage. The  
9 final written decision of the U.S. EPA Division Director may  
10 immediately be subjected to formal dispute resolution. Such  
11 dispute may be brought directly to either the DRC or the SEC, at  
12 the discretion of the Navy or Ecology.

13           21.10       Within twenty-one (21) days of resolution of  
14 a dispute pursuant to the procedures specified in this Part, the  
15 Navy shall incorporate the resolution and final determination  
16 into the appropriate plan, schedule, or procedures, and proceed  
17 to implement this Agreement according to the amended plan,  
18 schedule, or procedures.

19           21.11       Resolution of a dispute pursuant to this Part  
20 of the Agreement constitutes a final resolution of that dispute  
21 arising under this Agreement. All Parties shall abide by all  
22 terms and conditions of any final resolution of dispute obtained  
23 pursuant to this Part of this Agreement.

XXII.

ENFORCEABILITY

22.1 The Parties agree that:

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

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

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

(d) Any final resolution of a dispute pursuant to Part XXI of this Agreement which establishes a term, condition, timetable, deadline, or schedule shall be enforceable by any person pursuant to Section 310(a) of CERCLA, 42 U.S.C.

1 § 9659(a), and any violation of such term, condition, timetable,  
2 deadline or schedule will be subject to civil penalties under  
3 Sections 310(c) and 109 of CERCLA, 42 U.S.C. §§ 9659 and 9609.

4 22.2 Nothing in this Agreement shall be construed  
5 as authorizing any person to seek judicial review of any action  
6 or work where review is barred by any provision of CERCLA,  
7 including Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

8 22.3 The Parties agree that all Parties shall have  
9 the right to enforce the terms of this Agreement.

10  
11 XXIII.

12 STIPULATED PENALTIES

13 23.1 In the event that the Navy fails to submit a  
14 primary document to U.S. EPA and Ecology pursuant to the  
15 appropriate timetable or deadline in accordance with the  
16 requirements of this Agreement, or fails to comply with a term or  
17 condition of this Agreement which relates to an interim or final  
18 remedial action, U.S. EPA may assess, after consultation with  
19 Ecology, a stipulated penalty against the Navy. A stipulated  
20 penalty may be assessed in an amount not to exceed five thousand  
21 dollars (\$5,000) for the first week (or part thereof), and ten  
22 thousand dollars (\$10,000) for each additional week (or part  
23 thereof) for which a failure set forth in this Paragraph occurs.

24 23.2 Upon determining that the Navy has failed in  
25 a manner set forth in Paragraph 23.1, U.S. EPA shall so notify  
26 the Navy in writing. Ecology may, as it deems appropriate,

1 recommend that U.S. EPA issue a stipulated penalty pursuant to  
2 this Part. If the failure in question is not already subject to  
3 dispute resolution at the time such notice is received, the Navy  
4 shall have fifteen (15) days after receipt of the notice to  
5 invoke dispute resolution on the question of whether the failure  
6 did in fact occur. The Navy shall not be liable for the  
7 stipulated penalty assessed by U.S. EPA if the failure is  
8 determined, through the dispute resolution process, not to have  
9 occurred. No assessment of a stipulated penalty shall be final  
10 until the conclusion of dispute resolution procedures related to  
11 the assessment of the stipulated penalty.

12           23.3           The annual reports required by Section  
13 120(e)(5) of CERCLA, 42 U.S.C. § 9620(e)(5), shall include, with  
14 respect to each final assessment of a stipulated penalty against  
15 the Navy under this Agreement, each of the following:

- 16           (a) The facility responsible for the failure;  
17           (b) A statement of the facts and circumstances  
18                 giving rise to the failure;  
19           (c) A statement of any administrative or other  
20                 corrective action taken at the relevant facility,  
21                 or a statement of why such measures were  
22                 determined to be inappropriate;  
23           (d) A statement of any additional action taken by or  
24                 at the facility to prevent recurrence of the same  
25                 type of failure; and  
26           (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, the Department of Defense.

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 Pursuant to this Agreement, the following deadlines have been established in conjunction with Ecology for submittal of draft primary documents:

DATE

(a)	RI/FS Work Plan	April 16, 1990
(b)	Baseline Risk Assessment	October 31, 1991
(c)	RI Report	January 31, 1992

# FEDERAL FACILITY AGREEMENT

April 5, 1990

(d) FS Report

April 30, 1992

(e) ROD

October 31, 1992

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

24.3 Within twenty-one (21) days of the effective date of this Agreement, the Navy shall propose target dates for submittal of the draft secondary documents identified in Paragraph 20.7(a) - (h).

24.4 Within twenty-one (21) days of issuance of the ROD(s), the Navy shall propose target dates for submittal of draft secondary documents identified in Paragraph 20.7(i) - (k), and deadlines for completion of the following draft primary documents:

(a) RD Report

(b) RA Work Plan

24.5 Within fifteen (15) days of receipt, U.S. EPA, in conjunction with Ecology, shall review and provide comments to the Navy regarding the deadlines proposed in Paragraphs 24.3 and 24.4. Within fifteen (15) days following receipt of the comments the Navy shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed deadlines. If the Parties agree on proposed deadlines, the finalized deadlines shall be incorporated into the appropriate Work Plans. If the Parties fail to agree within thirty (30) days on the proposed deadlines, the matter shall immediately be submitted for dispute



1 resolution pursuant to Part XXI of this Agreement.

2           24.6           The deadlines set forth in this Part, or to  
3 be established as set forth in this Part, may be extended  
4 pursuant to Part XXV of this Agreement. The Parties recognize  
5 that one possible basis for extension of the deadlines for  
6 completion of the Remedial Investigation and Feasibility Study  
7 Reports is the identification of significant new conditions  
8 during the performance of the Remedial Investigation.

9  
10                           XXV.

11                           EXTENSIONS

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

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

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

- 26                   (a) An event of force majeure;  
27                   (b) A delay caused by another Party's failure to meet  
28                       any requirement of this Agreement;

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

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

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

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

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

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

16  
17                           XXVI.

18                           FORCE MAJEURE

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

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

25                   (b) unanticipated breakage or accident to machinery,  
26 equipment, or lines of pipe despite reasonably diligent

1 maintenance;

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

4 (d) restraint by court order or order of public  
5 authority;

6 (e) inability to obtain, at a reasonable cost and  
7 after exercise of reasonable diligence, any necessary  
8 authorizations, approvals, permits, or licenses due to action or  
9 inaction of any governmental agency or authority other than the  
10 Navy;

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

15 (g) insufficient availability of appropriated funds,  
16 if the Navy shall have made timely request for such funds as part  
17 of the budgetary process as set forth in Part XXVII of this  
18 Agreement. If such an event occurs, Ecology may exercise its  
19 rights as provided in Paragraph 27.6, but U.S. EPA shall be bound  
20 by this Force Majeure and shall not assess stipulated penalties.

21 26.2 Force Majeure shall also include any strike or  
22 other labor dispute, whether or not within the control of the  
23 Parties affected thereby. Force Majeure shall not include  
24 increased costs or expenses of response actions, whether or not  
25 anticipated at the time such response actions were initiated.

26 26.3 Any claim of Force Majeure shall be subject to

1 dispute resolution and, where applicable, to the limitations of  
2 Paragraph 27.6.

4 XXVII.

5 FUNDING

6 27.1 It is the expectation of the Parties to this  
7 Agreement that all obligations of the Navy arising under this  
8 Agreement will be fully funded. The Navy agrees to seek  
9 sufficient funding through the DOD budgetary process to fulfill  
10 its obligations under this Agreement.

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

16 27.3 Funds authorized and appropriated annually by  
17 Congress under the "Environmental Restoration, Defense"  
18 appropriation in the U.S. Department of Defense Appropriation Act  
19 and allocated by the Deputy Assistant Secretary of Defense  
20 (Environment) to the Navy will be the source of funds for  
21 activities required by this Agreement consistent with Section 211  
22 of SARA, 10 U.S.C. Chapter 160. However, should the  
23 Environmental Restoration, Defense appropriation be inadequate in  
24 any year to meet the total Navy CERCLA implementation  
25 requirements, DOD shall employ and the Navy shall follow a  
26 standardized DOD prioritization process which allocates that

1 year's appropriations in a manner which maximizes the protection  
2 of human health and the environment. A standardized DOD  
3 prioritization model shall be developed and utilized with the  
4 assistance of U.S. EPA and Ecology.

5           27.4           Any requirement for the payment or obligation  
6 of funds, including stipulated penalties, by the Navy established  
7 by the terms of this Agreement shall be subject to the  
8 availability of appropriated funds, and no provision herein shall  
9 be interpreted to require obligation or payment of funds in  
10 violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. In cases  
11 where payment or obligation of funds, including stipulated  
12 penalties, would constitute a violation of the Anti-Deficiency  
13 Act, the dates established requiring the payment or obligation of  
14 such funds shall be appropriately adjusted.

15           27.5           If appropriated funds are not available to  
16 fulfill the Navy's obligations under this Agreement, U.S. EPA and  
17 Ecology reserve the right to initiate an action against any other  
18 person or to take any response action which would be appropriate  
19 absent this Agreement.

20           27.6           The Navy maintains that any requirement for  
21 the payment or obligation of funds under this Agreement is  
22 subject to the availability of appropriated funds, and that the  
23 unavailability of such funds constitutes a valid defense to any  
24 judicial action that might be brought to enforce the terms of  
25 this Agreement. Notwithstanding Paragraphs 27.1, 27.2, 27.3,  
26 27.4, and 27.5 above, Ecology does not agree that lack of

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

19  
20 XXVIII.

21 RECOVERY OF EXPENSES

22 28.1 The Navy and U.S. EPA agree to amend this  
23 Part at a later date in accordance with any subsequent resolution  
24 of the currently contested issue of cost reimbursement.

25 28.2 The Navy agrees to request funding and  
26 reimburse Ecology, subject to the conditions and limitations set

1 forth in this Part; and subject to Part XXVII, for all reasonable  
2 costs it incurs in providing services in direct support of the  
3 Navy's environmental restoration activities at the Site pursuant  
4 to this Agreement.

5           28.3       Reimbursable expenses shall consist only of  
6 actual expenditures required to be made and actually made by  
7 Ecology in providing the following assistance to the Navy:

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

11           (b) Identification and explanation of unique state  
12 requirements applicable to military installations in performing  
13 response actions, especially state ARARs;

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

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

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

23           (f) Other services specified in this Agreement.

24           28.4       Within ninety (90) days after the end of each  
25 quarter of the federal fiscal year, Ecology shall submit to the  
26 Navy an accounting of all state costs actually incurred during



1 that quarter in providing direct support services under this  
2 Part. Such accounting shall be accompanied by cost summaries and  
3 be supported by documentation which meets federal auditing  
4 requirements. The summaries will set forth employee hours and  
5 other expenses by major type of support service. All costs  
6 submitted must be for work directly related to implementation of  
7 this Agreement and not inconsistent with either the NCP or the  
8 requirements described in OMB Circulars A-87 (Cost Principles for  
9 State and Local Governments) and A-128 (Audits for State and  
10 Local Cooperative Agreements with State and Local Governments)  
11 and Standard Forms 424 and 270. The Navy has the right to audit  
12 cost reports used by Ecology to develop the cost summaries.  
13 Before the beginning of each fiscal year, Ecology shall supply a  
14 budget estimate of what it plans to do in the next year in the  
15 same level of detail as the billing documents.

16           28.5           Except as allowed pursuant to Paragraphs 28.6  
17 and 28.7, within ninety (90) days of receipt of the accounting  
18 provided pursuant to Paragraph 28.4, the Navy shall reimburse  
19 Ecology in the amount set forth in the accounting.

20           28.6           In the event the Navy contends that any of  
21 the costs set forth in the accounting provided pursuant to  
22 Paragraph 28.4 are not properly payable, the matter shall be  
23 resolved through a bilateral dispute resolution process set forth  
24 at Paragraph 28.9.

25           28.7           The amount of reimbursement from the Navy to  
26 Ecology for oversight activities associated with the Site shall

1 not exceed Two Hundred Thousand Dollars (\$200,000.00) during the  
2 lifetime of this Agreement and not more than Fifty Thousand  
3 Dollars (\$50,000.00) during any single fiscal year. Either the  
4 Navy or Ecology may request, on the basis of significant upward  
5 or downward revisions in the Navy estimate of its total lifetime  
6 costs through construction used above, a renegotiation of the  
7 Cap. Failing an agreement, either the Navy or Ecology may  
8 initiate dispute resolution in accordance with Paragraph 28.9.  
9 Circumstances could arise whereby fluctuations in the Navy  
10 estimates or actual final costs through the construction of the  
11 final remedial action creates a situation where Ecology receives  
12 reimbursement in excess of the estimated amount of these costs.  
13 Under these circumstances, Ecology remains entitled to payment  
14 for services rendered prior to the completion of a new estimate  
15 if the services are within the ceiling applicable under the  
16 previous estimate. This negotiated reimbursement amount reflects  
17 the judgment of the Navy and Ecology that:

18 (a) Funding of support services must be constrained so  
19 as to avoid unnecessary diversion of the limited Defense  
20 Environmental Restoration Account funds available for the overall  
21 cleanup; and

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

24 28.8 Ecology agrees to seek reimbursement for its  
25 expenses solely through the mechanisms established in this Part,  
26 and reimbursement provided under this Part shall be in settlement

1 of any claims for state response costs relative to the Navy's  
2 environmental restoration activities at the Site.

3           28.9           Part XXI notwithstanding, this Paragraph  
4 shall govern any dispute between the Navy and Ecology regarding  
5 the application of this Part or any matter controlled by this  
6 Part including, but not limited to, allowability of expenses and  
7 limits on reimbursement. While it is the intent of the Navy and  
8 Ecology that these procedures shall govern resolution of disputes  
9 concerning Ecology reimbursement, informal dispute resolution is  
10 encouraged.

11           (A) The Navy and Ecology Project Managers shall be the  
12 initial points of contact for coordination of dispute resolution  
13 under Paragraph 28.9.

14           (B) If the Navy and Ecology Project Managers are unable  
15 to resolve a dispute, the matter shall be referred to the  
16 Commander, WESTNAVFACENGCOM, or his designated representative,  
17 and the Assistant Director, Waste Management, Washington  
18 Department of Ecology, as soon as practicable, but in any event  
19 within five (5) working days after the dispute is elevated by the  
20 Project Managers.

21           (C) If the Commander, WESTNAVFACENGCOM, and the  
22 Assistant Director, Waste Management, Washington Department of  
23 Ecology, are unable to resolve the dispute within ten (10)  
24 working days, the matter shall be elevated to the Director,  
25 Washington Department of Ecology, and the Deputy Director,  
26 Environmental Conservation Policy, Office of the Assistant

1 Secretary of the Navy (Installation and Environment) ("I&E").

2 (D) In the event the Director, Washington Department  
3 of Ecology, and the Deputy Director, Environmental Conservation  
4 Policy, Office of the Assistant Secretary of the Navy (I&E), are  
5 unable to resolve a dispute, Ecology retains any legal and  
6 equitable remedies it may have to recover its expenses. In  
7 addition, Ecology may withdraw from this Agreement by giving  
8 ninety (90) days notice to the other Parties.

9 28.10 Nothing herein shall be construed to limit  
10 the ability of the Navy to contract with Ecology for technical  
11 services that could otherwise be provided by a private contractor  
12 including, but not limited to:

- 13 (a) Identification, investigation, and cleanup of any  
14 contamination beyond the boundaries of the Site;  
15 (b) Laboratory analysis; or  
16 (c) Data collection for field studies.

17 28.11 The Navy and Ecology agree that the terms and  
18 conditions of this Part shall become null and void when Ecology  
19 enters into a Defense/State Memorandum of Agreement ("DSMOA")  
20 with the U.S. Department of Defense ("DOD") which addresses  
21 Ecology reimbursement.

22  
23 XXIX.

24 OTHER CLAIMS

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

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

8           29.2       The U.S. EPA and Ecology shall not be held as  
9 a Party to any contract entered into by the Navy to implement the  
10 requirements of this Agreement.

11           29.3       The Navy shall notify the appropriate federal  
12 and state natural resource trustees as required by Section  
13 104(b)(2) of CERCLA, 42 U.S.C. § 9604(e), and Section 2(e)(2) of  
14 Exec. Order 12580. Except as provided herein, the Navy is not  
15 released from any liability which they may have pursuant to any  
16 provisions of state and federal law, including any claim for  
17 damages for liability to destruction or loss of natural  
18 resources.

19           29.4       This Agreement shall not restrict the Parties  
20 from taking any legal or response action for any matter not  
21 specifically part of the work covered by this Agreement.

22  
23                           XXX.

24                           OTHER APPLICABLE LAWS

25           30.1       All actions required to be taken pursuant to  
26 this Agreement shall be undertaken in accordance with the

1 requirements of all applicable state and federal laws and  
2 regulations unless an exemption from such requirements is  
3 specifically provided in this Agreement, CERCLA, or the NCP.

4  
5 XXXI.

6 CONFIDENTIAL INFORMATION

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

22  
23 XXXII. TRANSFER OF PROPERTY

24 32.1 Conveyance of title, easement, or other  
25 interest in the Site shall be in accordance with Section 120(h)  
26 of CERCLA, 42 U.S.C. § 9620(h), and the Navy shall notify

1 U.S. EPA and Ecology of any such transfer at least ninety (90)  
2 days prior to such transfer.

3 XXXIII.

4 AMENDMENT OF AGREEMENT

5 33.1 This Agreement may be amended by unanimous  
6 agreement of the Navy, Ecology, and U.S. EPA. Any such amendment  
7 shall be in writing, shall have as the effective date that date  
8 on which it is signed by all the Parties, and shall be  
9 incorporated into this Agreement.

10  
11 XXXIV.

12 SEVERABILITY

13 34.1 If any provision of this Agreement is ruled  
14 invalid, illegal, or unconstitutional, the remainder of the  
15 Agreement shall not be affected by such ruling.

16  
17 XXXV.

18 RESERVATION OF RIGHTS

19 35.1 U.S. EPA and Ecology reserve the right to  
20 issue orders and/or penalties pursuant to available statutory  
21 authority, or to take any other enforcement action allowable by  
22 law, under the following circumstances:

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

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

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

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

#### XXXVI.

#### TERMINATION

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

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


#### XXXVII.

#### EFFECTIVE DATE

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



Signature sheet for the foregoing Federal Facility  
Agreement for the Naval Underseas Warfare Engineering Station -  
Keyport, the U.S. Environmental Protection Agency, the  
U.S. Department of the Navy, and the Washington State Department  
of Ecology.

  
JACQUELINE E. SCHAYER, Assistant  
Secretary of the Navy  
(Installations & Environment)

9 July 1990  
Date

REPRESENTED BY:

Judy A. Conlow, Esq.

Signature sheet for the foregoing Federal Facility  
Agreement for the Naval Underseas Warfare Engineering Station -  
Keyport, the U.S. Environmental Protection Agency, the  
U.S. Department of the Navy, and the Washington State Department  
of Ecology.



7/13/90

CHRISTINE O. GREGOIRE, Director  
Department of Ecology  
State of Washington

Date



7/13/90


KENNETH O. EIKENBERRY, Attorney General  
State of Washington

Date

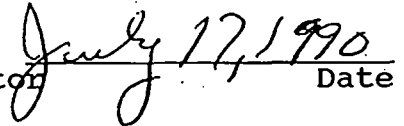
REPRESENTED BY:

Jerry Ackerman, Esq.

Signature sheet for the foregoing Federal Facility  
Agreement for the Naval Underseas Warfare Engineering Station -  
Keyport, the U.S. Environmental Protection Agency, the  
U.S. Department of the Navy, and the Washington State Department  
of Ecology.



THOMAS P. DUNNE, Acting Regional Administrator  
U.S. Environmental Protection Agency

 Date

REPRESENTED BY:

Cynthia L. Mackey, Esq.