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I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF THE ORIGINAL THEREOF.
Carolyn J. Glover
OF ATTORNEYS FOR U.S. EPA

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FEDERAL FACILITIES SF BR.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 10
AND THE
WASHINGTON STATE DEPARTMENT OF ECOLOGY
AND THE
BONNEVILLE POWER ADMINISTRATION

IN THE MATTER OF:	
The U.S. Department of Energy, Bonneville Power Administration, Ross Complex,	FEDERAL FACILITY AGREEMENT UNDER CERCLA SECTION 120
Vancouver, Washington,	Administrative Docket Number: 1089-07-17-120

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

I. JURISDICTION

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

1.1 The United States Environmental Protection Agency ("U.S. EPA"), Region 10, enters into those portions of this Agreement that relate to 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, 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 referred to as RCRA), and Executive Order 12580;

1.2 U.S. EPA 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, 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 Bonneville Power Administration ("BPA") 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), Sections 6001, 3008(h), and 3004(u) and (v) of RCRA, 42 U.S.C. §§ 6961, 6928(h), and 6924(u) and (v), Executive Order 12580, and the National Environmental Policy Act, 42 U.S.C. § 4321;

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

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

II. DEFINITIONS

2.1 The terms used in this Agreement shall have the same meaning as defined in Section 101 of CERCLA, 42 U.S.C. § 4601, the NCP, 40 CFR Part 300, and Section 1004 of RCRA, 42 U.S.C. § 6903. In addition:

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

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

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

(d) "BPA" shall mean the Bonneville Power

Administration, an agency of the United States within the Department of Energy ("U.S. DOE") and, to the extent necessary to effectuate the terms of this Agreement (including congressional reporting requirements), BPA employees, contractors, agents, successors, assigns, and authorized representatives;

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

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

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

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

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

amended;

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

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

(l) "Parties" shall mean BPA, U.S. EPA, and Ecology.

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

(n) "Site" shall mean the two hundred (200) acre BPA Ross Complex, located at 5411 N.E. Highway 99, Vancouver, Washington, and any off-Complex area contaminated by the migration of hazardous substances, pollutants, or contaminants originating from BPA;

(o) "U.S. DOE" shall mean the United States Department of Energy and, to the extent necessary to effectuate the terms of this Agreement (including appropriations and congressional reporting requirements), its employees, contractors, agents, successors, assigns, and authorized representatives;

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

(q) "Work Plan" shall mean the final RI/FS or Remedial Design/Remedial Action ("RD/RA") Work Plans, incorporated herein by reference, which are prepared in accordance with Office of Solid Waste and Emergency Response ("OSWER") Directives 9355.3.-01

(October 1988) and 9355.0-4A (June 1986), and the NCP.

III. PURPOSE

3.1 The general purposes of this Agreement are to:

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

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

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

3.2 Specifically, the purposes of this Agreement are to:

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

(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 action(s) in accordance with CERCLA and meet the requirements of Section 120(e)(2) of CERCLA, 42 U.S.C. § 9620(e)(2), for an interagency agreement between U.S. EPA and BPA;

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

(f) Coordinate response actions with the mission and support activities at the Site;

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

(h) Provide Ecology involvement in the initiation, development, and selection of remedial actions to be undertaken at the Site, including the review of all applicable data as it becomes available, and the development of studies, reports, and actions plans; and to identify and integrate state ARARs into the remedial action process.

IV. PARTIES BOUND

4.1 This Agreement shall apply to and be binding upon BPA, U.S. EPA, and the State of Washington. This Agreement shall also apply to subsequent owners and operators of any portion of the Site. BPA agrees to include notice of this Agreement in any document transferring ownership of property owned by the United States to any subsequent owners and operators of any portion of the Site in accordance with Section 120(h) of CERCLA, 40 U.S.C. § 120(h), and Part XXXII of this Agreement.

4.2 BPA will notify U.S. EPA and Ecology of the identity of its contractors performing work under this Agreement. BPA shall provide copies of this Agreement to all contractors performing any work pursuant to this Agreement.

4.3 Under no condition shall a Party under this Agreement utilize the services of any consultant, prime contractor, or subcontractor who has been suspended, debarred, or voluntarily excluded within the scope of 40 C.F.R. Part 32 or under the Federal Acquisition regulations at 48 C.F.R. Subpart 9.4 et seq.

4.4 Each undersigned representative of a Party

certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

V. STATUTORY COMPLIANCE

5.1 The Parties intend to integrate BPA'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.; to satisfy the corrective action requirements of Sections 3004(u) and (v) of RCRA, 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, and applicable state law.

5.2. Based upon the foregoing, the Parties intend that any remedial action selected, implemented, and completed under this Agreement will be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action. The Parties agree that with respect to releases of hazardous waste covered by this Agreement that have occurred on a site, RCRA and Ch. 70.105 et seq. of the Revised Code of Washington ("RCW") shall

be considered ARARs pursuant to Section 121 of CERCLA, 42 U.S.C. § 9621. If RCRA or RCW Ch. 70.105 et seq. ARARs are waived by the Record of Decision ("ROD") pursuant to Section 121 of CERCLA, 42 U.S.C. § 9621, Ecology shall have the right to withdraw from this Agreement within sixty (60) days following the effective date of the ROD and exercise any legal rights and remedies available under law. If Ecology exercises its right to withdraw from this Agreement, BPA expressly preserves its ability to assert any defense that it may have under the law in regard to the legal right or remedies pursued by Ecology. Releases or other hazardous waste activities not covered by this Agreement remain subject to all applicable state and federal environmental requirements.

5.3 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.

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

VI. FINDINGS OF FACT

6.1 For purposes of this Agreement, the following constitutes a summary of the facts as determined by U.S. EPA and Ecology 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.

6.2 BPA's Ross Complex ("Site") is situated on a sedimentary terrace between two (2) small streams. These streams, Burnt Bridge Creek and Cold Creek, form topographic boundaries for the northern and southwest portions of the Site. The Site is the control center for the transmission of electricity throughout the Pacific Northwest. Since its acquisition in 1939, the Site has provided research and testing facilities, as well as maintenance and operations capabilities for BPA. Maintenance activities at the Site routinely involve handling transformer oils containing polychlorinated biphenyls ("PCB"); organic and inorganic compounds associated with the storage of wood transmission poles; and paints, solvents, and waste oils. Testing and laboratory activities included using heavy metals, such as mercury, and other organic and inorganic compounds. Both active and inactive waste handling, storage, and disposal units exist on the Site.

6.3 The Site Inspection Report dated July 1989 focused on four (4) waste units (three inactive and one active) identified in the Preliminary Assessment dated April 1986 as requiring further investigation and four (4) additional waste units (all active) later included in the sampling effort to support RCRA requirements. These waste units include:

(a) Fog Chamber Dump

(b) District Operations Building No. 1 (DOB-1)

(c) Sanitary Drainfield (DOB-2)

(d) Top Coat Test Area

(e) Cold Creek Fill Area

(f) Two Wood Pole Storage Areas (east/south)

(g) Capacitor Testing Laboratory

(h) DOB-1 Drainline

6.4 Analysis of groundwater samples from test wells on the Site confirm the presence of 1,1,1-TCA, 1,1-DCE, and/or chloroform in the Troutdale aquifer in the western portion of the Complex and in perched-water zones along Cold Creek.

6.5 On July 14, 1989, the Site was proposed for inclusion on the National Priorities List ("NPL"). 54 Fed. Reg. 29,820 (July 14, 1989). It was listed on November 21, 1989. 54 Fed. Reg. 48,184 (November 21, 1989).

VII. REGULATORY DETERMINATIONS

7.1 For purposes of this Agreement, the following constitutes a summary of the Regulatory Determinations of U.S. EPA and Ecology, upon which this Agreement is based. None of the Regulatory Determinations related herein are admissions nor are they legally binding upon any party with respect to any unrelated claims of person(s) not a party to this Agreement.

7.2 BPA Ross Complex is a Site within the meaning of Sections 3008 of RCRA and 101(9) of CERCLA, 42 U.S.C. §§ 6928 and 9601(9).

7.3 Hazardous substances, pollutants, or contaminants within the meaning of Sections 1004(5) and 3001 of RCRA and 101(14) and 104(a)(2) of CERCLA, 42 U.S.C. §§ 6903(5), 6921, 9601(14) and 9604(a)(2), have been disposed of at the Site.

7.4 There have been releases and there may be continuing releases and threatened releases of hazardous substances, pollutants, or contaminants into the environment within the meaning of Sections 101(22), 104, 106, and 107 of CERCLA, 42 U.S.C. §§ 9601(22), 9604, 9606, and 9607, at and from the Site.

7.5 With respect to those releases and threatened releases, BPA is an owner of a facility under Section 107 of CERCLA, 42 U.S.C. § 9607, and is subject to RCRA in accordance with Section 6001, 42 U.S.C. § 6961.

7.6 The actions to be taken pursuant to this Agreement are reasonable and necessary to protect the public health or welfare or the environment; and

7.7 A reasonable time for beginning and/or completing the actions has been provided.

VIII. SCOPE OF AGREEMENT

A. Work to be Performed

8.1 BPA will conduct and finance the cost of the RI/FS consultant study in accordance with the RI/FS Work Plan and implement the RD/RA at the Site in accordance with the RD/RA Work Plan, and all relevant statutes, regulations, policies, guidance, and criteria.

8.2 All work performed pursuant to this Agreement shall be under the direction and supervision of, or in consultation with, a qualified engineer, geologist, or equivalent expert with expertise in hazardous substances site investigation and

remediation.

8.3 BPA shall perform the tasks and submit plans, reports, and other documents as required by those provisions of the Work Plans.

8.4 These matters are set forth in more detail below and in the RI/FS and RD/RA Work Plans. This Agreement fully incorporates the provisions of the Work Plans which relate to the implementation of this Agreement, including, but not limited to, definitions and procedures for submission, review, and approval of documents. In the event of any inconsistency between this Agreement and the Work Plan, this Agreement shall govern unless and until duly amended pursuant to Part XXXIII of this Agreement.

B. Interim Remedial Actions

8.5 If required, BPA shall develop and implement Interim Remedial Actions ("IRAs"), set forth in the RI/FS Work Plan and pursuant to Part XX. The IRA(s) shall be consistent with the purposes set forth in Part III of this Agreement.

C. Remedial Investigations

8.6 BPA shall develop, implement, and report upon a remedial investigation of the Site which complies with applicable requirements of CERCLA, the NCP, and pertinent written guidance and established written U.S. EPA policy, and which is in accordance with the requirements and time schedules set forth in this Agreement.

D. Feasibility Studies

8.7 BPA shall design, propose, undertake, and report upon a feasibility study for the Site which complies with applicable requirements of CERCLA, the NCP, and relevant guidance and established U.S. EPA policy, and which is in accordance with the requirements and time schedules set forth in this Agreement.

E. Remedial Actions

8.8 BPA shall develop and submit its proposed remedial action alternative following completion and approval of an RI and FS. Ecology may recommend the remedial action alternative it deems appropriate to U.S. EPA. The selection of Remedial Action for the Site shall be made by the Administrator of BPA and the Regional Administrator of U.S. EPA, in consultation with Ecology; or, if the Administrator of BPA and the Regional Administrator of U.S. EPA are unable to reach an Agreement, by the Administrator of U.S. EPA. The final selection of remedial action(s) by the U.S. EPA Administrator shall be final and not subject to dispute. Notwithstanding this Part, or any other Part of this Agreement, Ecology does not waive any right to seek judicial review of an interim or final remedial action in accordance with Sections 113 and 121 of CERCLA, 42 U.S.C. §§ 9613 and 9621.

IX. PROJECT MANAGERS

9.1 Not later than five (5) days after the effective date of this Agreement, BPA, Ecology, and U.S. EPA shall

each designate a Project Manager and alternate. Each Project Manager shall be responsible for overseeing his principal's duties concerning the implementation of this Agreement. All written communications between BPA and the regulatory agencies (including communication by letter, reports, notices, etc.) concerning activities related to this Agreement shall be directed or a copy sent to the appropriate Project Manager(s).

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

9.3 BPA, Ecology, and U.S. EPA may change their respective Project Manager(s) by sending a written notification to the other Parties no later than five (5) days before the date of such change.

9.4 The Project Managers may, in accordance with Part XX(J) of this Agreement, make modifications to the work to be performed pursuant to this Agreement, or in techniques, procedures, or design utilized in carrying out this Agreement, which are necessary to the completion of the project.

9.5 The Project Managers for BPA shall be physically present on the Site or reasonably available to supervise work performed at the Site during implementation of the work performed pursuant to this Agreement and be available to the U.S. EPA and Ecology Project Managers for the pendency of this Agreement. The absence of the regulatory agency Project Managers

from the Site shall not be cause for work stoppage or delay.

X. ACCESS

10.1 Consistent with any authority conferred on them by law, the U.S. EPA, Ecology, and/or their authorized representatives, shall have authority to enter the Site at all reasonable times for the purposes of, among other things: (1) inspecting records, operating logs, contracts, and other documents relevant to implementation of this Agreement; (2) reviewing the progress of BPA, its response action contractors, or agents in implementing this Agreement; (3) conducting such tests as Ecology and U.S. EPA Project Managers reasonably determine are necessary to implement this Agreement; and (4) verifying the data submitted to U.S. EPA and Ecology by BPA. BPA shall honor all requests for such access by U.S. EPA and Ecology, subject to any statutory or regulatory requirement as may be necessary to protect mission-essential activities. BPA reserves the right to provide an escort, if available.

10.2 To the extent that this Agreement requires access to property not owned and controlled by BPA, BPA shall, if necessary, exercise its authorities to obtain access pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and shall make every reasonable effort to obtain signed access agreements for itself, its contractors, and agents, and provide U.S. EPA and Ecology with copies of such agreements. With respect to non-BPA property upon which monitoring wells, pumping wells, treatment facilities, or

other response actions are to be located, the access agreements to the extent possible shall also provide that no conveyance of title, easement, or other interest in the property shall be consummated without provisions for the continued operation of such wells, treatment facilities, or other response actions on the property. The access agreements shall also provide to the extent possible that the owners of any property where monitoring wells, pumping wells, treatment facilities, or other response actions are located shall notify BPA, Ecology, and the U.S. EPA by certified mail, at least thirty (30) days prior to any conveyance of the property owner's intent to convey any interest in the property and of the provisions made for the continued operation of the monitoring wells, treatment facilities, or other response actions installed pursuant to this Agreement.

XI. SAMPLING AND DATA/DOCUMENT AVAILABILITY

11.1 The Parties shall make available to each other quality assured results of sampling, tests, or other data generated by any Party, or on their behalf, with respect to the implementation of this Agreement within forty-five (45) days of their collection or field testing. If quality assurance is not completed within forty-five (45) days, preliminary data or results shall be made available within the forty-five (45) day period and quality assured data or results shall be submitted as they become available but in no event later than ninety (90) days after the sampling or testing. These periods can be extended upon mutual

agreement among the Project Managers.

11.2 At the request of either the Ecology or U.S. EPA Project Manager, BPA shall allow split or duplicate samples to be taken by Ecology or U.S. EPA during sample collection conducted during the implementation of this Agreement. BPA's Project Manager shall notify the U.S. EPA and Ecology Project Managers not less than fourteen (14) business days in advance of any well drilling, sample collection, or other monitoring activity, conducted pursuant to this Agreement. The fourteen (14) day notification can be waived upon mutual agreement among the Project Managers for BPA, U.S. EPA, and Ecology.

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

XII. QUALITY ASSURANCE

12.1 Throughout all sample collection, transportation, and analyses activities conducted in connection with this Agreement, BPA shall use procedures for quality assurance, and for quality control, and for chain-of-custody in accordance with approved U.S. EPA methods, including "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans," QAMS-005/80, "Data Quality Objective Guidance," U.S. EPA 1540/687/003 and 004, and subsequent amendments to such guidelines. BPA shall require each laboratory it uses to perform any analysis according to approved U.S. EPA methods and to

participate in a quality assurance/quality control program equivalent to that which is followed by U.S. EPA and which is consistent with U.S. EPA document QAMS-005/80.

XIII. REPORTING

13.1 BPA shall submit to Ecology and U.S. EPA quarterly or, at the option of BPA, more frequent written progress reports which describe the actions which BPA 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 expeditiously transmit primary and secondary documents, and all notices required herein. 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 BPA:**
BPA Ross Complex Superfund Project Manager
Ross Complex
Bonneville Power Administration
P.O. Box 491
Vancouver, Washington 98666
(206) 690-2464

Express Mail:
5411 N.E. Highway 99
Dittmer Control Center
Vancouver, Washington 98666

(b) **For U.S. EPA:**
BPA Ross Complex Project Manager
U.S. Environmental Protection Agency
1200 Sixth Avenue, HW-074
Seattle, Washington 98101
(206) 442-6635

BPA Ross Complex Project Manager
U.S. EPA Washington Operations Office
c/o Washington State Department of Ecology
Mail Stop PV-11
Olympia, Washington 98504-8711
(206) 753-9014

Express Mail for U.S EPA Washington Operations Office Only:
4415 Woodview Drive, S.W.
Lacey, Washington 98503

(c) **For the State of Washington:**
BPA Ross Complex Project Manager
Washington State Department of Ecology
Attn: Bob Goodman
Mail Stop PV-11
Olympia, Washington 98504-8711
(206) 438-3077

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

(d) **For the DOE:**
c/o Bonneville Power Administration
1000 Independence Avenue, S.W.
Washington, D.C. 20585

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 Section 121 (e) of CERCLA, 42 U.S.C. § 9621(e), 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.

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

15.3 Ecology and U.S. EPA shall review BPA's

proposed modifications to this Agreement made pursuant to this Part. If BPA submits proposed modifications prior to a final determination of any appeal taken on a permit needed to implement this Agreement, Ecology and U.S. EPA may elect to delay review of the proposed modifications until after such final determination is entered. If Ecology and U.S. EPA elect to delay review, BPA shall continue implementation of this Agreement which can be reasonably implemented pending final resolution of the permit issue(s).

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

XVI. RETENTION OF RECORDS

16.1 Despite any document retention policy to the contrary, the Parties shall preserve, during the pendency of this Agreement and for a minimum of seven (7) years after its termination, all records and documents in their possession which relate to the actions carried out pursuant to this Agreement. After this seven (7) year period, each Party shall notify the other Parties at least forty-five (45) days prior to destruction of any such documents. Upon request by any Party, the requested Party shall make available such records or copies of any such records, unless withholding is authorized and determined appropriate by law.

XVII. PUBLIC PARTICIPATION AND ADMINISTRATIVE RECORD

17.1 The Parties agree that any subsequent proposed plan considered for remedial action 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 BPA 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 shall be placed in the Administrative Record. The Administrative Record developed by BPA shall be periodically updated and a copy of each document included in each Administrative Record will be provided to U.S. EPA and Ecology.

XVIII. CREATION OF DANGER/EMERGENCY ACTION

18.1 In the event U.S. EPA or Ecology determine that activities conducted pursuant to this Agreement, or any other circumstances or activities, are creating an imminent and substantial endangerment 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 BPA to stop further implementation of this Agreement for twenty-four (24) hours or, upon agreement of the Parties, such period of time as needed to abate the danger. Any unilateral work stoppage for longer than twenty-four (24) hours requires the concurrence of the U.S. EPA Division Director, in accordance with Paragraph 21.9.

18.2 In the event BPA determines that activities undertaken in furtherance of this Agreement or any other

circumstances or activities at the Site are creating an imminent and substantial endangerment to the health or welfare of the people on the Site or in the surrounding area or to the environment, BPA may stop implementation of this Agreement for such periods of time necessary for U.S. EPA to evaluate the situation and determine whether BPA should proceed with implementation of the Agreement or whether the work stoppage should be continued until the danger is abated. BPA shall notify the Project Manager as soon as is possible, but not later than twenty-four (24) hours after such stoppage of work, and provide U.S. EPA with documentation of its analysis in reaching this determination. If U.S. EPA disagrees with the BPA determination, it may require BPA to resume implementation of this Agreement.

18.3 If U.S. EPA concurs in the work stoppage by BPA, or if U.S. EPA or Ecology require or order a work stoppage, BPA's obligations shall be suspended and the time periods for performance of that work, as well as the time period for any other work dependent upon the work which was stopped, shall be extended, pursuant to Part XXV of this Agreement. Any disagreements pursuant to this Part shall be resolved through the dispute resolution procedures in Part XXI of the Agreement by referral directly to the DRC committee.

XIX. FIVE YEAR REVIEW

19.1 If a remedial action is selected that results in any hazardous substances, pollutants, or contaminants remaining

at the Site, the Parties shall review such remedial action no less often than each five (5) years after the initiation of such remedial action to assure that human health and the environment are being protected by the remedial action being implemented. The U.S. EPA Project Manager and the Ecology Project Manager shall advise the BPA Project Manager of their findings in this regard. If BPA determines that additional action is required, the Agreement may be amended pursuant to Part XXXIII. BPA determination under this Part shall be subject to dispute resolution by the other Parties.

XX. CONSULTATION WITH U.S. EPA AND ECOLOGY

A. Applicability

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

20.2 The designation of a document as "draft" or "final" is solely for purposes of consultation with U.S. EPA and Ecology in accordance with this Part. Such designation does not

affect the obligation of the Parties to issue documents, which may be referred to herein as "final," to the public for review and comment as appropriate and as required by law.

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

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

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

C. Primary Reports

20.5 BPA shall complete and transmit draft reports for the following primary documents to U.S. EPA and Ecology for

review and comment in accordance with the provisions of this Part:

(a) Scope of Work

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

(c) RI Report, including the Initial Screening of Alternatives

(d) Baseline Risk Assessment

(e) FS Report

(f) Record of Decision ("ROD")

(g) Remedial Design ("RD")

(h) Remedial Action ("RA") Work Plan

20.6 Only the draft final reports for the primary documents identified above shall be subject to dispute resolution. BPA 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 BPA 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 Reports

(l) Other items as Project Managers agree are 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 except as provided by Paragraph 20.4. Target dates shall be established for the completion and transmission of draft secondary reports pursuant to Part XXIV of this Agreement. The purpose of target dates is to assist BPA in meeting deadlines, but target dates do not become enforceable and are not subject to Parts XXII, XXIII, XXIV, and/or XXV.

E. Meetings of the Project Managers on Development of Reports

20.9 The Project Managers shall meet 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 potential ARARs pertinent to the report being addressed. Draft ARAR determinations shall be prepared by BPA in accordance with Section 121(d)(2) of CERCLA, 42 U.S.C. § 9621(d)(2), the NCP, and pertinent guidance issued by U.S. EPA and Ecology, which is not inconsistent with CERCLA and the NCP.

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

G. Review and Comment on Draft Reports

20.12 BPA shall complete and transmit each draft primary report to U.S. EPA and Ecology on or before the corresponding deadline established for the issuance of the report. BPA shall complete and transmit the draft secondary document in accordance with the target dates established for the issuance of such reports established pursuant to Part XXIV of this Agreement.

20.13 Unless the Parties mutually agree to another time period, all draft reports shall be subject to a thirty (30) day period for review and comment. Review of any document by U.S. EPA or Ecology may concern all aspects of the report (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the NCP, and any pertinent guidance or policy issued by the U.S. EPA or Ecology. Comments by U.S. EPA and Ecology shall be provided with adequate specificity so that BPA may respond to the comments and, if appropriate, make changes to the draft report. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and, upon request of BPA, U.S. EPA and Ecology shall provide a copy of the cited authority or reference. In cases involving complex or unusually lengthy reports, U.S. EPA and Ecology may extend the thirty (30) day comment period for an additional twenty (20) days by written notice to BPA prior to the end of the thirty (30) day period. On or before the close of the comment period, U.S. EPA and Ecology shall transmit by next day mail their written comments to BPA.

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

20.15 In commenting on a draft report which contains

a proposed ARAR determination, U.S. EPA and Ecology shall include a reasoned statement of whether they object to any portion of the proposed ARAR determination. To the extent that U.S. EPA and Ecology do object, they shall explain the basis for their objection in detail and shall identify any ARARs which they believe were not properly addressed in the proposed ARAR determination.

20.16 Following the close of the comment period for a draft report, BPA shall give full consideration to all written comments on the draft report submitted during the comment period. Within thirty (30) days of the close of the comment period on a draft secondary report, BPA shall transmit to U.S. EPA and Ecology its written response to comments received within the comment period. Within thirty (30) days of the close of the comment period on a draft primary report, BPA shall transmit to U.S. EPA and Ecology a draft final primary report, which shall include BPA's response to all written comments, received within the comment period. While the resulting draft final report shall be the responsibility of BPA, it shall be the product of consensus to the maximum extent possible.

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

H. Availability of Dispute Resolution for Draft Final Primary Documents

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

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

I. Finalization of Reports:

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

J. Subsequent Modifications of Final Reports

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

20.22 U.S. EPA, Ecology, or BPA may seek to modify a report after finalization if it determines, based on new

information (i.e., information that became available, or conditions that became known, after the report was finalized) that the requested modification is necessary. U.S. EPA, Ecology, or BPA may seek such a modification by submitting a concise written request to the Project Managers of the other Parties. The request shall specify the nature of the requested modification and how the request is based on new information.

20.23 In the event that a consensus among the Parties is reached, the modification shall be incorporated by reference and become fully enforceable under the Agreement pursuant to Part XXXIII. In the event that a consensus is not reached by the Project Managers on the need for a modification, either U.S. EPA, Ecology, or BPA may invoke dispute resolution as provided in Part XXI to determine if such modification shall be conducted. Modification of a report shall be required only upon a showing that: (1) the requested modification is based on significant new information, and (2) the requested modification could be of significant assistance in evaluating impacts on the public health or the environment, in evaluating the selection of remedial alternatives, or in protecting human health and the environment.

20.24 Nothing in this Subpart shall alter U.S. EPA's or Ecology's ability to request the performance of additional work which was not contemplated by this Agreement. BPA's obligation to perform such work must be established by either a modification of a report or document or by amendment to 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 issuance of a draft final primary document pursuant to 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 of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one

individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (SES or equivalent) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The U.S. EPA representative on the DRC is the Hazardous Waste Division Director ("Division Director") of U.S. EPA's Region 10. BPA's designated member is the Lower Columbia Area Manager. Ecology's designated member is the Program Manager, Hazardous Waste Investigation and Cleanup, Washington Department of Ecology. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties.

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

21.6 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The U.S. EPA representative on the SEC is the Regional Administrator of U.S. EPA's Region 10. BPA's representative on the SEC is the BPA Administrator. Ecology's representative on the SEC is the Director of the Washington Department of Ecology. The SEC members shall, as appropriate, confer, meet, and exert their best

efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within twenty-one (21) days, U.S. EPA's Regional Administrator shall issue a written position on the dispute. BPA or Ecology may, within fourteen (14) days of the Regional Administrator's issuance of U.S. EPA's position, issue a written notice elevating the dispute to the Administrator of U.S. EPA for resolution in accordance with all applicable laws and procedures. In the event that BPA or Ecology elect not to elevate the dispute to the Administrator within the designated fourteen (14) day escalation period, BPA and/or Ecology shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

21.7 Upon escalation of a dispute to the Administrator of U.S. EPA pursuant to Paragraph 21.6, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the U.S. EPA Administrator shall meet and confer with the Secretary of the U.S. DOE and a representative from Ecology to discuss the issue(s) under dispute. The Administrator will provide notice to all Parties of any Party's request to meet or confer with respect to any such dispute and will provide an adequate opportunity for all Parties to participate in any meeting or conference convened to resolve such dispute. Upon resolution, the Administrator shall provide BPA and Ecology with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Part shall not be delegated.

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

21.9 When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Division Director for U.S. EPA's Region 10 or the Ecology Program Manager request, in writing, that work related to the dispute be stopped because, in U.S. EPA's or Ecology's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. To the extent possible, U.S. EPA and Ecology shall give BPA notification that a work stoppage request is forthcoming. After stoppage of work, if BPA believes that the work stoppage is inappropriate or may have potential significant adverse impacts, BPA may meet with the U.S. EPA Division Director and Ecology equivalent to discuss the work stoppage. Following this meeting, and further consideration of the issues, the U.S. EPA Division Director will issue, in writing, a final decision with respect to the work stoppage. The

final written decision of the U.S. EPA Division Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of BPA or Ecology.

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

21.11 Resolution of a dispute pursuant to this Part of the Agreement constitutes a final resolution of that dispute arising under this Agreement. All Parties shall abide by all terms and conditions of any final resolution of dispute obtained 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 consistent with and to the extent provided by Section 310 of CERCLA, 42 U.S.C. § 9659, and a violation of any standard, regulation, condition, requirement, or order which has become effective and is incorpoarated into this Agreement will be subject to civil penalties under Sections 310(c) and 109 of CERCLA, 42 U.S.C. §§ 9659(c) 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(c) 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(c) of CERCLA, 42 U.S.C. § 9659(c), and any violation of such terms or conditions will be subject to civil penalties under Sections 310(c) and 109 of CERCLA, 42 U.S.C. §§ 9659(c) 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(c) of CERCLA, 42 U.S.C. § 9659(c), and any violation of such term, condition, timetable, deadline, or schedule will be subject to civil penalties under Sections 310(c) and 109 of CERCLA, 42 U.S.C. §§ 9659(c) and 9609.

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

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

XXIII. STIPULATED PENALTIES

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

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

23.3 The annual reports required by Section 120(e)(5) of CERCLA, 42 U.S.C. § 9620(e)(5), shall include, with

respect to each final assessment of a stipulated penalty against BPA under this Agreement, each of the following:

(a) The facility responsible for the failure;

(b) A statement of the facts and circumstances giving rise to the failure;

(c) A statement of any administrative or other corrective action taken at the relevant facility, or a statement of why such measures were determined to be inappropriate;

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

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

23.4 Stipulated penalties assessed pursuant to this Part shall be payable to the Hazardous Substances Response Trust Fund.

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 BPA'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 BPA personally liable for the payment of any stipulated penalty assessed pursuant to this Part.

XXIV. DEADLINES

24.1 Deadlines (subject to extension pursuant to Part XXV) for the draft primary documents are established as follows:

	Date
a. Scope of Work	March 15, 1989
b. RI/FS Work Plan	May 15, 1990
c. Baseline Risk Assessment	September 30, 1991
d. RI Report, including the Initial Screening of Alternatives	December 30, 1991
e. FS Report	March 31, 1992
f. Record of Decision	September 30, 1992

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

24.3 Within twenty-one (21) days of issuance of the Record of Decision, BPA shall propose target dates for completion of the draft secondary documents identified in Paragraph 20.7(i) through (k), and deadlines for completion of the following draft primary documents:

(a) Remedial Design

(b) Remedial Action Work Plan

24.4 Within fifteen (15) days of receipt of the proposed deadlines submitted pursuant to Paragraph 24.3, U.S. EPA, in conjunction with Ecology, shall review and provide comments to

BPA regarding the proposed deadlines. Within fifteen (15) days following receipt of the comments, BPA 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 Plan(s). If the Parties fail to agree within thirty (30) days on the proposed deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Part XXI of this Agreement. The final deadlines established pursuant to this paragraph shall be published by U.S. EPA, in conjunction with Ecology.

24.5 The deadlines set forth in this Part, or to be established as set forth in this Part, may be extended pursuant to Part XXV of this Agreement. The Parties recognize that one possible basis for extension of the deadlines for completion of the RI/FS Reports is the identification of significant new conditions during the performance of the RI.

XXV. EXTENSIONS

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

(a) The timetable and deadline or the schedule that is sought to be extended;

(b) The length of the extension sought;

(c) The good cause(s) for the extension; and

(d) Any related timetable and deadline or schedule that would be affected if the extension were granted.

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

(a) An event of Force Majeure;

(b) A delay caused by another Party's failure to meet any requirement of this Agreement;

(c) A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;

(d) A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule; and

(e) Any other event or series of events mutually agreed to by the Parties as constituting good cause, including delays that result from compliance with other federal laws.

25.2 Absent agreement of the Parties with respect to the existence of good cause, BPA may seek and obtain a determination through the dispute resolution process that good cause exists.

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

basis for its position.

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

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

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

XXVI. FORCE MAJEURE

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

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

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

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

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

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

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

26.2 Force Majeure shall also include any strike or other labor dispute, whether or not within the control of the Parties affected thereby. Force Majeure shall not include increased costs or expenses of response actions, whether or not

anticipated at the time such response actions were initiated.

26.3 Any claim of Force Majeure shall be subject to dispute resolution.

XXVII. FUNDING

27.1 BPA agrees to fund its obligations under this Agreement consistent with its authority under the Bonneville Project Act, the Federal Columbia River Transmission Systems Act, 16 U.S.C. § 838, and Pub. L. 100-371 (the 1989 Energy and Water Appropriations Act).

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

XXVIII. RECOVERY OF EXPENSES

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

28.2 BPA agrees to fund and reimburse Ecology, subject to the conditions and limitations set forth in this Part; and subject to Section XXVII, for all reasonable costs it incurs in providing services specifically related to BPA'S environmental restoration activities at the Site pursuant to this Agreement.

28.3 Reimbursable expenses shall consist only of

actual expenditures required to be made and actually made by Ecology in providing the following assistance to BPA:

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

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

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

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

(e) Other services specified in this Agreement.

28.4 Within ninety (90) days after the end of each quarter of the federal fiscal year, Ecology shall submit to BPA an accounting of all state costs actually incurred during that quarter in providing direct support services under this Part. Such accounting shall be accompanied by cost summaries and be supported by documentation which meets federal auditing requirements. The summaries will set forth employee hours and other expenses by major type of support service. All costs submitted must be for work directly related to implementation of this Agreement and not inconsistent with either the NCP or the requirements described in

OMB Circulars A-87 (Cost Principles for State and Local Governments) and A-128 (Audits for State and Local Cooperative Agreements with State and Local Governments) and Standard Forms 424 and 270. BPA has the right to audit cost reports used by the State to develop the cost summaries. Before the beginning of each fiscal year, the State shall supply to the BPA Project Manager a budget estimate of what it plans to do in the next year in the same level of detail as the billing documents.

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

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

28.7 The amount of reimbursement from BPA to Ecology shall not exceed THREE HUNDRED THOUSAND DOLLARS ($300,000.00) during the lifetime of this Agreement, and not more than SEVENTY FIVE THOUSAND DOLLARS ($ 75,000.00) during any single fiscal year. Either BPA or Ecology may request, on the basis of significant upward or downward revisions in the BPA estimate of its total lifetime costs through construction, a renegotiation of the above dollar amounts. Failing an agreement, either BPA or Ecology may initiate dispute resolution in accordance with Paragraph 28.9. Circumstances could arise whereby fluctuations in BPA estimates or

actual final costs through the construction of the final remedial action creates a situation where Ecology receives reimbursement in excess of the estimated amount of these costs. Under these circumstances, the State remains entitled to payment for services rendered prior to the completion of a new estimate if the services are within the ceiling applicable under the previous estimate. This negotiated reimbursement amount reflects the judgment of BPA and Ecology that support services should not be disproportionate to overall project costs and budget.

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

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

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

(b) If BPA and Ecology Project Managers are unable to resolve a dispute, the matter shall be referred to the BPA Lower

Columbia Area Manager, or the designated representative, and the Assistant Director, Waste Management, Washington Department of Ecology, as soon as practicable, but in any event within five (5) working days after the dispute is elevated by the Project Managers.

(c) If the BPA Lower Columbia Area Manager, and the Assistant Director, Waste Management, Washington Department of Ecology, are unable to resolve the dispute within ten (10) working days, the matter shall be elevated to the Director, Washington Department of Ecology, and the BPA Administrator or the designated representative.

(d) In the event the Director, Washington Department of Ecology, and the BPA Administrator or designated representative, are unable to resolve a dispute, Ecology retains any legal and equitable remedies it may have to recover its expenses as well as the right to withdraw from this Agreement by giving ninety (90) days notice to the other Parties.

XXIX. OTHER CLAIMS

29.1 Nothing in this Agreement shall constitute an admission, constitute or be construed as a bar or release from any claim, cause of action, or demand in law or equity by or against any persons, firm, partnership, or corporation not a signatory to this Agreement for any liability it may have arising out of or relating in any way to this Agreement or the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, hazardous constituents,

pollutants, or contaminants found at, taken to, or taken from BPA's Ross Complex.

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

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

XXX. OTHER APPLICABLE LAWS

30.1 All actions required to be taken pursuant to this Agreement shall be undertaken in accordance with the requirements of all applicable state and federal laws and regulations unless an exemption from such requirements is provided in this Agreement, CERCLA, or the NCP. The Parties acknowledge that compliance with applicable laws may result in delays in satisfying deadlines for submission of documents and may require and extension of time pursuant to Part XXV.

XXXI. CONFIDENTIAL INFORMATION

31.1 BPA may assert on its own behalf, or on behalf of a contractor, subcontractor, or consultant, a confidentiality

claim covering all or part of the information requested by this Agreement pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 32 C.F.R. Part 806. Analytical data shall not be claimed as confidential by BPA. Information determined to be confidential by BPA pursuant to 32 C.F.R. Part 806 shall be afforded the protection specified therein and such information shall be treated by Ecology as confidential, to the extent permitted by state law. If Ecology is unable to afford the confidentiality protection, BPA is not required to submit the data to Ecology. If no claim of confidentiality accompanies the information when it is submitted to either regulatory agency, the information may be made available to the public without further notice to BPA.

XXXII. TRANSFER OF PROPERTY

32.1 Conveyance of title, easement, or other interest in the Site shall be in accordance with Section 120 of CERCLA, 42 U.S.C. § 9620.

XXXIII. AMENDMENT OF AGREEMENT

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

XXXIV. RESERVATION OF RIGHTS

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

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

(b) Upon Ecology's or U.S. EPA'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 Ecology or U.S. EPA would be empowered to take an enforcement action and which the Parties choose not to address by modification of this Agreement.

34.2 As of the effective date of this Agreement, and during the term of this Agreement, the Parties agree that so long as BPA is in full compliance with the terms of this Agreement, this Agreement shall operate in lieu of any administrative action by U.S. EPA or the State, civil action by the State, or civil referral by U.S. EPA to the Department of Justice against BPA with respect to the matters within the scope of this Agreement.

34.3 BPA reserves all of its rights to contest any

enforcement action brought under this Part.

XXXV. SEVERABILITY

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

XXXVI. TERMINATION AND SATISFACTION

36.1 The provisions of this Agreement shall be deemed satisfied upon a consensus of the Parties that BPA has completed its obligations under the terms of this Agreement. Any Party may propose in writing the termination of this Agreement upon a showing that the requirements of this Agreement have been satisfied. A Party opposing termination of this Agreement shall reserve its objection upon the proposing Party within thirty (30) days of receipt of the proposal. Any objection shall describe in detail the additional work needed to satisfy the requirements of the Agreement. Any Party may invoke dispute resolution as to the request for or objection to a proposal to terminate.

XXVII. 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 Bonneville Power Administration's Ross Complex among the U.S. Environmental Protection Agency, the Bonneville Power Administration, and the Washington State Department of Ecology.

APR 20 1990

JAMES J. JURA
Administrator
Bonneville Power Administration

Date

REPRESENTED BY:

David Adler, Esq.
Dean Monroe, Esq.

Signature sheet for the foregoing Federal Facility Agreement for the Bonneville Power Administration's Ross Complex among the U.S. Environmental Protection Agency, the Bonneville Power Administration, and the Washington State Department of Ecology.

Christine O. Gregoire — 4/23/90

CHRISTINE O. GREGOIRE — Date
Director
Washington Department of Ecology
State of Washington

Kenneth O. Eikenberry — 4/26/90

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

REPRESENTED BY:

Jerry A. Ackerman, Esq.

Signature sheet for the foregoing Federal Facility Agreement for the Bonneville Power Administration's Ross Complex among the U.S. Environmental Protection Agency, the Bonneville Power Administration, and the Washington State Department of Ecology.

Thomas P. Dunne

THOMAS P. DUNNE
Acting Regional Administrator, Region 10
United States Environmental Protection Agency

May 1, 1990
Date

REPRESENTED BY:

Monica Kirk, Esq.