

SUPERFUND STATE CONTRACT

**BETWEEN
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AND
THE STATE OF WASHINGTON**

**FOR
COMMENCEMENT BAY NEARSHORE / TIDEFLATS SUPERFUND SITE
OPERABLE UNIT 4 (RUSTON / NORTH TACOMA STUDY AREA)**

1. GENERAL AUTHORITY

References: 42 U.S.C. §§ 9604 and 9621; 40 C.F.R. §§ 300.435(f), 300.510, 300.515(g), and 35.6800-.6820; RCW § 70.105D; and WAC § 173-340.

This Superfund State Contract (Contract) is entered into pursuant to the authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. §§ 9604 and 9621; the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. §§ 300.435(f), 300.510, 300.515(g); other applicable Federal regulations, 40 C.F.R. §§ 35.6800-.6820; the Revised Code of Washington (RCW), Chapter 70.105D, the Washington Model Toxics Control Act and its implementing regulations, the Washington Administrative Code (WAC), Chapter 173-340.

2. PURPOSE OF CONTRACT

References: 42 U.S.C. §§ 9604(a), 9604 (c)(3), 9604(c)(9), 9604(j), and 9621(f); 40 C.F.R. §§ 35.6805(b), 300.510(a), and 300.515(g); and RCW § 70.105D.030.

A. This Contract is an agreement between the United States Environmental Protection Agency (EPA) and the Washington Department of Ecology (Ecology), hereinafter referred to as the "Parties." The Governor has designated Ecology to interact with EPA on behalf of the State, concerning CERCLA response actions, for the Ruston / North Tacoma Study Area (Operable Unit 4 or "OU4") of the Commencement Bay Nearshore / Tideflats Superfund Site (the "Site"). Ecology is also authorized by RCW 70.105D.030(1)(d) to act on behalf of the State in carrying out state programs under CERCLA.

B. The State is hereby providing the assurances required by Sections 104(c)(3), (c)(9), and (j) of CERCLA, 42 U.S.C. §§ 9604(c)(3), (c)(9), and (j). This Contract also documents the State involvement in the remedial action process as specified by Section 121(f) of CERCLA, 42 U.S.C. § 9621(f), and the NCP, 40 C.F.R. § 300.515(g). More specifically, this Contract documents responsibilities of EPA, as lead agency, and Ecology, as support agency, during remedial actions

and includes clauses that outline the basic purpose, scope, and administration of the Contract.

- C. EPA and Ecology are entering into this Contract specifically to allow the remedial actions funded by the American Recovery and Reinvestment Act (ARRA) to proceed at OU4, and are proceeding under the time limitations imposed by the ARRA.

3. SCOPE OF CONTRACT

- A. This Contract is specifically limited to the implementation of the remedial actions funded by ARRA specified in Appendix 2, Scope of Work and Schedules. Throughout the remainder of this document, those actions will be referred to as "ARRA-funded actions." Specific properties addressed by ARRA-funded actions will be identified in the O&M plans.
- B. ARRA-funded actions are part of and consistent with EPA's selected remedy for OU4, which is documented in a Record of Decision (ROD) for that OU, dated June 1993. Throughout the remainder of this document, the selected remedy for OU4 will be referred to as the "Remedy".
- C. ARRA-funded actions may not be sufficient to complete the Remedy for OU4. For over ten years, ASARCO has been conducting remedial actions at OU4 under a consent decree with EPA. After completing ARRA-funded actions, EPA may still conduct additional remedial actions before the Remedy for OU4 will be considered complete.
- D. The Parties disagree about whether the Remedy for OU4 is sufficiently protective of human health and the environment under CERCLA.
 - i. Under that Remedy, soils above the action levels of 230 ppm arsenic or 500 ppm lead are excavated if located in the top 18 inches and capped if below that depth. However, for soils above the cleanup levels of 20 ppm arsenic or 250 ppm lead, but below the action levels, only institutional controls are required.
 - ii. The State does not believe that the Remedy is sufficiently protective of human health and the environment. The State's position is that all soils above the cleanup levels of 20 ppm arsenic or 250 ppm lead should be excavated or contained. The State does not believe that institutional controls alone adequately protect the public from exposure to such concentrations.
 - iii. The EPA believes that the Remedy is protective of human health and the environment. EPA will continue to conduct five-year reviews of the Remedy for protectiveness and take into account any new information. EPA does not dispute the ability of the State to take additional actions at the Site under MTCA.

- iv. By signing this Contract and agreeing to perform Operation and Maintenance (O&M) activities, the State is not foregoing the opportunity to revisit the protectiveness of the Remedy or to require further response actions on any of the affected properties.
- v. EPA agrees to complete a protectiveness evaluation of the Remedy for OU4 within one year of the effective date of this Contract. In assessing protectiveness, EPA will use the criteria in the "Comprehensive Five Year Review Guidance" (OSWER No. 9355.7-03B-P, June 2001):
 - a. Is the remedy functioning as intended by the decision documents?
 - b. Are the exposure assumptions, toxicity data, cleanup levels, and remedial action objectives (RAOs) used at the time of the remedy selection still valid?
 - c. Has any other information come to light that could call into question the protectiveness of the remedy?

When assessing the protectiveness of the Remedy for OU4, EPA will also consider the strategies the State has developed for addressing arsenic and lead contamination throughout the State and within the Tacoma Smelter Plume, and work cooperatively with the State to resolve, when possible, differences between those strategies and the Remedy.

- vi. The Parties agree to coordinate on a long-term strategy to integrate long-term management of OU4 and the Tacoma Smelter Plume.
- E. Despite this disagreement, the Parties are entering into this Contract to allow the remedial actions funded by the ARRA to proceed. This Contract is not intended to resolve any of the remaining issues between the parties regarding OU4. Each Party specifically reserves the right to raise any issue regarding OU4 in the future. However, the Parties intend to work cooperatively together in the future to resolve remaining issues at OU4.

4. DURATION OF CONTRACT

This Contract shall become effective upon execution by EPA and the State, and shall remain in effect until the completion of all actions and payments covered by this Contract.

5. DESIGNATION OF PRIMARY CONTACTS AND THEIR RESPONSIBILITIES

References: 40 C.F.R. §§ 35.6805(h) and 300.120.

- A. EPA has designated the following person to serve as Remedial Project Manager (RPM) for this Contract:

Kevin Rochlin
US EPA Region 10, Office of Environmental Cleanup (ECL-111)
1200 6th Avenue, Suite 900
Seattle, Washington 98101
(206) 553-2106

The designated RPM may be changed by letter to Ecology, and incorporated by reference herein without amending this Contract.

- B. The State has designated the following person to serve as the State Project Manager (SPM) for this Contract:

Chung Ki Yee
Washington State Department of Ecology
Toxics Cleanup Program
P.O. Box 47600
Olympia, WA 98504-7600
(360) 407-6991.

The designated SPM may be changed by letter to EPA, and incorporated by reference herein without amending this Contract.

- C. The RPM and SPM are the representatives acting on behalf of EPA and Ecology, respectively, in the implementation of this Contract. The RPM may approve project changes during the implementation of remedial actions so long as such changes do not require amendment of this Contract in accordance with Section 33, Amendability.
- D. Any disagreements between the RPM and SPM shall be resolved through their chains of command and/or the signatories to this Contract, as specified under Section 31, Issue Resolution.

6. NEGATION OF AGENCY RELATIONSHIP

Reference: 40 C.F.R. § 35.6805(c).

Nothing in this Contract is intended to create, either expressly or by implication, the relationship of agency between EPA and the State. EPA (including its employees, agents, and contractors) is not authorized to represent or act on behalf of the State in any matter associated with this Contract, and the State (including its employees, agents, and contractors) is not authorized to represent or act on behalf of EPA in any matter associated with this Contract.

7. SITE DESCRIPTION

References: 40 C.F.R. §§ 35.6805(d), and 300.430(b) and (d).

The ROD (Appendix 1) contains a description of: the Site, including the location, background of events, physical characteristics, and nature of releases of hazardous substances (e.g., contaminant type and affected media); past response actions conducted by EPA, the State, and others; and the selected remedy for OU4.

8. SITE ACCESS AND PERMITS

References: 40 C.F.R. §§ 35.6805(p) and 300.400(d).

EPA will use its own authority to secure access to the Site, as well as rights-of-way and easements necessary for EPA or its contractors to complete the ARRA-funded actions. If requested by EPA, the State may assist in securing such access. At the request of EPA, the State will assist EPA in obtaining any permits needed to satisfactorily complete off-Site elements of the remedial actions.

EPA may need State assistance to obtain access to properties where owners have previously refused sampling or remediation.

9. EXCLUSION OF THIRD-PARTY BENEFITS

Reference: 40 C.F.R. § 35.6805(r).

This Contract is intended to benefit only the State and EPA. This Contract extends no benefit or right to any third party not a signatory hereto.

10. SCOPE OF WORK (SOW) AND SCHEDULES

References: 40 C.F.R. §§ 35.6805(e) and (g), 300.435(b), 300.430(f)

The ARRA-funded actions, and the schedule for conducting those actions are specified in a Scope of Work (SOW), which is attached in Appendix 2 and incorporated herein as part of this Contract.

11. STATE REVIEW

References: 40 C.F.R. §§ 35.6805(t), and 300.505(a) and (d).

To receive funding under the ARRA, EPA must meet the milestones specified in the SOW. To facilitate that schedule, the Parties agree to do the following:

- A. EPA will provide a schedule of deliverables at the beginning of the project. EPA will keep Ecology updated if there are any schedule changes.
- B. Unless otherwise agreed to by the Parties, Ecology shall provide comments to EPA as follows:
 - i. For "major deliverables" (e.g., intermediate and final remedial designs), within ten (10) working days of receipt.

- ii. For “minor deliverables” (e.g., site management plan and remedial action work plan) within five (5) working days of receipt.

12. TECHNICAL AND PROGRESS REPORTS

References: 40 CFR 35.6815(c)(1) & 35.6650.

A. PROGRESS REPORTS

EPA agrees to submit progress reports on a quarterly basis to the SPM. These progress reports shall include an explanation of work accomplished during the reporting period, delays and problems encountered, along with a description of anticipated corrective measures and resolutions. EPA shall also provide a comparison of the percentage of the project completed to the percentage indicated in the project schedule, detailing significant discrepancies. The SPM will be cc'd on progress reports provided to EPA by the remedial action contractor. Any Confidential Business Information in the reports will be removed prior to their being provided to the SPM.

B. TECHNICAL REPORTS

EPA agrees to submit technical reports to the SPM. Technical reports may be supplied in draft, and finalized during the remedial action process, detailing technical progress of the project, changes in the execution of the remedial action, and other information as specified herein. These reports include, but are not limited to, the following:

- i. Preliminary and Final Remedial Design for Yard Remediation.
- ii. Site Management Plan (SMP).
- iii. Remedial Action (RA) Work Plan.
- iv. Construction Health and Safety Plan.
- v. Sampling and Analysis Plan / Field Sampling Plan.
- vi. Waste Disposal Plan for Wood Waste Pile.
- vii. Operations & Maintenance (O&M) Plan.
- viii. Pre-Final and Final Completion Report.

13. RECORDS RETENTION

References: 40 C.F.R. §§ 35.6705, 35.6815(d), and 300.515(i); 36 C.F.R. § 1230; and EPA Order 2160.

All financial and programmatic records, supporting documents, statistical records, and other records related to the Site must be retained by the State for a minimum of ten (10) years following the submission of the final Financial Status Report by EPA. All such records shall be accessible and available to EPA. If any litigation, claim, negotiation, audit, cost recovery, or other action involving the records has been started before the expiration of the 10-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 10-year period, whichever is later. Microfilm copying must be performed in accordance with the technical regulations and records management procedures contained in 36 C.F.R. § 1230 and EPA Order 2160, respectively.

14. A STATEMENT OF INTENTION TO FOLLOW EPA POLICY AND GUIDANCE

References: 40 C.F.R. §§ 35.6805(f) and 300.430(f)(5)(ii)(B).

In addition to compliance with all requirements specified in CERCLA and the NCP, EPA and the State intend to follow all applicable EPA policy and guidance identified in the Administrative Record or stated herein. EPA will consider relevant State guidance during the implementation of the ARRA-funded actions.

15. LIST OF SITE-SPECIFIC AGREEMENTS

Reference: 40 C.F.R. § 35.6805(m).

The following list includes all site-specific agreements (Cooperative Agreements, Contracts, consent agreements, and administrative orders) associated with and/or in effect for the Site:

- Consent Decree with Asarco to perform Ruston/North Tacoma Yard remediation. *United States of America v. Asarco Incorporated*, C94-5715 (W.D. Wa. 1995).
- Consent Decree with Asarco to perform the remedy at the Asarco Smelter Site. *United States of America v. Asarco Incorporated*, C-91-5528 B (W.D. Wa. 1997).
- Unilateral Administrative Order (UAO) for Asarco to perform the sediment remedies OU 6 in 2002.
- Second Amendment to the Asarco Smelter Consent Decree. Sale of Smelter Site to Point Ruston in 2006 and adding Point Ruston as a party to the Consent Decree.

16. CERCLA ASSURANCE: COST SHARE

References: 42 U.S.C. § 9604(c)(3); and 40 C.F.R. §§ 35.6105(b)(2), 35.6805(i)(5), and 300.510(b).

The State shall pay ten (10) percent of the cost of all ARRA-funded actions completed by EPA or its representatives, reduced by any recovery of such costs from any potentially responsible parties, including the State. This payment is necessary under Section 104(c)(3)(C) of CERCLA, 42 U.S.C. § 9604(c)(3), in order to allow EPA to implement the ARRA-funded actions.

17. COST-SHARE CONDITIONS

References: 42 U.S.C. § 9604(c)(3) and (5); and 40 C.F.R. §§ 35.6805(j) and .6815(a), and 300.510(b)(2), (3), and (4).

A. ESTIMATE OF TOTAL COST OF ARRA-FUNDED ACTIONS

- i. The estimated total cost of the ARRA-funded actions (excluding EPA's indirect costs) is \$5,000,000. This estimate is derived from the costs calculated for the Asarco bankruptcy. Those costs are based on the yards that must still be remediated; contingencies for change orders, which may or may not be invoked; and the cost of construction management services.
- ii. The estimated amount of the State's ten (10) percent share of the total cost of the ARRA-funded actions is \$500,000.

B. PAYMENT TERMS

i. NOTICE OF PROJECTED ANNUAL COSTS BY EPA

By April 1st of each calendar year, EPA shall provide Ecology with the following:

- a. An estimate of the remedial action costs covered by this Contract that EPA will incur during the next three State fiscal years, the first of which starts on July 1st of that calendar year.

For example, by April 1, 2010, EPA shall provide Ecology with an estimate of the remedial action costs that EPA will incur during the next three State fiscal years, from July 1, 2010 through June 30, 2013.

- b. An updated estimate of the total cost of remedial actions covered by this Contract.

ii. INVOICE OF ACTUAL ANNUAL COSTS BY EPA

By April 1st of each calendar year, EPA shall provide Ecology with an invoice for the following:

- a. The State's share of the actual remedial action costs covered by this Contract and incurred by EPA during the preceding State fiscal year.
- b. Any previously invoiced amounts that the State has not paid, including any applicable interest accrued on those amounts.

For example, by April 1, 2011, EPA shall provide Ecology with an invoice for the State's share of the actual remedial action costs incurred by EPA during the preceding State fiscal year, ending on June 30, 2010, and any previously invoiced amounts that the State has not paid.

iii. PAYMENT OF ACTUAL ANNUAL COSTS BY STATE

By September 30th of each calendar year, the State shall submit the amount invoiced by April 1st of that calendar year to EPA, subject to the other payment terms specified in this Section.

For example, by September 30, 2011, the State shall submit to EPA the amount invoiced on April 1, 2011.

iv. PAYMENT BY STATE CONTINGENT ON APPROPRIATIONS

The State's obligation to make annual payments under this Contract is contingent on the availability of funds appropriated for that purpose. Ecology assures that its biennial budget requests, and supplemental requests if needed to meet the conditions of this Contract, will include the amount invoiced by April 1st of that calendar year.

v. ACCRUAL OF INTEREST ON PAST DUE AMOUNTS

If invoiced amounts are not paid by September 30th, (as described in B.iii.), then interest shall accrue on those amounts from October 1st of that calendar year until payment is submitted by the State. The interest rate is specified at http://www.epa.gov/cfo/finstatement/superfund/int_rate.htm.

vi. FINAL PAYMENT BY STATE

Notwithstanding any other provisions of this Contract, all of the State's ten (10) percent share of remedial actions costs covered by this Contract, including accrued interest, shall be paid within five (5) years of completion of all ARRA-funded actions.

vii. SUBMITTAL

All payments by the State shall be made to EPA and sent to the address specified below:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

C. STATE CREDIT

- i. Credit for costs incurred by the State to perform remedial action at this or another National Priority List (NPL) site may be applied to off-set all or a portion of the cost-share requirement of this Contract. Such credit is limited to expenses incurred by the State for remedial action that EPA determines to be reasonable, documented, direct, out-of-pocket expenditures of non-federal funds that have not been previously applied or reimbursed. Such costs must be verified and documented in a Support Agency Cooperative Agreement and reflected in an amendment to this Contract.
- ii. The State may provide in-kind services to satisfy its cost share requirements under this Contract. These in-kind services must be reasonable, documented, and comply with the requirements regarding in-kind and donated services described in 40 CFR 31.24. In-kind services must also be documented in a Support Agency Cooperative Agreement and reflected in an amendment to this Contract.
- iii. The State may request credit pursuant to Section 17(C)(i) above under a Support Agency Cooperative Agreement for remedial actions conducted both within and outside of OU4, including actions conducted within the Tacoma Smelter Plume.

18. EMERGENCY RESPONSE ACTIVITIES

Reference: 40 C.F.R. 300.415 & 300.525

Any emergency response activities, or emergency circumstances, including removal actions, shall not be restricted by the terms of this Contract. However, remedial actions may be suspended until the emergency activities are concluded, at which time the terms of this Contract will be subject to amendment if required by Section 33, Amendability.

19. CERCLA ASSURANCE: 20-YEAR WASTE CAPACITY ASSURANCE

References: 42 U.S.C. § 9604(c)(9); and 40 C.F.R. §§ 300.510(e), 35.6120, 35.6105(b)(3), and 35.6805(i)(2).

The State submitted a Waste Capacity Assurance Plan on April 25, 1994, which EPA determined to be adequate, pursuant to 40 C.F.R. 35.6120, on May 26, 1994. The State hereby assures that hazardous waste treatment or disposal facilities will be available for receiving wastes from OU4 for twenty (20) years following the effective date of this Contract.

20. CERCLA ASSURANCE: OFF-SITE STORAGE, TREATMENT, OR DISPOSAL

References: 42 U.S.C. § 9604(c)(3)(B) and 9621(d)(3); and 40 C.F.R. §§ 300.510(d), and 35.6805(i)(3), and 35.6105(b)(4).

The State hereby assures the availability of adequate regional capacity for the disposal of hazardous substances from the site. The State makes these assurances based upon the information contained in its 1994 Waste Capacity Assurance Plan referenced in Section 19, immediately above.

21. NOTIFICATION OF TRANSFER OF CERCLA WASTE

References: 40 C.F.R. §§ 35.6805(v) and 35.6120, and EPA (OSWER) Directive 9330.2-07.

EPA will, prior to any shipment of hazardous substances from the site to an out-of-State facility, provide written notification to:

- A. The appropriate environmental official for the State in which the waste management facility is located; and/or
- B. The appropriate Indian tribal official who has jurisdictional authority in the area where the waste management facility is located.

22. CERCLA ASSURANCE: REAL PROPERTY ACQUISITION

References: 42 U.S.C. § 9604(j); and 40 C.F.R. §§ 300.510(f), and 35.6805(i)(4), 35.6105(b) 5), and 35.6400.

Pursuant to the ROD, an interest in real property does not need to be acquired in order to implement the ARRA-funded actions.

23. CONSTRUCTION COMPLETION DETERMINATION

References: 40 C.F.R. §§ 300.510(c)(2) and 300.515(g); and OSWER Directives 9355.0-4B and 9320.2-09A-P.

A. PREFINAL/FINAL INSPECTION

EPA will notify Ecology when it believes construction of the ARRA-funded actions to be complete. EPA and Ecology agree to participate in a joint, pre-final inspection with EPA's Construction Manager and the Construction Contractor to determine whether the

remedy has been constructed in accordance with the ROD, the remedial design, any construction contract specifications established pursuant thereto, and as modified by any change orders, claims, or construction contract modifications. Construction completion information shall include written confirmation by the property owners that construction on specific properties was completed as proposed by EPA and that the property owner's concerns, if any, with the cleanup of the property have been addressed. Within fifteen (15) calendar days of completion of the pre-final inspection, Ecology shall submit in writing to the RPM any comments it may have regarding construction. Based upon Ecology's written comments and EPA's, the RPM will prepare one uniform set of comments for submission to EPA's Construction Manager.

If necessary, after the Construction Manager addresses issues raised in the pre-final inspection, a joint final inspection will be scheduled to determine whether the remedy has been constructed in accordance with the ROD, the remedial design, any construction contract specifications established pursuant thereto, and as modified by any change orders, claims, or construction contract modifications. Within fifteen (15) calendar days of completion of the final inspection, Ecology will submit to the RPM any written comments it may have regarding the construction. Based upon Ecology's written comments and EPA's, the RPM will prepare one uniform set of comments for submission to EPA's Construction Manager. After the Construction Manager addresses the comments from both the pre-final and final inspections, the construction of the ARRA funded activities will be considered complete and the Operational and Functional (O&F) period for the ARRA-funded work will begin. The completion of the construction and the start of the O&F period will be documented in a letter from EPA to Ecology. In the event that EPA and the State disagree that the construction phase of ARRA-funded actions have achieved remediation goals in the ROD, then EPA and Ecology agree to invoke the Dispute Resolution provisions contained in Section 31.

B. OPPORTUNITY TO OBJECT BY STATE

If Ecology does not agree with EPA's determination that the construction of the ARRA-funded work is complete, then Ecology must notify EPA in writing that it is invoking dispute resolution procedures set forth in Paragraph 31.

24. OPERATIONAL AND FUNCTIONAL (O&F) DETERMINATION

References: 40 C.F.R. §§ 35.6805(q), 300.435(f), 300.510(c)(2), and 300.515(g); and OSWER Directives 9355.0-4A and 9320.2-09A-P.

A. ACTIVITIES

Pursuant to 40 CFR 300.435(f)(2), a remedy becomes "operational and functional" either one year after construction is completed or when the remedy is determined by EPA and the state to be functioning properly and performing as designed, whichever is earlier. EPA shall conduct, per this Contract, those activities necessary to ensure that the ARRA-funded actions are O&F. EPA shall conduct those activities until either one year after construction is completed or

when the ARRA-funded actions are determined concurrently by EPA and the State to be functioning properly and performing as designed, whichever is earlier. EPA may grant extensions of the one-year period, as appropriate.

B. CERTIFICATION BY EPA

EPA will certify in writing to Ecology that the ARRA-funded actions are O&F and explain and how any issues identified by Ecology were resolved.

C. OPPORTUNITY TO OBJECT BY STATE

If Ecology does not agree with EPA's determination, then Ecology must notify EPA in writing that it is invoking the dispute resolution procedures set forth in Paragraph 31.

25. OPERATION AND MAINTENANCE (O&M) PLANS

References: 40 C.F.R. 300.510(c)(1).

EPA will specify in O&M plans the applicable O&M activities and designate properties addressed by the ARRA-funded portion of the Remedy before transferring the responsibility for undertaking those activities to the State. EPA agrees to work cooperatively with Ecology in the development of those plans.

26. CERCLA ASSURANCE: OPERATION AND MAINTENANCE (O&M)

References: 42 U.S.C. § 9604(c)(3)(A); 40 C.F.R. §§ 35.6805(i)(1), 35.6105(b)(1), 300.435(f), and 300.510(c); and OSWER Directive 9355.0-87.

A. TRANSFER

Upon the ARRA-funded portion of the Remedy for OU4 being deemed O&F as defined in Section 24 above, the State will accept transfer of and responsibility for operating and maintaining that portion of the Remedy.

B. ASSURANCE

Upon transfer of the ARRA-funded portion of the Remedy for OU4, the State will undertake and satisfactorily complete O&M activities for that portion of the Remedy. Those activities and the properties subject to those activities will be specified in the O&M plans identified in Section 25 above.

C. LIMITS ON ASSURANCE

The State is not agreeing under this Contract to undertake O&M activities at any other portion of OU4.

D. COORDINATION OF ACTIVITIES

The Parties agree to coordinate O&M activities within OU4 with the goal of achieving consistency throughout OU4.

27. NPL DELETION

References: 40 C.F.R. 300.515(c)(3) & 300.425(e), and OSWER Directive 9320.2-3A

EPA shall consult and provide the State with a deletion package, for the State's concurrence, before deleting the Site from the National Priorities List (NPL).

28. ACTIVITIES BY OTHER PARTIES

Reference: 40 C.F.R. § 35.6805(u).

If, at any time during the pendency of this Contract, a party other than EPA performs any of the remedial actions addressed by this Contract, the State and EPA may amend this Contract to reflect changes resulting from such performance, see Section 33, Amendability.

29. ENFORCEMENT

Reference: 40 C.F.R. § 35.6805(n).

This Contract does not constitute a waiver or compromise of EPA's right to bring or maintain an action against any person or persons, including the State, under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, or any other statutory of common law.

30. COST RECOVERY

References: 42 U.S.C. § 9607; and 40 C.F.R. § 300.520.

- A. EPA and the State may assert claims against any party for the reimbursement of any response costs.
- B. Neither the State nor EPA waives the right to recover all government-funded expenditures.

31. ISSUE RESOLUTION

References: OSWER Directive 9375.5-04, and EPA/OARM Audit Report 2750 -- Management of EPA Audit Reports and Follow-up Actions (1984 Edition).

In the event a dispute arises under this Contract, the Parties shall utilize the dispute resolution procedure set forth below. All decisions, including unilateral decisions by EPA and joint decisions by the Parties, are subject to this procedure. Matters unrelated to

this Contract, such as those between the State and other Federal agencies, are not subject to the terms of this Contract, since this Contract is a bilateral agreement.

- A. Any dispute arising under this Contract shall be resolved to the extent possible by the RPM and the SPM.
- B. If any such dispute cannot be resolved by the RPM and the SPM, it shall be referred, as necessary, to the Environmental Cleanup Office Director [or designee] of EPA; the Regional Administrator [or designee] of EPA; and finally, matters of national significance may be referred to the Administrator [or designee] of EPA for resolution. EPA and the State agree that any terms of resolution reached through this process are binding.

32. SANCTIONS FOR FAILURE TO COMPLY WITH TERMS OF THIS CONTRACT

References: 42 U.S.C. § 9604(d)(2); and 40 C.F.R. § 35.6805(o)

If the State fails to comply with the terms of this Contract, after reasonable notice and opportunity to correct, EPA may, after providing sixty (60) days notice, proceed under the provisions of CERCLA, 42 U.S.C. § 9604(d)(2), to enforce this Contract in the appropriate court of competent jurisdiction. If EPA breaches this Contract, the State may, after providing sixty (60) days notice, file suit and seek remedies in an appropriate court of competent jurisdiction if authorized by law.

33. AMENDABILITY

References: 42 U.S.C. § 9604; and 40 C.F.R. 42 U.S.C. §§ 35.6805(l) and 300.510.

- A. This Contract may be amended by mutual agreement of EPA and the State. Any such amendments must be in writing, and must be signed by authorized officials for EPA and the State.
- B. The Parties may agree to amend this Contract for reasons including, but not limited to, the revision of costs or terms to undertake modifications to the remedial activities.
- C. The Parties shall amend this Contract if alterations impact the State's assurances pursuant to the NCP and CERCLA, as amended.

34. RECONCILIATION PROVISION

Reference: 40 C.F.R. § 35.6805(K).

- A. This Contract shall remain in effect until EPA and the State have satisfied CERCLA cost-share requirements under this Contract. This will include financial settlement of project costs and final reconciliation of response costs (including change orders, claims, overpayments, reimbursements, etc.). Rather than using

overpayments by the State under this Contract to satisfy cost-sharing obligations at another site, EPA shall reimburse the State for any overpayments.

- B. If the payment terms herein do not cover the complete cost of ARRA-funded actions, EPA will bill the State for the State's corrected cost share. Final reconciliation of all the costs for ARRA-funded actions will follow completion of all ARRA-funded actions, and is not contingent upon deletion of the Site from the NPL.

35. CONCLUSION OF THIS CONTRACT

References: 42 U.S.C. § 9604(j); and 40 C.F.R. §35.6820.

This Contract is concluded when:

- A. EPA has satisfactorily completed the ARRA-funded actions;
- B. The State has undertaken the O&M obligations specified in Section 26, CERCLA Assurance: Operation and Maintenance;
- C. The EPA Financial Management Officer has a final accounting of all remedial action costs covered by this Contract, including change orders and contractor claims, pursuant to Section 34, Reconciliation Provision;
- D. The State has submitted all cost-share payments covered by this Contract to EPA in accordance with Section 17, Cost-Share Conditions; and
- E. If applicable, interest in real property has been accepted by the State pursuant to 40 C.F.R. 35.6805(i)(4).

36. TERMINATION OF THIS CONTRACT

- A. The Parties may terminate this Contract by agreement. Any such agreement must establish the effective date for the termination, the basis for settlement of termination costs, and the amount and date of any sums due either party.
- B. In addition, either Party may terminate this Contract upon EPA's decision to halt ARRA-funded actions. Any such termination must be initiated by written notice to the other Party and will be effective upon reconciliation of costs as provided in Section 34, Reconciliation Provision.

37. APPENDICES

The following appendices are hereby incorporated by reference into this Contract. With the exception of the ROD, any modifications to the appendices are also incorporated by reference into this Contract. Incorporation of any amendments to the ROD pertaining to OU4 requires the agreement of both EPA and Ecology for the duration of this Contract.

Appendix 1: EPA Superfund Record of Decision for Operable Unit 4 (Ruston / North Tacoma Study Area), June 16, 1993.

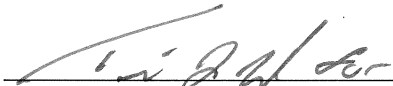
Appendix 2: Scope of Work for Remediation of Operable Unit 4 (Ruston / North Tacoma Study Area).

THE PARTIES HAVE EXECUTED THIS CONTRACT IN TWO (2) COPIES, EACH OF WHICH SHALL BE DEEMED AN ORIGINAL.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

_____ Date _____
Daniel D. Opalski, Director
Office of Environmental Cleanup
United States Environmental Protection Agency, Region 10

FOR THE STATE OF WASHINGTON, BY AND THROUGH THE WASHINGTON STATE DEPARTMENT OF ECOLOGY

 _____ Date 7/12/09
James J. Pendowski, Program Manager
Toxics Cleanup Program

Appendix 1

EPA Superfund Record of Decision for Operable Unit 4 (Ruston / North Tacoma Study Area), June 16, 1993

Appendix 2

Scope of Work for Remediation of Operable Unit 4 (Ruston / North Tacoma Study Area)

1. Scope of Work

The scope of work generally includes the following:

- Sampling individual properties to determine if soil exceeds the action levels.
- Excavation of any contaminated soil and slag to a depth of 18 inches and if contaminants exceed this depth placing a marker to clearly identify the base of the cap.
- Excavation of debris pile.
- Replacing the excavated soil and slag with clean soil and gravel and re-landscaping.
- Capping contaminated dirt alleys and parking areas with asphalt to provide an impermeable barrier to contaminants, or removing the soil and replacing it with gravel.
- Establishing a temporary staging area or transfer facility for excavated soil.
- Disposing of the contaminated soil offsite.
- If necessary implementing safety measures, including air monitoring.

Specific properties which will be addressed will be determined by sampling. The locations of these properties will be identified in the Construction Completion Report and O&M Plans for OU4.

2. Tasks

EPA expects that the remedial action contract will include the following major tasks:

- Contractor on-site management.
- Contractor mobilization and demobilization.
- Development of site specific plans (e.g. construction health and safety, O&M, site management, sampling and analysis).
- Yard sampling.
- Preparation of individual property remediation plans.
- Soil excavation, material handling, stockpiling, transport and offsite disposal.
- Confirmational sampling.

The final plans and specifications developed for the final work may differ from this list of tasks but is expected to be consistent with the statement of work described above.

3. Project Schedule

EPA's preliminary schedule for conducting this work is as follows:

- Design – completed by September 1 2009,

- Award Contract – 1st Quarter of FY 2009.
- Construction Start – Spring 2010
- Construction Complete – Fall 2011.

This schedule is subject to change as design progresses and contract schedule is finalized.