

Responsiveness Summary

Bradford Island Federal Facility Agreement

This Responsiveness Summary has been developed collaboratively by the United States Army Corps of Engineers (USACE), United States Environmental Protection Agency (EPA), Oregon Department of Environmental Quality (ODEQ), and Washington State Department of Ecology (WDOE) consistent with Section 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9620, and the Bradford Island Federal Facility Agreement (FFA) Section XXXV – PUBLIC COMMENT ON THIS AGREEMENT.

I. Introduction

The Bradford Island Site (Site) is a National Priorities List (NPL) Federal Facility located in the Columbia River approximately 40 miles east of Portland, Oregon, and 5 miles west of Cascade Locks, Oregon. The Site was placed on the NPL by EPA on March 16, 2022. Following listing, USACE, EPA, ODEQ, and WDOE (Parties) negotiated the FFA, and associated Site Management Plan (SMP), and reached an agreement on terms on March 25, 2024. Shortly thereafter, EPA and USACE provided seven Tribes the opportunity for Government-to-Government consultation on the FFA and SMP. In addition to consultation, the Tribes received the opportunity to submit comments on the FFA and SMP. On April 24, 2024, EPA released the FFA and SMP to the public for a 45-day public comment period which ended on June 10, 2024. EPA received over 350 comments from individuals and two petitions containing a combined 2,000 identical comments. EPA also received comments from Bonneville Power Administration (BPA), the Confederated Tribes and Band of the Yakama Nation (Yakama Nation), and the Columbia Riverkeeper and associated organizations.

II. Public Comments

Most of the public commenters utilized a template provided by the Sierra Club. Over 350 individual emails and over 2,000 signatures attached to two petitions made the following statement:

“Thank you for the opportunity to submit a comment on the Bradford Island Federal Facility Agreement and Site Management Plan. Resident fish near Bradford Island have the highest levels of cancer-causing PCB contamination of any fish in the United States. Columbia River communities deserve safe and healthy fish to eat, especially those who depend on fish for their livelihoods and cultures. A swift and thorough cleanup is long overdue. I support a Federal Facilities Agreement that mandates urgent cleanup actions with strict adherence to an enforceable schedule. I support the Yakama Nation and other Tribes rights to be involved as an equal partner in cleanup decisions.”

Response – *Resident Fish Near Bradford Island*

The Parties appreciate the importance of the Columbia River to persons in the region. The Parties intend to work with community members, the United States Department of Defense (DOD), Tribes, and Federal and State agencies to better understand the extent of contamination associated with the Site and develop cleanup alternatives to reduce risks to human health and the environment. The Parties also understand the importance of a timely cleanup in order to address these risks as soon as possible and will seek to accomplish that objective in accordance with the FFA.

Comments on Tribal Involvement

Other comments by individuals noted the importance of Tribal involvement in all aspects of the remedial process. Comments urged EPA and USACE to honor the language of the Tribal Memoranda of Understanding (MOUs) that have thus far been entered into by USACE and EPA with three Tribes: the Cowlitz Indian Tribe, Yakama Nation, and the Confederated Tribes of the Grand Ronde Community of Oregon (Grand Ronde).

Response – *US Government Obligation to Tribes and Enforceable Schedule of Cleanup*

There are seven Federally recognized Tribes with treaty rights or other expressed interest in the Bradford Island environment. The seven Tribes are: the Yakama Nation, the Cowlitz Indian Tribe, the Grand Ronde, the Confederated Tribes of the Umatilla Indian Reservation, the Nez Perce Tribe, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes of Siletz Indians of Oregon. Protecting the members of these Tribes and others from exposure to contamination in the Bradford Island environment is of paramount importance to the Parties.

The FFA is a legal agreement between the parties and provides an enforceable framework for USACE to undertake investigation and cleanup of the Bradford Island Site under in consultation with EPA as the lead regulator and the States as support regulatory agencies.

The seven affected Tribes are not signatories to the FFA but may nonetheless choose to effectively participate in the investigation and cleanup of the Bradford Island Site in several ways. Tribes may participate via a memorandum of understanding with EPA and USACE. The Yakama Nation, Cowlitz Indian Tribe, and the Grand Ronde have already chosen this method of participation, and other tribes are welcome to, as well. Tribes or their individual members may also be involved through participation in the Bradford Island Restoration Advisory Board and the Technical Coordination Team established by EPA outside of the FFA. At various points during the cleanup process, EPA and USACE will also offer Tribes formal

consultation on plans for the Bradford Island Site. In these ways and others, the Parties welcome and encourage the involvement of the Federally recognized Tribes in work for the Bradford Island Site.

Bonneville Power Administration Comments

A set of comments was received through the public comment process from BPA, who shares operation and maintenance (O&M) obligations with USACE for the Bonneville Dam power production complex. BPA made three points in their comments. 1) BPA does not have CERCLA liability at the Bradford Island Superfund Site. 2) “BPA Funding” in the Bradford Island FFA refers to USACE’s assignment of 50% of USACE-caused and incurred CERCLA response costs at Bradford Island to BPA as a joint cost for O&M of the Bonneville project. 3) “BPA Funding” in the Bradford Island FFA also refers to BPA’s discretionary direct funding – BPA will cease direct funding and instead reimburse the U.S Treasury for appropriately-assigned environmental liability costs.

Response

Funding for USACE response actions under the FFA will be determined in the normal course of the Federal budgeting process. The remainder of BPA’s comments address matters outside the scope of the FFA, to which a response is not necessary.

III. Yakama Nation Comments

Introduction

Shortly after the FFA was signed by the Parties, offers for Government-to-Government consultation were sent to seven Tribes affected by the Site. These Tribes were: the Grand Ronde, Confederated Tribes of Siletz Indians of Oregon, Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes of the Warm Springs Reservation of Oregon, the Yakama Nation, Cowlitz Indian Tribe, and the Nez Perce Tribe.

Following Government-to-Government consultation with USACE and EPA, as well as numerous staff-to-staff discussions, the Yakama Nation submitted multiple suggestions that reflected thoughtful consideration of the FFA. The Parties greatly appreciate the Yakama Nation’s comments, which reflect considerable time and effort, and look forward to continuing collaborative engagement on the Bradford Island Site. The following table lists the comments of the Yakama Nation.

Philip Rigdon on behalf of the Yakama Nation		Response
	Yakama Nation General Comments	Response
	There are provisions in the Federal Facility Agreement (FFA) that are poorly and/or awkwardly drafted. In addition, some of the defined terms are used inconsistently, which may create ambiguities that are probably not wise for an agreement of this magnitude. Most of those that may have some significance for implementation are addressed in the comments for specific subsections.	Relying extensively on a model Federal Facility Agreement (FFA) that the United States Environmental Protection Agency (EPA) and the United States Department of Defense (DoD) previously developed for the Ft. Eustis Federal Facility in 2008 which has proven effective, EPA, USACE, Washington, and Oregon spent almost two years carefully preparing the Bradford Island FFA. While there may be differences of opinion on the use of certain terms, the Bradford Island FFA is a comprehensive agreement that is expected to govern the effective performance of response actions for the Bradford Island Site. The Parties do not find there to be flaws in the terms or provisions of the Bradford Island FFA that would warrant modification.

<p>The aspect of this FFA that is of primary concern is the uncertainty regarding the chain of command and designated officials for USACE. These should require very specific nomenclature and clear directives on who within the agency will do what. Simply stating that “USACE” will do this or that in the required duties leaves it far too vague, making it very difficult for anyone outside of USACE to figure out who is in charge. This has been a consistent problem with the administration of the Bradford Island Site; leaving future managers and staff to guess as to the individuals responsible for all of these requirements will further erode trust and faith in USACE’s cleanup efforts. Note that the Portland District, which is directly in charge of Bradford Island, is only mentioned in three places in the FFA, and only in connection with the administrative record and the contact for all notices to the Project Manager. As a result, the term “USACE” as it is used in this agreement could mean anybody within the command structure, except for a very few certain specific provisions (e.g., Dispute Resolution). As we state in specific comments, even in the instances where particular officials are designated, they are vaguely worded. All of these ambiguities and uncertainties could have enormous implications for adequate communication with USACE – by the other FFA parties, MOU tribes, and the general public that is expected to have a say in the process.</p>	<p>The Parties agree with informing the Tribes and the public of the project management structure and points of contact within the FFA Parties. The FFA does establish the roles and responsibilities of the Project Managers, the positions primarily responsible for implementing the coordination processes in the FFA among the FFA parties. The memoranda of understanding with the two Tribes, discussed above, also provide that the Project Managers are the initial and main personnel responsible for communications and interaction. The Restoration Advisory Board (RAB) is the active and continuing public outreach group for all interested community members to hear about and provide input on the USACE response actions, with a Community Co-Chair, along with the USACE Project Manager. In addition, USACE will provide regular opportunities for the public to comment on significant steps in the cleanup and will provide notice of these opportunities in advance.</p>
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<p>As USACE did in its 2014-2017 litigation with the Yakama Nation, the FFA also walks a fine, semantic line regarding the extent of a “Site” and a “Facility.” However, all those areas where released hazardous substances have come to be located are, in fact, a “facility.” A “facility” includes “any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.” 42 U.S.C. § 9601(9). If a hazardous waste has “come to be located” at a “Site,” the Site is thus also a facility under CERCLA. <i>Pakootas v. Teck Cominco Metals, Ltd.</i>, 452 F.3d 1066, 1074 (9th Cir. 2006). And “the term facility has been broadly construed by the courts, such that in order to show that an area is a facility, the plaintiff need only show that a hazardous substance under CERCLA is placed there or has otherwise come to be located there.” 3550 Stevens Creek Assocs. v. Barclays Bank of California, 915 F.2d 1355, 1360 n. 10 (9th Cir. 1990). Nevertheless, the FFA’s definitions of Site and Facility are confusing and potentially the source of completely unnecessary conflict. The Yakama Nation would like to firmly state its position for the record that an NPL facility and an NPL site have the same geographic contours, with both being wherever the contaminants of concern from Bradford Island are situated.</p>	<p>The Parties agree with the Yakama Nation’s conclusion that Bradford Island is a “facility” as defined by CERCLA and includes areas where hazardous substances have come to be located. In addition, the FFA provides that USACE will also remediate CERCLA pollutants and contaminants, as well as Resource Conservation and Recovery Act (RCRA) hazardous wastes and hazardous constituents.</p>
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	<p>We also want to note for the record that both CERCLA and the National Contingency Plan (NCP) must be “liberally construed to accomplish its dual goals of promptly cleaning up hazardous waste sites and making polluters, rather than society as a whole, pay.” <i>Pakootas v. Teck Cominco Metals, Ltd.</i>, 905 F.3d 565, 584 (9th Cir. 2018) (citing <i>U.S. v. Chapman</i>, 146 F.3d 1166, 1175 (9th Cir. 1998)). Throughout the history of this site USACE has shown a habit of interpreting the statute and regulations in the narrowest possible manner, and the Yakama Nation will continue to remind EPA and all of the Parties to the FFA that strict construction of an unclear word or phrase is not permissible during the term of the Agreement.</p>	<p>The Parties agree that the investigation and cleanup by USACE of the Bradford Island Site will be accomplished by properly addressing releases of contamination which result in unacceptable risks of exposure associated with activities at Bradford Island. The implementation of the Bradford Island FFA which achieves that goal will be a priority of the Parties.</p>
	Yakama Nation Specific Comments	Response
1	II. Definitions	
a	<p>a. “Facility” (2.12) – This term is limited to property owned by the United States and is, thus, inconsistent with the CERCLA definition of “facility.” This is, at best, confusing as used throughout the FFA. For example, in the definition of the “Site Management Plan” the term “facility” is used. Presumably, because it is not capitalized, it refers to where hazardous substances have come to be located. It could, however, be referring to only those areas owned and/or operated by the United States. We recommend that “Facility” be changed to a more specific term. If the term is not changed, it should be made clear – in each subsequent reference – to which “facility” or “Facility” the section is referring.</p>	<p>While it is true that the term "Facility" is defined in the FFA more narrowly than CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) define the term "facility," the definition of "Site" in the Bradford Island FFA encompasses the term "Facility" plus the more expansive definitions of "facility" provided in CERCLA and the NCP. CERCLA § 101(9) defining “facility” includes the term “site” and covers the area where a release has come to be located.</p> <p>No change is necessary to the Bradford Island FFA based on this comment.</p>

b	<p>“Operable Unit” (2.23) – This term is lifted from the National Contingency Plan’s definitions and is correct, but the term is used inconsistently throughout the FFA, as will be noted in other comments.</p>	<p>As acknowledged in this comment, the definition of the term “Operable Unit” is consistent with the NCP. The term “Operable Unit” or “OU” is properly used in the Bradford Island FFA.</p> <p>No change is necessary to the Bradford Island FFA based on this comment.</p>
c	<p>“Site” (2.33) – This definition is not consistent with the CERCLA definition of “facility;” the phrase “areas within the Facility and <i>any other areas</i> where a hazardous substance has been deposited, etc.” is misleading because any other such “areas” would also be “within the Facility.” Note that the term “site” (or “Site”) is used inconsistently throughout the FFA as pointed out in comments below, and probably should be changed to “facility.”</p>	<p>This comment expresses the concern that the referenced phrase means that the term “Site” narrowly includes only contamination within the Bradford Island uplands area, but that phrase and definition of “Site” in the Bradford Island FFA includes the uplands and the broader spread of contamination from the uplands to other areas. This definition of “Site” follows and expands upon the CERCLA and NCP definition of “facility.”</p> <p>No change is necessary to the Bradford Island FFA based on this comment.</p>
d	<p>Transmit” (2.38). The definition is grammatically clumsy and does not actually define “transmit.” Instead, it sets forth when an item is timely transmitted. If the purpose is to set forth acceptable ways to transmit required documents, it should do so first. Moreover, we assume that “any other means of transmission” either means or includes transmission of .pdf or other documents through electronic means.</p>	<p>The concern expressed in this comment is that the definition of “transmit” is actually an explanation of what constitutes a timely transmission rather than a definition of the term “transmit”. While that may be true from one perspective, the purpose of the definition is accomplished by showing whether a document or notice has been sent in a timely manner (i.e., constitutes “transmit” in compliance with the FFA).</p> <p>No change is necessary to the Bradford Island FFA based on this comment.</p>

e	<p>“USACE” (2.39) – this definition is far too vague and misleading considering the size and structure of the agency. For some reason it includes “Bradford Island” rather than “Portland District” or “Northwestern Division,” even though the staff, managers and commanding officials all work for those offices. More importantly, it would be helpful in many of the FFA provisions to point out who in particular within “USACE” will be the responsible official for that particular task and/or duty. This definition is a problem because it has never been clear who is actually in charge at USACE for the Bradford Island cleanup. Including DOD in the definition also muddies things considerably without any explanation for what that “other” USACE department will do under the FFA.</p>	<p>The U.S. Army is the Military Department that has undertaken the responsibilities of the FFA and assigned implementation to USACE as a subordinate command. There are also provisions in the Bradford Island FFA which refer to particular offices or officials within USACE, EPA, WA, and OR. Lastly, contrary to the view expressed in this comment, the definition does explain what the DOD is expected to do with respect to certain Bradford Island matters.</p>
2	II. Parties Bound	
	<p>Section 3.23 should include notification to the Tribes of the information set forth in the first sentence.</p>	<p>USACE and EPA have jointly entered into Memoranda of Understanding (MOUs) covering Tribal participation in work for the Bradford Island Site, one with the Yakama Nation, one with the Cowlitz Indian Tribe, and one with the Grand Ronde. Other Tribes with an expressed interest in the Bradford Island Site may also enter into a similar MOU. In addition, Tribes and Tribal members are invited to participate in work for the Bradford Island Site through involvement in the Restoration Advisory Board (RAB) and at EPA Technical Coordination Team (TCT) meetings. These opportunities will allow interested Tribes and Tribal members to be aware of developments for the Bradford Island Site and meaningfully participate in the work.</p>

		No change is necessary to the Bradford Island FFA based on this comment.
3	IV. Purpose	
	<p>A new Section 4.2.9 purpose should be added: <u>“Provide for the participation of federally recognized Indian tribes in the remedial actions to be undertaken at Bradford Island through Memoranda of Understanding executed separately with USACE and EPA as acknowledged in Section 6.16 of this Agreement.”</u></p>	<p>As acknowledged in this comment, there are MOUs which already provide for the participation of the Yakama Nation and Cowlitz Indian Tribe in work for the Bradford Island Site, and this allowance is recognized in Section 6.16 of the Bradford Island FFA. It is further expressed in that Section 6.16 that other Tribes may obtain similar MOUs. Further, Tribes and Tribal members may participate in the work for the Bradford Island Site through the RAB and at EPA TCT meetings.</p> <p>No change is necessary to the Bradford Island FFA based on this comment.</p>

4	V. Scope of Agreement	
a	5.3 RCRA Corrective Action – It would be a good idea to explicitly state here that neither EPA nor the State of Oregon currently enforce RCRA or state hazardous waste regulations at the Bradford Island facility through either a permit or interim status.	<p>RCRA and CERCLA integration is effectively captured in Section 8.1 of the Bradford Island FFA without the need to further explain the historical or current RCRA status of Bradford Island (and speaking to the “current” status could necessitate future amendment to the FFA were that status to change in the future).</p> <p>No change is necessary to the Bradford Island FFA based on this comment.</p>
b	5.4 Geographic Scope – The last sentence of this section is misleading and inaccurate, as it seems to describe OUs as “discrete locations” despite the definition in Section 2.23 providing that OUs are “discrete actions...which may address geographical portions of the Site (emphasis added)” among other things. Also, see comments on the definition of “Site.” As set forth above, it is not clear that the “Site” is what is listed on the NPL.	<p>"Site" is the NPL listed area plus the broader area identified in the Bradford Island FFA (i.e., where contamination has come to be located). OUs are defined as a discreet action but also as "geographical portions of the Site" as stated in Section 2.23 of the Bradford Island FFA and the NCP at 40 C.F.R. § 300.5.</p> <p>No change is necessary to the Bradford Island FFA based on this comment.</p>
5	VI. Findings of Fact	
	6.6 NPDES – A list of all Bonneville Dam related Clean Water Act permits should be included here. This summary may be incorrect, as there may be more than one NPDES permit. It should also be noted that general upland industrial operations storm water has a special exemption for dams.	<p>The recitation of Clean Water Act related permits that may apply to Bradford Island is not needed to comprehend the critical elements of the CERCLA Site or for the purpose of assuring compliance with the Bradford Island FFA.</p> <p>No change is necessary to the Bradford Island FFA based on this comment.</p>

6	IX. Work to be Performed	
a	9.2.1 Operable Units – Finding of Fact 6.19 finds that data is needed to do a supplemental remedial investigation, updated baseline Risk Assessment and revised upland and river feasibility studies. However, this section only requires RI/FS, with no mention of an updated baseline risk assessment. That should be included.	<p>Specifying in the Bradford FFA that a risk assessment must be done is not necessary because baseline risk assessments are to be part of every remedial investigation (RI) according to the NCP, 40 CFR § 300.430(d)(4). Also, Section 9.2.6 of the Bradford Island FFA calls for a Baseline Risk Assessment to be performed as part of the RI.</p> <p>No change is necessary for the Bradford Island FFA based on this comment.</p>
b	9.2.2 OUs – The reference to “site” is confusing, and perhaps misleading, based on the definitions. The word “site” should be deleted and replaced with “action or geographic location.”	<p>The reference to “site” with a small “s” is clear enough given the context without the need to resort to further explanation.</p> <p>No change is necessary to the Bradford Island FFA based on this comment.</p>
c	9.2.5 No Action – the word “Sites” is vague and misleading and should be deleted and replaced with “geographical locations within Operable Units.”	<p>The term “sites” is interchangeable with the term “OUs” in the Bradford Island FFA. While the term “Sites” should not be capitalized here, that grammatical error will not impact future understandings of the meaning of this term in this context.</p> <p>No change is necessary to the Bradford Island FFA based on this comment.</p>

d	9.4.5 ARARs – The phrase “it may act” in the last sentence should be changed to “they may act.”	<p>The Parties understand the concern raised here but will be treating the two States as able to act independently of one another for all purposes under the Bradford Island FFA.</p> <p>No change is necessary to the Bradford Island FFA based on this comment.</p>
e	The Sections include no mention of necessary monitoring documents (e.g., baseline, construction verification, long-term monitoring) except Section 9.8.2.5 (“may include long-term monitoring.”)	<p>The reference to “may include long term monitoring” is sufficiently broad. In addition, there may be long-term land use control monitoring as specified in section 9.5.1. Specific monitoring documents will be captured in the SMP.</p> <p>No change is necessary to the Bradford Island FFA based on this comment.</p>
7	X. Consultation	
a	10.3 and 10.4 Primary v. Secondary Documents – These sections should clarify that monitoring, Site Management Plan, and Institutional Controls documents are Primary Documents. A reserve clause should be included in these provisions stating that the list is not exclusive, and that other unlisted documents can be designated as either Primary or Secondary, as needed.	<p>Monitoring and Institutional Controls documents will be described in the Primary Documents. The SMP is included in the list of primary documents at FFA paragraph 10.3 and is separately covered in the Bradford Island FFA in Section XII.</p> <p>DoD and EPA developed the list of Primary and Secondary documents in the Ft. Eustis model FFA.</p> <p>No change is necessary to the Bradford Island FFA based on this comment.</p>

b	<p>10.5.1, 14.3 Project Manager Meetings (and other meetings that include the MOU Tribes) –The language should clarify the format and structure of overall technical, management, legal check-ins, and each should include the MOU Tribes. For TCT meetings (currently monthly) the FFA needs clarity on how this will be handled.</p>	<p>The MOUs already provide for the participation of these Tribes in Project Manager meetings.</p> <p>Specificity in terms of the structure of the meetings is best addressed during the meeting itself.</p> <p>No change is necessary to the Bradford Island FFA based on this comment.</p>
c	<p>10.7.1 Document Transmissions – second sentence should be modified, as follows: “USACE shall complete and transmit each draft Secondary Document in accordance with the target dates.”</p>	<p>Although this change would provide for accuracy, the Parties understand that there will be multiple Secondary Documents.</p> <p>No change is necessary to the Bradford Island FFA based on this comment.</p>

d	10.7.2 Review and Comment – This section is too lengthy and deals with two different subjects: (1) the time periods and 2) the scope of review and comment. It should be broken into two separate sections. The new section 10.7.3 should start with the sentence “Review of any document by EPA, ODEQ, and WDOE may concern all aspects of the document, etc.” The third sentence of 10.7.2 should be modified to read “may need to be expedited in order for USACE to satisfy the 15-month requirement of Section 120(e)(2) of CERCLA.”	<p>Adding the 15-month detail here is unnecessary since from the context of the statement it can be understood to reference the timeline specified in section 120(e)(2) of CERCLA. Moreover, this sentence dates back to the EPA-DoD 1988 Model Language for Federal Facility Agreements (FFAs), meaning that it has appeared consistently in over approximately 150 FFAs without need for modification.</p> <p>The referenced paragraph in the Bradford Island FFA may be understood without the need to break the paragraph into two subparagraphs.</p> <p>No change is necessary to the Bradford Island FFA based on this comment.</p>
8	XII. Budget Development	
a	12.2 Facility-Specific Budget Building – In the second paragraph, “USACE” in the should be “USACE Portland District.” The sentence should end with a colon. In the third paragraph the word “USACE” should also be “USACE Portland District.” The last two sentences are awkward and confusing, and it is not clear which office of “EPA” is being referred to (Region 10 or Headquarters).	<p>This provision was negotiated to be consistent with the Federal budget process.</p> <p>No change is necessary to the Bradford Island FFA based on this comment.</p>
a	Fourth paragraph of 12.2, end of first sentence should read “(i.e., a projected budget shortfall).”	The recommended clarification is not necessary to understand this statement.

b	12.3 USACE Budget – The term “USACE” is used throughout this section, but it is unclear which office is responsible for the duties being mandated, as discussed above regarding Paragraph 2.3. That should be clarified. In addition, USACE should provide information its budget requests to the Parties and Tribes, not just EPA. The process as set forth is not collaborative, nor does it develop trust amongst the parties involved in the cleanup of the Site. The second paragraph should be deleted.	<p>The specific USACE office is already provided in this provision.</p> <p>As reflected in the Bradford Island FFA, this is a federal government matter of deliberative process and as such the requested information is protected.</p> <p>No change is necessary to the Bradford Island FFA based on this comment.</p>
c	12.4 Annual SMP amendment by June 30 – Although the FFA won’t be executed until July 2024 (or perhaps after), USACE stated on March 28, 2024, that they still intend to update it this coming June.	<p>The Parties agree with this comment and updating the SMP is in process.</p> <p>No change is necessary to the Bradford Island FFA based on this comment.</p>
d	12.5.2.3 – The term SEC is defined later in the FFA; the last the sentence should end “ <u>directly to the level of the Senior Executive Committee (SEC) as provided in SECTION XX – DISPUTE RESOLUTION.</u> ”	The recommended changes are not necessary to understand the meaning of this statement.
e	12.6 Resolving Appropriations Shortfalls – We recommend either streamlining this Paragraph or dividing it to avoid confusion.	It is not necessary to break up this paragraph into two subparagraphs in order to understand the meaning of this provision.
9	XIII. Extensions	
	A new Section 13.2.5 should be added: “A delay caused by a dispute with a participating Indian tribe pursuant to the provisions of a Memorandum of Agreement set forth in Section 6.16.”	<p>The origin of those extension procedures is from the 1988 Model Language, which has successfully been invoked to extend schedules and is written broadly to permit such extensions.</p> <p>No change is necessary to the Bradford Island FFA based on this comment.</p>

10	XIV Project Managers	
	The second sentence in Section 14.6 is confusing. It should be modified to read: "Modifications of Work that result in increases in contract cost must be approved by the USACE Contracting officer."	The rewriting of the referenced sentence is not necessary as the meaning may be understood by a careful reading of the sentence.
11	XV. Exemptions	
	15.1 National Security – Although Bradford Island is operated by DOA/DOD, this sentence seems irrelevant and not within the realm of reasonable foreseeability during the remedial process under CERCLA. Moreover, in the event such an Order is executed, it would supersede with FFA regardless of this provision. We recommend deleting it.	<p>Contrary to this comment, it is possible that a power production facility such as the one on Bradford Island may be the subject of a national security concern. Being clear about that possibility and the law behind what happens is an accurate and transparent way to address the issue.</p> <p>No change necessary to the Bradford Island FFA based on this comment.</p>
12	XVI. Access	
	16.2 Classified Information – USACE has no national security interests at Bradford Island and any information should not be withheld or classified to protect national security (see above comment regarding Section 15.1).	<p>Contrary to this comment, there may be national security interests at Bradford Island, which make this access reservation an important condition.</p> <p>No change is necessary to the Bradford Island FFA based on this comment.</p>

13	XVII. Permits	
	17.9 RCRA Permits – see comment on Section 5.3 above regarding current RCRA enforcement.	<p>Specifying the RCRA permits that do and do not exist for Bradford Island is not needed to address CERCLA work within the context of the Bradford Island FFA (and speaking to the “current” status of RCRA permits could necessitate future amendment to the FFA were that status to change in the future).</p> <p>No change is necessary to the Bradford Island FFA based on this comment.</p>
14	XX. Dispute Resolution	
a	Please draft an attachment or appendix to the FFA containing a chain-of-command flow chart for USACE. Also include a chart of respective counterpart officials at USACE and EPA for the dispute resolution steps (project manager on up) as well as Portland District relationships with other USACE technical groups (Omaha District, Kansas City office, Center for Expertise, etc.).	EPA and DOD developed the model dispute resolution provision in 1988 and, to date, there has been no confusion as to identity of the persons at each respective organization who participate in the process. In addition, the referenced dispute resolution provisions do provide specificity on the participants in the process by title or position.
b	20.3 Informal Dispute Resolution – It is not clear whether the USACE Portland District Commander will be involved in these meetings as an “immediate supervisor” of the Project Manager. The FFA or comment responses should clarify who the immediate supervisors are.	The specificity provided in this provision is enough to identify the persons at each respective organization who will participate in the dispute resolution process.

c	<p>20.6 Senior Executive Committee – The designation of the “Commander, USACE” for the SEC is unclear. We assume that this person is the “Chief Engineer and Commanding General” (currently Lt. Gen. Spellmon), but that is not obvious from the language. We recommend clarifying this provision with a more specific designation. This section then provides that the “Secretary of the Army” rather than “Commander, USACE” will be the individual in charge of elevating the dispute on behalf of the Army. This seems incongruous with the previous statement on process. Regardless, it is not clear why elevating the responsibility to an official at that level, for the purpose of referring a dispute to the EPA Administrator, is necessary or efficient. The process implies that the “Secretary of the Army for Civil Works” (currently Asst. Sec’y Connor) is not involved in the decision making. The USACE command structure involved in this process is vague and should be clearly set out.</p>	<p>There is specificity in this provision that includes the titles and positions of those officials within USACE and DoD who are involved in the dispute resolution process. This is the structure that USACE and DoD have determined is appropriate.</p>
d	<p>20.7 EPA Administrator’s Decision – The Secretary of the Army again is involved with this dispute resolution rather than someone in the Army Civil Works chain of command, which seems more appropriate for USACE.</p>	<p>As provided in the Fort Eustis Model, FFA, EPA and DOD have determined the appropriate protocol for elevating a matter of this type.</p>
e	<p>20.10 Incorporation of Final Resolution into Cleanup – It is not specified who within “USACE” will do what is provided for in this section. This should be clarified to avoid confusion.</p>	<p>USACE will make the determination as to who is to fulfill this role and responsibility in the course of work for the Bradford Island Site.</p>

15	XXIII. Enforceability	
	23.2 Judicial Review – As noted in the FFA, any remedial action will be conducted under § 120(e) of CERCLA, 42 U.S.C. § 9620(e). Therefore, the jurisdictional bar in CERCLA § 113(h) regarding review of remedial actions in U.S. District Court does not and will not apply to any Citizen Suit filed to enforce the FFA’s provisions. See, Fort Ord Toxics Project, Inc. v. California EPA, 189 F.3d 828 (9th Cir. 1999).	No change is requested or warranted for the Bradford Island FFA based on the comment.
16	XXXIII. Protected Information	
	33.2 National Security Information – This section should be deleted in its entirety. See comments above regarding national security interests in Sections 15.1 and 16.2.	<p>Contrary to this comment, national security may be an issue for Bradford Island and the process set forth in this provision is important to recognize in the event such an issue should arise.</p> <p>No change is necessary to the Bradford Island FFA based on this comment.</p>
17	XXXIV. Community Relations	
	34.9 RAB Tribal Subcommittee – Yakama enrolled tribal members who participate in any “tribal subcommittee” formed under the RAB will be speaking on their own behalf and are not official representatives of the Yakama Nation.	<p>This point may be made with the RAB and is not necessary to capture in the Bradford Island FFA.</p> <p>No change is necessary to the Bradford Island FFA based on this comment.</p>
The Yakama Nation Comments on the Site Management Plan		
1	Upland Source Control should be completed prior to river cleanup to prevent recontamination.	The SMP reflects the current conditions at the Bradford Island Federal Facility that will be addressed under the FFA, and the current plans for response actions at each of the OUs. The plans and schedules will be updated in annual SMP amendments as provided in FFA Section XII.

a	The Site Management Plan (SMP) lists River Cleanup projected completion in 2037 (14 yrs from now) and upland is 2040 (16 yrs). Why is the upland being phased after in- water?	The SMP reflects the current conditions at the Bradford Island Federal Facility that will be addressed under the FFA, and the current plans for response actions at each of the OUs. The plans and schedules will be updated in annual SMP amendments as provided in FFA Section XII.
b	Although, we recognize the importance of Early Action removals of significant source areas, overall, upland source control and active pathways should be addressed before in- water cleanups. Without the pathways controlled, recontamination of in-water cleanup areas is certain. Before in-water remedial design, recontamination potential will need to be assessed to identify upriver, stormwater (upland and upriver), bank erosion (upland and cross river where contaminated fill may have been used to create uplands), groundwater (upland), and other pathways loading contaminants to in-water cleanup areas.	The SMP reflects the current conditions at the Bradford Island Federal Facility that will be addressed under the FFA, and the current plans for response actions at each of the OUs. The plans and schedules will be updated in annual SMP amendments as provided in FFA Section XII.
c	Note that we view the upland RI as incomplete and expect data gaps. We do not have certainty that the NTCRA will be a one-and-done for upland source control needs. We anticipate a high likelihood for additional upland source control needs on Bradford Island and other areas of the facility where contamination from the dam has come to be located.	The SMP reflects the current conditions at the Bradford Island Federal Facility that will be addressed under the FFA, and the current plans for response actions at each of the OUs. The plans and schedules will be updated in annual SMP amendments as provided in FFA Section XII.
2	Conceptual Site Model	
a	From this SMP it is difficult to piece together the Conceptual Site Model (CSM) for individual Upland AOPCs and understand how the RA Milestones are tied to and driven by the CSM. Because this is a complex site, information about exposure pathways, receptors, media of concern, and COC should be summarized in easily digestible table format.	The SMP reflects the current conditions at the Bradford Island Federal Facility that will be addressed under the FFA, and the current plans for response actions at each of the OUs. The plans and schedules will be updated in annual SMP amendments as provided in FFA Section XII.

b	<p>The Sandblast AOPC RA section discusses GW (occupational worker) and soil (tribal and occupational worker) exposure pathways and risk assessments. However, the Summary of Investigations section reports that stormwater, GW, and soil have been sampled, stating “In addition, groundwater and stormwater sampling programs were conducted to update the CSM and better understand the recontamination potential to the River OU”. We agree that the GW and stormwater are recontamination potential sources to the River OU and need to be addressed; however, we do not see this reflected in the discussion, or that the River OU COCs are also addressed for Upland AOPCs. Maybe the there is a plan to further address the stormwater to River OU pathway, but without clear presentation of comprehensive information, it impossible for the reviewer to understand what pathways/receptors/COCs/ARARs may be important or not, and what remains to be investigated to make those determinations. The disconnected presentation of pathways/receptors/risk assessments/COCs and the nature and extent in this SMP should be rolled together into a clear CSM.</p>	<p>The SMP reflects the current conditions at the Bradford Island Federal Facility that will be addressed under the FFA, and the current plans for response actions at each of the OUs. The plans and schedules will be updated in annual SMP amendments as provided in FFA Section XII.</p>
c	<p>A well-developed Conceptual Site Model (CSM) is an important tool in identifying known and suspected releases or sources, pathways, and receptors. The Site History descriptions of AOPCs and OUs should be expanded to include sources, pathways, and receptors. The CSM must then be updated after more extensive site history research and data collection. As the SMP will [be] updated annually the Contents of the SMP, including but not limited to the CSM and Nature and Extent information, site risks, should also be updated annually.</p>	<p>The SMP reflects the current conditions at the Bradford Island Federal Facility that will be addressed under the FFA, and the current plans for response actions at each of the OUs. The plans and schedules will be updated in annual SMP amendments as provided in FFA Section XII.</p>

d	Data Quality Objectives (DQOs) must be established, and a Data Gaps Analysis performed to guide Work Plan and Sampling and Analysis Plan development. Extensive sampling in these early phases will pay off by defining areas of contamination and serving as the basis for site remedies.	The SMP reflects the current conditions at the Bradford Island Federal Facility that will be addressed under the FFA, and the current plans for response actions at each of the OUs. The plans and schedules will be updated in annual SMP amendments as provided in FFA Section XII.
e	Summary of Investigations – Upland OUs. A more detailed description of activities and sampling performed to date is needed. Based on the 2012 Remedial Investigation (RI) report, sampling activities appear to have been omitted from this section (e.g., direct push groundwater grab and lagoon sediment sampling at Pistol Range AOPC). Additional discussion of the analytes sampled, and methods is needed to provide a comprehensive picture of past investigations.	The SMP reflects the current conditions at the Bradford Island Federal Facility that will be addressed under the FFA, and the current plans for response actions at each of the OUs. The plans and schedules will be updated in annual SMP amendments as provided in FFA Section XII.
f	Summary of Investigations – Bulb Slope AOPC. Additional hydrogeologic data is needed to adequately assess CSM for the Bulb Slope AOPCs. With no groundwater data, the full nature and extent of contamination at the AOPC is not known.	The SMP reflects the current conditions at the Bradford Island Federal Facility that will be addressed under the FFA, and the current plans for response actions at each of the OUs. The plans and schedules will be updated in annual SMP amendments as provided in FFA Section XII.
g	Summary of Baseline Risk Assessments. While this section provides a summary of Baseline Risk Assessments, it does not, but should, summarize the COCs in a simple table format. Typically, such tables would include OU, AOPC, receptor, media, point of compliance, and COCs and relevant threshold concentrations. Additionally, the table could summarize ongoing RA receptors, media, COCs to be presented in the Upland and River Supplemental RI Reports, with the expectation that the SMP will be updated with relevant site risk information per annual updates.	The SMP reflects the current conditions at the Bradford Island Federal Facility that will be addressed under the FFA, and the current plans for response actions at each of the OUs. The plans and schedules will be updated in annual SMP amendments as provided in FFA Section XII.

h	Summary of Baseline Risk Assessments – Upland OUs. Were soil gas data included in the risk assessments for the Landfill, Pistol Range, and Bulb Slope AOPCs? If not, include the rationale for not assessing the vapor intrusion pathway for current and potential future buildings (institutional or land use controls?). Need to evaluate the groundwater exposure pathways and associated risk for occupational workers at Pistol Range and Bulb Slope AOPCs.	The SMP reflects the current conditions at the Bradford Island Federal Facility that will be addressed under the FFA, and the current plans for response actions at each of the OUs. The plans and schedules will be updated in annual SMP amendments as provided in FFA Section XII.
i	Summary of Baseline Risk Assessments – River OU. Why weren't occupational workers included in the human health risk evaluation? Occupational workers at the powerhouses and Bonneville Dam could encounter contaminated sediments.	The SMP reflects the current conditions at the Bradford Island Federal Facility that will be addressed under the FFA, and the current plans for response actions at each of the OUs. The plans and schedules will be updated in annual SMP amendments as provided in FFA Section XII.
j	Nature and Extent of Contamination – Landfill and Sandblast Area AOPCs. Section states that landfill wastes include grease and sandblast grit. Certain greases and paints/waterproof surface coatings (potentially removed during sandblasting) are known to contain PFAS, specifically PFOA and PFOS. Additionally, former landfills, specifically pre-subtitle D landfills, are potential secondary sources for PFAS due to widespread usage of PFAS-containing materials from the 1950s to 1980s. As of April 2024, PFOA and PFOS have been hazardous substances under CERCLA (USEPA, 2024) and, as a result, should be included in future sampling of groundwater and soil at the Landfill and Sandblast Area AOPCs. If subsequent sampling data indicates the presence of PFOA and PFOS at the listed upland AOPCs, sampling of sediment in the River OU for PFOA and PFOS may be warranted if migration pathways to the river are complete.	The SMP reflects the current conditions at the Bradford Island Federal Facility that will be addressed under the FFA, and the current plans for response actions at each of the OUs. The plans and schedules will be updated in annual SMP amendments as provided in FFA Section XII.

3	SMP work to be performed must also include:	
a	Development of monitoring programs for sites. See 1996. USEP and USACE. Guidance Document for Development of Site Management Plans for Ocean Dredged Material Disposal Sites.	The SMP reflects the current conditions at the Bradford Island Federal Facility that will be addressed under the FFA, and the current plans for response actions at each of the OUs. The plans and schedules will be updated in annual SMP amendments as provided in FFA Section XII.
b	Information on institutional control deliverables and timing.	The SMP reflects the current conditions at the Bradford Island Federal Facility that will be addressed under the FFA, and the current plans for response actions at each of the OUs. The plans and schedules will be updated in annual SMP amendments as provided in FFA Section XII.
c	A timeline and requirement for the Biological Assessment and Biological Opinion. Consultation and discussions should be initiated in tandem with the Proposed Plan and the Record of Decision development. Ideally, the BiOp should be finalized with the ROD execution.	The SMP reflects the current conditions at the Bradford Island Federal Facility that will be addressed under the FFA, and the current plans for response actions at each of the OUs. The plans and schedules will be updated in annual SMP amendments as provided in FFA Section XII.
d	A list of applicable RCRA permits or requirements and applicable work, documentation, or timelines	The SMP reflects the current conditions at the Bradford Island Federal Facility that will be addressed under the FFA, and the current plans for response actions at each of the OUs. The plans and schedules will be updated in annual SMP amendments as provided in FFA Section XII.
e	A list of applicable CWA requirements (ex. NPDES permits or exemptions) and applicable work, documentation, or timelines	The SMP reflects the current conditions at the Bradford Island Federal Facility that will be addressed under the FFA, and the current plans for response actions at each of the OUs. The plans and schedules will be updated in annual SMP amendments as provided in FFA Section XII.

4	Contingency Planning	
	Contingency Planning. With each budget period, a contingency budget and list of contingency actions should be developed for additional work to be performed in the event that: (1) unanticipated environmental investigations or actions are needed or (2) planned environmental investigations/actions come in under budget.	The SMP reflects the current conditions at the Bradford Island Federal Facility that will be addressed under the FFA, and the current plans for response actions at each of the OUs. The plans and schedules will be updated in annual SMP amendments as provided in FFA Section XII.

IV. Columbia Riverkeeper Comments

Columbia Riverkeeper		Response
I	General Comment I: USACE and the EPA Must Honor the MOUs Between Tribes and the Federal Government	
	<p>As a whole, the FFA fails to explicitly incorporate language demonstrating that Tribal Nations are equal partners in this cleanup. The Yakama Nation played a leading role in getting Bradford Island listed as a Superfund site; however, they are only mentioned three times in the entirety of this 67-page document. While the FFA acknowledges many Tribal Nations have treaty rights and tribal interests in this site, the FFA language states that the MOUs signed “are separate and apart from this Agreement and not enforceable under this Agreement.” The FFA’s failure to expressly include language seeking input from MOU Tribes excludes these sovereign governments from vital decision-making processes.</p> <p>Going forward, USACE and the EPA must honor commitments made in the existing and any future MOU Tribes and recognize the crucial role that the Yakama Nation and other Tribal governments play in the Bradford Island cleanup. While the FFA wholly fails to acknowledge MOU Tribes, specific omissions and particularly concerning sections are discussed in more detail below.</p>	<p>Tribes may effectively participate in the investigation and cleanup of the Site in several ways. A Tribe may enter into MOU with EPA and USACE which documents the participation of that Tribe. The Yakama Nation, Cowlitz Indian Tribe, and the Grand Ronde have each entered into such an MOU with EPA and USACE. Each of the other affected and interested Tribes are welcome to enter into such an MOU, as well. EPA and USACE intend to honor the commitments made in the MOUs. Tribes and Tribal members may also contribute to the investigation and cleanup work through their voluntary participation in the Restoration Advisory Board and EPA’s Technical Coordination Team (TCT). Lastly, the Tribes will have the opportunity for formal Government to Government consultation when requested regarding planning for significant actions at Bradford Island.</p>

	Specific Comments
1	Section 9 – Work to be Performed
	<p>As written, Section 9’s language excludes MOU Tribes from proposing a new site or operable unit (Section 9.2) and proposing Interim Remedial Actions for areas within the Facility or operable units (Section 9.3). Further, MOU Tribes are not included in the listed governmental entities that review, comment, and have modification and decision-making power on the draft Proposed Plan under Sections 9.4.2–3. Full power to modify the draft Proposed Plan, the draft Record of Decision, or the remedial action plan rests only with USACE, in consultation with the EPA, Oregon Department of Environmental Quality (ODEQ,) and Washington Department of Ecology (WDOE). The language of Section 9.5.4 also omits MOU Tribes from the list of governmental entities that receive USACE’s Remedial Action Completion Report after remedial actions are finalized at each operable unit.</p> <p>We strongly urge USACE and the EPA to uphold the language of the MOUs and include input from MOU Tribes on “all project data, studies, reports, plans, and other technical submissions being distributed among the parties . . . related to the investigation and cleanup of the Bradford Island site.”</p> <p>EPA and USACE intend to honor the commitments made in the MOUs. While there are certain powers that EPA, USACE, WA, and OR have based on Federal and State laws, as reflected in the FFA, the Tribes as sovereign nations will be afforded considerable opportunities to participate in planning and review of the investigation and cleanup of the Site.</p>

2.	Section 10 – Consultation	
	<p>The FFA’s Section 10 on Consultation also leaves much to be desired, as it centers consultation only between USACE, EPA, ODEQ, and WDOE. MOU Tribes are not mentioned once in the entire Consultation section and, as a result, are not explicitly listed to receive or give feedback on Primary or Secondary Documents. These documents are the bulk of the on-the-ground remediation efforts for Bradford Island and site cleanup. USACE and the EPA must meaningfully engage the MOU Tribes in consultation regarding these documents.</p>	<p>The Tribes with MOUs will have the opportunity to review and comments on all Primary and Secondary Documents.</p>
3.	Section 12 – Budget Development and Amendment of Site Management Plan	
	<p>Sections 12.4–12.5.3 detail the SMP amendment process. These sections only mention soliciting amendment feedback from the FFA Parties on proposed SMP changes and Milestone modifications. There is no mention of including MOU Tribes in this process; however, language from the Yakama Nation’s MOU clearly states that USACE shall provide “all project data, studies, reports, plans, and other technical submissions being distributed among the parties . . . related to the investigation and cleanup of the Bradford Island site, <i>including the Site Management Plan (SMP) and any revisions or updates thereto.</i>” USACE and the EPA must honor the language of the MOU and ensure that the MOU Tribes’ input is meaningfully solicited and fully incorporated. Failure to do so would exclude critical Tribal input from real-time cleanup updates and result in ineffective, disingenuous Government-to-Government relations.</p>	<p>The Tribes with MOUs will have the opportunity to review and comment on annual amendments to the SMP.</p>

4.	Section 17 – Permits
	<div data-bbox="245 244 1124 491"> <p>Section 17 discusses USACE’s responsibility to obtain all relevant Federal and state permits necessary for work under the FFA. As with other sections, the FFA does not explain how MOU Tribes will be consulted regarding updates to cleanup permits. Tribal input on all Federal, state, and local permits is vital. The permitting process will govern large parts of the Bradford Island cleanup, and Tribes must be meaningfully involved and consulted.</p> </div> <div data-bbox="245 533 1124 844"> <p>When USACE proposes a response action on site and includes this action in a Draft Record of Decision (ROD) or removal memorandum (Section 17.3), it must share this information with MOU Tribes at the same time it is shared with FFA Parties. Further, MOU Tribes must be notified at the same time and same manner as FFA Parties of any permits required for off-site activities as soon as USACE becomes aware of such a requirement (Section 17.5). If USACE proposes any modifications to the FFA as mentioned in Sections 17.6 and 17.7, it must also meaningfully include MOU Tribes in this process.</p> </div> <div data-bbox="1135 244 1882 345"> <p>The Tribes with MOUs will have the opportunity to review and comments on all documents submitted by USACE to EPA, ODEQ, and WDOE under the FFA.</p> </div>

5.	Section 18 – Removal and Emergency Actions	
	<p>Section 18.1 states that USACE shall provide the FFA Parties with timely notice of any proposed removal action, with Section 18.3 detailing the procedure for doing so. Section 18.4 goes on to state that in the event of an emergency removal action or release that poses an imminent and substantial danger, protocol in Section 18.3 may be overridden if deemed impractical, and oral notice will be given to the FFA Parties as soon as possible.</p> <p>During removal or emergency action scenarios, USACE must also provide notice and any accompanying documentation to MOU Tribes to include them in real-time cleanup processes in the same manner provided to the FFA Parties. These actions are vital to the cleanup, and Tribal input must be prioritized.</p>	The Tribes with MOUs will be afforded substantial opportunities to be involved in all Bradford Island cleanup actions.
6.	Section 19 – Periodic Review	
	MOU Tribes must be included in Section 19’s periodic review process and given the same opportunities as the FFA Parties to review and comment on remedial action for each Operable Unit and the Periodic Review Assessment Repo	The Tribes with MOUs will have the opportunity to review and comment on reports and plans submitted by USACE to EPA, ODEQ, and WDOE under the FFA.

7.	Section 34 – Community Involvement	
	<p>Finally, Section 34.9 states that if the Restoration Advisory Board (RAB) thinks there is “sufficient participation by members of the Indian Tribes who are interested in the response actions” it “may establish a subcommittee of the Tribal members to allow their concerns to be discussed.” This should not be a substitute for meaningfully involving Tribal Nations. Tribal Nations are not members of the interested public; they are sovereign nations and should be treated as such.</p> <p>As implementation goes forward, USACE and the EPA must prioritize Tribal input on all aspects of the cleanup and allow ample time and opportunity to incorporate Tribal comments. It is incumbent upon USACE and the EPA to meaningfully engage with Tribes and respect Tribal Nations’ sovereign rights. Meaningfully seeking and incorporating Tribal input is vital to the success of this cleanup.</p>	<p>In addition to the important role of the RAB in community outreach, discussion of plans for future response actions, and review of draft reports, Tribes may attend the EPA’s TCT meetings, and Tribes will have the opportunity to participate in response action planning through formal Government to Government consultations, and Tribes with MOUs will be able to review and comment on response action decision documents.</p>
II.	General Comment II: The FFA Lacks Specificity Regarding Implementation and the USACE Chain of Command	
	<p>Throughout the FFA, the language regarding points of contact and the USACE chain of command is overly vague. In several sections, the Agreement lacks specificity for which position or division of USACE will be responsible for aspects of cleanup implementation and instead refers to the USACE as a whole. This results in uncertainty regarding the chain of command and impacts accountability.</p> <p>As cleanup progresses, clearer, more defined expectations must be set regarding which specific USACE officials, positions, and divisions are responsible for the varied aspects of implementation. This will help increase transparency and efficient communication.</p>	<p>The FFA provides that the USACE Project Manager is the first point of contact for the processes and responsibilities assumed by the Army in the FFA, and the Army and USACE have committed to meeting all the obligations established in the FFA.</p>

III.	General Comment III: The FFA Lacks Specificity Regarding Satisfaction of Statutory Requirements.	
	<p>Section 8 of the FFA details statutory requirements under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA). The FFA states that provisions under this section and the SMP satisfy both statutes' corrective active obligations and achieve compliance. The language of this section also assumes that any remedial action selected will be automatically deemed protective of human health and the environment. However, there is little specificity on how compliance will explicitly be measured, what guideposts the Parties will use to determine if the corrective actions are in line with the most up-to-date science, and whether the corrective actions are actually protective of human and environmental health. The FFA also lacks language addressing what occurs if the corrective actions fail, and there are no accountability measures in place to protect human and environmental health. As USACE and the EPA initiate cleanup and permits are granted for response actions; we urge the agencies to adopt strong permit conditions that address the above-mentioned concerns.</p> <p>Additionally, the FFA and SMP fail to include language discussing remedial steps to address potential contamination beyond the site boundary. While this is not yet a cleanup issue—and may not ultimately become one—it must be noted that if contamination goes beyond the FFA's facility and site boundary, the FFA and SMP are insufficient to adequately address remediation and satisfy RCRA Section 3004(v). Further, if contamination beyond the site boundary occurs, USACE must ensure that Tribal input is prioritized and incorporated into decision-making documents.</p>	<p>The Parties will each assure that scientists, engineers, risk assessors, hydrogeologists, and persons with other relevant expertise in their respective organizations participate in investigation and cleanup process to best assure the protection of public health and the environment. While there will be no permits required for response actions conducted onsite, as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), the substantive aspects of relevant environmental laws will be taken into account as part of the investigation and cleanup process. The remediation of the Site will include those areas where releases of CERCLA hazardous substances from Bradford Island have come to be located as provided in the definition of "facility" set forth in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and the NCP at 40 C.F.R. § 300.5.</p>

