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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF:)	ADMINISTRATIVE ORDER ON
)	CONSENT
YAKIMA HOPS)	
EPA ID No. WAH 00001 0488)	
Mabton, Washington)	U.S. EPA, Region 10
)	Docket No. RCRA-10-2003-0116
YAKIMA HOPS, INC. and.)	
HOP UNION USA, INC)	
Respondents)	
)	
Proceeding Under Section 7003 of the)	
Resource Conservation and Recovery)	
Act, as amended, 42 U.S.C. § 6973)	

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I. JURISDICTION AND GENERAL PROVISIONS

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1. This Administrative Order on Consent ("Order") is entered into by the United States Environmental Protection Agency ("EPA"), and Yakima Hops, Inc. and Hop Union USA, Inc. ("Respondents"). This Order provides for the performance of certain activities by Respondents in connection with the property located on approximately one hundred and twenty-one acres of land at 1st Avenue Northwest in Mabton, Yakima County, Washington, (the "Facility"). These activities are described herein and in Attachments A through F, which are hereby incorporated into this Order by reference. The Facility is located on land owned in fee by Yakima Hops, Inc, and within the Confederated Tribes and Bands of the Yakama Indian Nation Reservation.

2. This Order is issued pursuant to the authority vested in the Administrator of EPA by Section 7003 of the Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973. The authority to issue orders pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, has been delegated to EPA Regional Administrators by EPA Delegation Nos. 8-22-A, 8-22-B and 8-22-C, and to the Director of the Region 10 Office of Waste and Chemicals Management by Delegation Nos. R10 8-22-A, R10 8-22-B, and R10 8-22-C.

3. The Director of the Office of Waste and Chemicals Management has determined that the Respondents have contributed or are contributing to the past or present handling, storage, treatment, transportation or disposal of Solid Waste or Hazardous Waste at the Facility which may present an imminent and substantial endangerment to health or the environment. Notice of the issuance of this Order was given in writing to the State of Washington Department of Ecology pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), and to the Yakama Indian Nation Environmental Program (YNEP).

4. Respondents' participation in this Order shall not constitute or be construed as an admission of liability or of EPA's Findings of Fact, Conclusions of Law or other determinations

1 contained in this Order except in a proceeding to enforce the terms of this Order.

2 5. In any action by EPA or the United States to enforce the terms of this Order, Respondents
3 consent to and agree not to contest the authority or jurisdiction of the Director of the Office of Waste
4 and Chemicals Management to issue or enforce this Order.

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II. DEFINITIONS

7 6. Unless otherwise expressly provided herein, terms used in this Order that are defined in the
8 RCRA statute shall have the meaning assigned to them in RCRA. Whenever terms listed below are
9 used in this Order or in the Attachments that are attached to and incorporated into this Order, the
10 following definitions shall apply:

11 a. "Additional work" shall mean any activity or requirement that is not expressly
12 covered by this Order, but is determined by EPA to be necessary to fulfill the purposes of this Order
13 as presented in Section IV, Statement of Purpose.

14 b. "Administrative Record" shall mean the record compiled and maintained by EPA
15 relative to this Order.

16 c. "CERCLA" shall mean the Comprehensive Environmental Response,
17 Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

18 d. "Contractor" shall include any subcontractor, consultant, or laboratory retained to
19 conduct or monitor any portion of the Work performed pursuant to this Order.

20 e. "Day" shall mean a calendar day unless expressly stated to be a business day.
21 "Business day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing
22 any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal
23 holiday, the period shall run until the close of business of the next business day.

24 f. "EPA" shall mean the United States Environmental Protection Agency, and any
25 successor departments or agencies of the United States.

26 g. "Facility" or "Site" shall mean all contiguous property under the ownership or
27 control of the Respondents, encompassing approximately one hundred and twenty-one acres of land

1 at 1st Avenue Northwest in Mabton, Yakima County, Washington, as depicted generally on the map
2 attached as Figure 1.

3 h. "Hazardous Constituents" shall mean those constituents listed in Appendix VIII of
4 40 C.F.R. Part 261, and any constituent identified in Appendix IX to 40 C.F.R. Part 264.

5 i. "Hazardous Waste" shall mean hazardous waste as defined in § 1004(5) of RCRA,
6 42 U.S.C. § 6903(5). This term includes all hazardous constituents as defined above.

7 j. "Interim Measure(s)" or "IM(s)" shall mean those actions which can be initiated in
8 advance of completion of the final corrective measures to achieve the stabilization goals of
9 controlling or abating threats to human health and/or the environment, and to prevent or minimize the
10 spread of contaminants while long-term corrective measures are being evaluated or implemented.

11 k. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral or a
12 letter.

13 l. "Parties" shall mean the U.S. Environmental Protection Agency and the
14 Respondents, Yakima Hops, Inc. and Hop Union USA, Inc.

15 m. "Section" shall mean a portion of this Order identified by a Roman numeral, unless
16 used to refer to a statutory or regulatory section, or in a legal description of real property.

17 n. "Solid Waste" shall mean those solid wastes as defined in Section § 1004(27) of
18 RCRA, 42 U.S.C. § 6903(27).

19 o. "Submittal" shall include any Work Plan, report, progress report, or any other
20 written document Respondents are required by this Order to send to EPA.

21 p. "Work" or "Obligation" shall mean any activity Respondents must perform to
22 comply with the requirements of this Order, including its Attachments and approved submittals,
23 which are incorporated into this Order by reference

24 q. "Work Plan" shall mean any of the detailed plans Respondents are required to
25 prepare to satisfy the requirements of this Order, including its Attachments, except the Health and
26 Safety Plan. Once approved by EPA, all Work Plans are incorporated into this Order and become an
27 enforceable part of this Order.

1 **III. PARTIES BOUND**

2 7. This Order applies to and is binding upon EPA, Respondents and Respondents' successors
3 and assigns. Any change in ownership or corporate status of Respondents including, but not limited
4 to, any transfer of assets or real or personal property shall not alter Respondents' responsibilities
5 under this Order. Respondents are jointly and severally liable for carrying out all activities required
6 by this Order.

7 8. Respondents shall ensure that its Contractors and representatives retained to conduct or
8 monitor any portion of the Work performed pursuant to this Order receive a copy of this Order and
9 comply with this Order. Respondents shall be responsible for any noncompliance with this Order.

10 9. Not later than ninety (90) days prior to any voluntary transfer by Respondents of any
11 interest in property at the Site or the operation of the Facility, Respondents shall give written notice
12 of this Order to the grantee and written notice to EPA of the proposed transfer. Respondents shall
13 notify EPA of any involuntary transfers immediately upon Respondents' initial receipt of notice of
14 any involuntary transfer. Not later than three (3) days after any transfer, Respondents shall submit
15 copies of the transfer documents to EPA.

16
17 **IV. STATEMENT OF PURPOSE**

18 10. In entering into this Order, the objectives of EPA and the Respondents are:

19 a. To conduct a site investigation to determine the nature and extent of contamination
20 and any threat to the public health or the environment caused by the release or threatened release of
21 Hazardous Wastes or Solid Wastes at or from the Facility, to report on that investigation, and to
22 provide sufficient data and information to design and implement corrective measures to be taken;

23 b. To conduct a corrective measures study to identify and evaluate, in accordance with
24 the results of the site investigation and other such data as may be relevant or necessary, the corrective
25 measures alternatives necessary to mitigate, remedy or otherwise respond to any threat to the public
26 health or the environment from any release, threatened release or migration of Hazardous Wastes or
27 Solid Wastes at or from the Facility;

1 c. To design and implement the corrective measures or response measures selected by
2 EPA in accordance with the process and requirements set forth in this Order.

3 d. To implement any Interim Measures that may be required to relieve threats to
4 human health and/or the environment resulting from the release or threatened release of Hazardous
5 Wastes or Solid Wastes from the Facility throughout the implementation of this Order.

6 e. To perform any other activities necessary to address or evaluate actual or potential
7 threats to human health and/or the environment resulting from the release or potential release of Solid
8 Waste or Hazardous Waste at or from the Facility.

9

10 **V. EPA'S FINDINGS OF FACT**

11 11. Respondents Yakima Hops, Inc. and Hop Union USA, Inc. are Washington corporations
12 doing business in the State of Washington, and are persons as defined in § 1004(15) of RCRA, 42
13 U.S.C. § 6903(15). Respondent Yakima Hops, Inc. is the owner of the Site, and has been the owner
14 of the Site since before the treatment of wood poles at the Site was discontinued in 1999. The Site is
15 approximately one hundred and twenty acres, and includes a hop farm, a residence, equipment
16 storage areas, and an area where poles used in hop farming were treated with wood preservatives.

17 12. Respondents Hop Union USA, Inc. and Yakima Hops, Inc. have operated the Facility
18 since before 1999. The facility is located on land owned in fee by Yakima Hops, Inc., within the
19 Confederated Tribes and Bands of the Yakama Indian Nation Reservation.

20 13. The Site has been used for agricultural purposes since at least 1957. Based on reports
21 from former Hop Union, USA employees, hop pole wood treating and storage has occurred at the Site
22 since at least the early 1980s.

23 14. Respondents treated the ends of wood poles for use in hop farming at the Facility with a
24 diesel based treatment solution containing various Hazardous Constituents, including
25 pentachlorophenol (PCP). Respondents discontinued this practice in 1999, but unused treated poles
26 remain on site. The pole treating area at the Facility includes five in-ground dip tanks, treated and
27 untreated wood storage areas, and areas of discarded treated and untreated wood ends. Also located

1 at the Facility are equipment storage areas and a “boneyard” of farm equipment, vehicles and several
2 out of use underground storage tanks of unknown origin.

3 15. Solid Waste containing Hazardous Constituents has been generated at the Facility in
4 various forms by Respondents and has been discarded, including but not limited to treatment
5 solutions that have dripped or spilled onto the ground and discarded treated poles and treated pole
6 ends. Respondents have engaged in the generation, treatment, storage and/or disposal of solid and/or
7 hazardous waste at the Facility as those terms are defined in § 1004(5) and (27) of RCRA, 42 U.S.C.
8 § 6903 (5) and (27).

9 16. A Phase I Environmental Site Assessment (ESA) Report was prepared for Respondents
10 by AGRA Earth and Environmental, Inc. (AGRA), dated October 11th, 1999. The ESA concluded
11 that “a high risk of environmental degradation of [the Site] appears to exist from historical Site
12 uses.” AGRA recommended further assessment of the Site (limited phase II) and removal and proper
13 disposal of drums containing PCP and diesel removed from the in-ground dip tanks.

14 17. A limited Phase II Environmental Site Assessment Report was prepared by AMEC Earth
15 and Environmental, Inc. (AMEC), dated May 11, 2000 (AMEC purchased AGRA in 2000). In
16 February of 2000, AMEC advanced three (3) exploratory borings near and down gradient of the dip
17 tanks to collect soil and groundwater samples. Analysis of soil and groundwater confirmed the
18 presence of PCP and Total Petroleum Hydrocarbons as diesel (“TPH-diesel”) within the soil and
19 groundwater. Soil concentrations of PCP were detected as high as 450 milligrams per kilogram
20 (mg/kg), while groundwater samples exhibited PCP concentrations as high as 0.027 milligrams per
21 Liter (mg/L). AMEC recommended further delineation of the TPH-diesel and PCP in soils around
22 the dip tanks and further groundwater monitoring.

23 18. An Expanded Phase II Environmental Site Assessment Report was prepared for
24 Respondents by AMEC, dated March 29, 2001. During November 2000, AMEC advanced 15 direct-
25 push soil borings and installed three (3) groundwater monitoring wells. Boring depths ranged from
26 11.5 to 18 feet below ground surface (ft/bgs). Concentrations of PCP and TPH-diesel were detected
27 in 18 of the 54 soil samples collected at concentrations as high as 1,010 mg/kg PCP and 7,950 mg/kg

1 TPH-diesel.

2 19. Groundwater samples were collected in both temporary hollow-stem auger borings
3 (February 2000) and within monitoring wells. Concentrations of PCP and TPH-diesel as high as 27
4 micrograms/liter (ug/L) and 1,920 ug/L, respectively, were detected in groundwater samples
5 obtained from the temporary hollow-stem auger borings. Concentrations of PCP and TPH-diesel
6 within the monitoring well groundwater samples were detected at maximum concentrations of 7.6
7 µg/L PCP and 37 µg/L TPH-diesel in monitoring well MW-3, located proximal to the dip tank area.
8 AMEC recommended removal of soil containing concentrations of PCP above Model Toxics Control
9 Act (MTCA) Method B cleanup levels for PCP, possible removal of the dip tanks, and additional
10 study to determine if groundwater remediation would be necessary.

11 20. Benzene, ethyl benzene, toluene, and xylene (BTEX) are gasoline range organic (GRO)
12 chemicals which are common components of gasoline and some diesel fuels. Soil samples were not
13 analyzed for these chemicals. Groundwater samples collected from the three temporary hollow-stem
14 auger borings were tested for BTEX. BTEX was not detected in the samples.

15 21. The EPA Safe Drinking Water Act maximum contaminant level (“MCL”) is 1 µg/L for
16 PCP, 5 µg/L for benzene, 700 µg/L for ethyl benzene, 1 mg/L for toluene, and 10 mg/L for total
17 xylenes.

18 22. PCP is a man-made pesticide that does not occur naturally in groundwater or soil.

19 23. Dioxins are an impurity in PCP. They are complex isomeric mixtures that originate from
20 historic technical-grade PCP and many other sources. Testing of one soil sample exhibiting evidence
21 of diesel/PCP contamination (odor and staining) for dioxins did not detect dioxins.

22 24. BTEX is a common component of gasoline and occasionally of diesel fuels. Diesel was
23 mixed with PCP in the wood treating process.

24 25. Land use in the area around the Site is mixed residential, agricultural and undeveloped
25 use. The Site is bounded to the north by agricultural grazing land, lakes and wetlands, to the east by
26 1st Avenue, to the south by Monroe Street and agricultural property, and to the west by temporary
27 residences and undeveloped property.

1 26. The nearest known drinking water well is located approximately one-quarter mile
2 southeast of the dip tank area. Irrigation ponds are located within 1,000 feet of the dip tank area and
3 provide water for nearby fields.

4 27. The Facility is situated on a flood plain terrace above wetlands. The wetlands contain
5 water during a portion of the year. During periods when surface water is present, the wetlands have
6 direct hydraulic connectivity with the adjoining Yakima River. Surficial drainage of runoff from the
7 Site is toward the north and west into the wetland (north) and irrigation ponds (west). Surficial
8 erosional rills have been observed originating from the pole treating area and terminating into the
9 irrigation ponds, indicative of past surficial runoff into the irrigation ponds. Past surficial runoff into
10 these irrigation ponds may have contained Hazardous Waste or Hazardous Constituents.

11 28. The irrigation ponds located to the west of the pole treating area are currently in use.

12 29. Quarterly groundwater monitoring reports prepared by AMEC Earth and Environmental
13 for the period from March 2001 to present indicate that the general groundwater flow direction
14 beneath the Site is to the northeast toward the Yakima River. However, groundwater flow direction
15 was reported to the southeast in the third quarter, 2002 Quarterly Groundwater Monitoring Report by
16 AMEC. Depth to groundwater has ranged from approximately 21 to 22 ft/bgs based on groundwater
17 monitoring conducted by AMEC. The estimated average precipitation in the area is 8.21 inches per
18 year of rain and 24.3 inches per year of snow.

19 30. The National Marine Fisheries Service has designated the Columbia River, including its
20 tributaries, as critical habitat for Steelhead. (65 Fed. Reg. 7764-7787, February 16, 2000). The
21 Yakima River is a tributary of the Columbia River. Endangered and threatened species which have
22 been listed pursuant to the Endangered Species Act exist within the Yakima River Basin, including
23 salmonids, bull trout, wintering bald eagles and utes ladies tresses (an orchid). Additionally, fish
24 within the river is a food source for the local populace and a major food source for members of the
25 Yakama Indian Nation.

26 31. PCP has been detected in groundwater at the Site in excess of MCLs for drinking water.
27 Irrigation ponds currently being used are present within 1,000 feet of the dip tank area. Dermal

1 contact, inhalation, or ingestion of Hazardous Constituents in the waste in the soil, surface water and
2 groundwater at the Site can cause a wide range of health effects if concentrations exceed established
3 risk based health exposure standards. Concentrations of PCP detected in some soil samples exceed
4 exposure standards for human health. The full nature and extent of the contamination at the Site has
5 not been determined. The nature and extent of the Solid and Hazardous Wastes present at the Site is
6 such that the Facility may present an imminent and substantial endangerment to health or the
7 environment.

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VI. CONCLUSIONS OF LAW AND DETERMINATIONS

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32. Based on the Findings of Fact set forth above, and the Administrative Record supporting
this Order, EPA has determined that:

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a. Each of the Respondents is a “person” as defined in Section 1004(15) of RCRA, 42
U.S.C. § 6903(15), and a past or present generator of Solid and/or Hazardous waste, and owner or
operator of a treatment, storage or disposal facility.

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b. Materials found at the Facility, including preservative containing PCP and diesel
oil, have been discarded and are “hazardous wastes” as defined in Section 1004(5) of RCRA, 42
U.S.C. § 6903(5), or “solid wastes” as defined by Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

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c. These Solid Wastes and/or Hazardous Wastes have been handled, treated, stored, or
disposed of by Respondents, within the meaning of Section 7003 of RCRA, 42 U.S.C. § 6973.

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d. Respondents have contributed to the past or present handling, treatment, storage or
disposal of Solid Wastes or Hazardous Wastes at the Facility which may present an imminent and
substantial endangerment to health or the environment, within the meaning of Section 7003 of
RCRA, 42 U.S.C. § 6973.

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e. The actions required by this Order are necessary to protect health or the
environment.

1 **VII. WORK TO BE PERFORMED**

2 33. Based upon the foregoing and pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973,
3 Respondents agree to and are hereby ordered to comply with all the requirements of this Order,
4 including the following.

5 34. Project Managers/Contractors/Communication:

6 a. All Work conducted under this Order shall be performed in accordance with
7 prevailing professional standards and shall be under the direction and supervision of qualified
8 personnel. Respondents shall designate a Project Manager who shall be responsible for
9 administration of all the Respondents' actions required by this Order. To the greatest extent possible,
10 Respondents' Project Manager shall be readily available during all Work to be performed pursuant to
11 this Order. Within ten (10) Business days after the effective date of this Order, Respondents shall
12 notify EPA in writing of the names, titles and qualifications of Respondents' selected Project
13 Manager, any other key personnel of any Contractors to be used in carrying out Work required by this
14 Order. Key personnel shall include those individuals with significant responsibility for the design or
15 oversight of the Work to be performed by this Order. The qualifications of the selected Project
16 Manager, or any key personnel of a Contractor retained by Respondents, shall be subject to EPA
17 review and approval, to verify that such personnel meet minimum technical background and
18 experience requirements. In the event that EPA disapproves of a selected Project Manager, or key
19 personnel of a Contractor, EPA shall notify Respondents in writing within five (5) days of the
20 disapproval and the reasons for the disapproval. If EPA disapproves of a selected Project Manager,
21 or key personnel of a Contractor, Respondents shall retain a replacement within a reasonable period
22 of time, not to exceed thirty (30) Business days following EPA's disapproval, and shall notify EPA of
23 the name and qualifications of the new Project Manager, key personnel of a Contractor within three
24 (3) Business days of retention. EPA shall have the same right to disapprove changes or additions to
25 such personnel as it has regarding the initial notification.

26 b. During the course of the Work conducted pursuant to this Order, Respondents shall
27 notify EPA in writing of any change to the Project Manager or any changes or additions of key

1 personnel of a Contractor, providing names, titles and qualifications. Such notification shall occur at
2 least five (5) days prior to such change or addition and EPA shall have the same right to disapprove
3 changes or additions to such personnel as it has regarding the initial notification. In the event that it
4 is not possible to provide five (5) days notice of an addition or change, Respondents shall provide
5 notice of such addition or change as soon as possible.

6 c. Receipt by Respondents' Project Manager of any notice or communication from
7 EPA relating to this Order shall constitute receipt by Respondents, except for notices regarding
8 disapproval of the Project Manager, which shall be sent directly to Respondents at:

9

10 Alex Barth
11 John I. Haas, Inc.
12 5185 MacArthur Boulevard, Suite 300
13 Washington, D.C. 20016-3341

14 Gene Probasco
15 Yakima Hops, Inc.
16 P.O. Box 1441
17 Yakima, WA 98907

18 With copies to:

19 James E. Benedict
20 Cable Huston Benedict Haagensen & Lloyd LLP
21 1001 S.W. Fifth Avenue, Suite 2000
22 Portland, OR 97204-1136

23 Len Farr
24 AMEC Earth & Environmental, Inc.
25 7376 S.W. Durham Road
26 Portland, OR 97224

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d. EPA has designated Shawn Blocker as its Project Manager. Respondents shall
direct all Submittals required by this Order to Shawn Blocker at the U.S. Environmental Protection
Agency, Region 10, Mail Stop WCM-126, 1200 Sixth Avenue, Seattle, Washington 98101. EPA's
Project Manager may be changed. Respondents will be notified in writing if such a change does
occur. The absence of the EPA Project Manager shall not be cause for the stoppage or delay of work
at the facility. Respondents shall submit a copy of all documents and notices required to be
submitted to EPA under this Order to the Yakama Nation Environmental Program (YNEP) at the

1 same time as the documents are submitted to EPA. Respondents shall direct all such Submittals to:

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Mr. Moses Squeochs, Manager
Yakama Nation Environmental Program
Confederated Tribes and Bands of the Yakama Nation
P.O. Box 151
Fort Road
Toppenish, Washington 98948

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35. Site Investigation:

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- a. Within sixty (60) days of the effective date of this Order, Respondents shall submit to EPA for review and approval a Site Investigation Work Plan, as more fully described in Attachment B. The Site Investigation Work Plan must meet the objectives and requirements set forth in Attachment A and Attachment B, unless otherwise approved by EPA in writing. The Site Investigation Work Plan shall include provisions for determining the nature and extent of contamination in all media at the Site, potential receptor identification, and a schedule for all activities and Submittals.
- b. The Site Investigation Work Plan shall include plans for developing and updating a conceptual Site model in accordance with Attachment E.
- c. The Site Investigation Work Plan shall include a Sampling and Analysis and Data Management Plan to document all sampling, monitoring, analytical procedures. This Sampling and Analysis and Data Management Plan shall be developed to ensure that all information, data, and resulting decisions are technically sound, statistically valid to the extent required and properly documented. The Sampling and Analysis and Data Management Plan shall meet the objectives and requirements set forth in Section X (Sampling/Quality Assurance/Field Activities).
- d. The results of the Site Investigation shall be submitted for EPA review and approval in a Site Investigation Report to be submitted in accordance with the schedule contained in the Site Investigation Work Plan.
- e. EPA acknowledges that Respondents have previously collected information and data that may satisfy some or all of the requirements of this Paragraph. This information and data

1 may be used to comply with the requirements of this Paragraph, provided it satisfies Order
2 requirements and its use is specified in the Site Investigation Work Plan approved by EPA.

3 36. Corrective Measures Study:

4 a. Within ninety (90) days after Respondents receive notice of EPA's approval of the
5 final Site Investigation Report, Respondents shall submit a Draft Corrective Measures Study
6 ("CMS") Report to EPA for review and approval. The Draft CMS Report shall identify and evaluate
7 alternative Corrective Measures that address the Solid and Hazardous Wastes that have been
8 identified at the Site that require corrective measures, and may include Respondents' proposed
9 corrective measures. The Draft CMS shall be developed in accordance with Attachment C and is
10 subject to EPA review and approval.

11 b. After EPA issues its approval, conditional approval, or modification and approval
12 of the Draft CMS Report and after consulting with YNEP, EPA will provide the public with an
13 opportunity to submit written and/or oral comments and an opportunity for a public meeting
14 regarding corrective measures alternatives and EPA's proposed corrective measures, the Draft CMS
15 Report, and EPA's justification for choosing the corrective measures EPA proposes (the "Statement
16 of Basis").

17 c. Following the public comment period, Respondents shall address any comments
18 received from EPA and perform any additional corrective measures studies required by EPA, and
19 revise the Draft CMS Report accordingly. Respondents shall submit the revised CMS Report to EPA
20 for review and approval within thirty (30) days of receipt of EPA's notice directing Respondents to
21 revise the Draft CMS Report, provided however, if EPA's notice directs Respondents to perform
22 additional corrective measures studies, the notice shall specify the time period following receipt of
23 EPA's notice for submittal of the revised CMS Report, which period shall not be less than the time
24 necessary to complete the additional corrective measures study.

25 37. Corrective Measures Implementation:

26 a. Within sixty (60) days after Respondents' receipt of written notification of EPA's
27 approval, conditional approval, or modification and approval of the CMS Report and selection of the

1 corrective measures, Respondents shall submit for EPA review and approval a Corrective Measures
2 Implementation (“CMI”) Work Plan. The CMI Work Plan shall be prepared in accordance with
3 Attachment D and shall cover the design, construction, operation, maintenance and monitoring of the
4 performance of the corrective measures selected by EPA to protect human health and the
5 environment, and shall include a schedule for all activities, including Submittals. The Respondents
6 shall implement the corrective measures selected by EPA in accordance with Attachment D, and all
7 approved Submittals, including the CMI Work Plan.

8 b. Notwithstanding any other provision in this Order, the Parties agree that if
9 conditions contained in Paragraph 37.c below are met and Respondents do not want to implement the
10 corrective measures selected by EPA under consent following the completion of the dispute
11 resolution process, either or both of the Respondents may withdraw their consent to implement said
12 corrective measures. To be effective, such withdrawal of consent must be in writing, signed by the
13 company signatory to this Order, and received by the EPA Office of Waste and Chemicals
14 Management Director no later than fifteen (15) Business days from receipt of the final dispute
15 decision by EPA.

16 c. Respondents’ right to withdraw its consent is limited to implementation of the
17 corrective measures selected by EPA only, and such right to withdraw shall not accrue until: (1) EPA
18 has selected corrective measures as provided in this Order; (2) and EPA issues a final decision under
19 the dispute resolution procedures contained in Section XVII. Nothing in this Section shall affect or
20 diminish Respondents’ consent to any other provision of this Order, including its obligations
21 hereunder to conduct Interim Measures, a Site Investigation, a CMS, additional work as provided in
22 Section XXVI related to matters other than the Corrective Measures Implementation, or issuance of
23 stipulated penalties as provided for in Section XVIII.

24 d. As provided in Section XX (Reservation of Rights), EPA retains all authorities it
25 has under RCRA, CERCLA or other authority to enforce implementation of the corrective measures
26 or to conduct response actions related to the Facility, including in the event that either or both of the
27 Respondents exercises their right to withdraw their consent to implement the corrective measures as

1 provided in this Section.

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VIII. IMPLEMENTATION OF ALL REQUIRED WORK

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IX. INTERIM MEASURES/STABILIZATION

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38. Except as indicated in this Paragraph, or otherwise approved by EPA in writing, all Work undertaken pursuant to this Order shall be performed in accordance with the provisions of this Order, including Attachments A - F, and any EPA-approved Work Plans, deliverables and Submittals. All Work undertaken pursuant to this Order shall be developed and performed in accordance with RCRA and all other applicable laws and their implementing regulations, and EPA guidance documents.

39. Each Work Plan shall include a schedule. After EPA approval of a Work Plan, Respondents shall commence Work and implement the Work Plan in accordance with the schedule and provisions approved by EPA.

40. Compliance with OSHA requirements: Each Work Plan shall be accompanied by a separate Health and Safety Plan (which is not subject to EPA approval) to be implemented during any Work performed under this Order. Respondents may incorporate by reference any previously submitted Health and Safety Plan to meet this requirement in any Work Plan submitted after the initial Work Plan.

41. Any deviations from an approved Work Plan must be approved by EPA in writing, must be documented, including reasons for the deviations; and must be reported in the applicable reports, including progress reports.

42. Oral advice, suggestions, or comments given by EPA representatives will not constitute an official approval, nor shall any oral approval or oral assurance of approval be considered binding.

43. Throughout the duration of this Order, the Respondents shall evaluate existing data and new data as it becomes available and assess the need for and opportunity for Interim Measures. Interim Measures shall be used whenever possible to achieve the stabilization goals of controlling or abating immediate threats to human health and/or the environment, and to prevent or minimize the

1 spread of contaminants while long-term corrective measures alternatives are being evaluated or
2 implemented.

3 44. In the event Respondents identify an immediate threat to human health or the
4 environment at any time while this Order is in effect, Respondents shall within twenty-four (24)
5 hours notify the EPA Project Manager, and shall notify EPA in writing within five (5) days of such
6 discovery describing the immediacy and magnitude of the identified threats and response actions to
7 be taken. This reporting requirement is in addition to, and not in lieu of, any other applicable
8 reporting requirements including but not limited to reporting under Section 103(c) of CERCLA, 42
9 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-to-Know Act,
10 42 U.S.C. § 11004, et seq. Upon written request of EPA and in the time period specified by EPA,
11 Respondents shall submit to EPA an Interim Measures Work Plan for review and approval that
12 includes the elements listed in Paragraph 45 below. If EPA determines that immediate action is
13 required, the EPA Project Manager may authorize Respondents to act prior to EPA's receipt and
14 approval of the Interim Measures Work Plan. Such authorization by the EPA Project Manager will
15 be in writing.

16 45. If EPA identifies a threat to human health and/or the environment, or determines that
17 Interim Measures are necessary to further the achievement of stabilization goals as identified in
18 Paragraph 43, taking into consideration the project schedule, EPA will notify Respondents in writing.
19 Within twenty (20) days (or by such other date as may be agreed to by the Parties) of receiving EPA's
20 written notification, Respondents shall submit to EPA an Interim Measures Work Plan that identifies
21 appropriate Interim Measures which will mitigate the threat. If EPA determines that immediate
22 action is required, the EPA Project Manager may require Respondents to act prior to Respondents'
23 submission of an Interim Measures Work Plan. Such requirement shall be set forth in EPA's written
24 notification. The Interim Measures Work Plan and activities conducted pursuant to this Order are
25 subject to EPA review and approval. The Interim Measures Work Plan shall include the following :

- 26 a. Interim Measures Description and Objectives
- 27 b. Public Involvement Plan

- 1 c. Sampling and Analysis and Data Management Plan in accordance with Section
- 2 X (Sampling/Quality Assurance/Field Activities)
- 3 d. Design Plans and Specifications
- 4 e. Operation and Maintenance Plan
- 5 f. Project Schedule
- 6 g. Interim Measures Construction Quality Assurance
- 7 h. Performance Standards to be used in evaluating the effectiveness of the Interim
- 8 Measures;
- 9 i. Reporting Requirements.

10 Deviations from these requirements may be made only with prior EPA written approval, based on the
11 nature of the Interim Measures. EPA will attempt to promptly review and act upon such requests.

12 46. If at any time Respondents identify the need or opportunity to conduct Interim Measures,
13 then Respondent shall submit a written request and Interim Measures Work Plan to EPA for review
14 and approval. Respondents shall secure prior written EPA approval to perform any interim or
15 stabilization measure or other work at the Facility. This requirement shall not apply to normal
16 maintenance and operation activities, to the extent that these activities do not affect Interim
17 Measures, corrective measures, or investigations carried out pursuant to this Order.

18 47. To the maximum extent practicable, Interim Measures should be consistent with and
19 capable of being integrated into any long-term corrective measures at the Facility.

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21 **X. SAMPLING/QUALITY ASSURANCE/FIELD ACTIVITIES**

22 48. Each Work Plan shall include a Sampling and Analysis and Data Management Plan for
23 EPA review and approval, addressing quality assurance, quality control, and chain of custody
24 procedures for all sampling, monitoring and analytical activities. Respondents shall follow EPA
25 guidance for sampling and analysis in accordance with the latest approved edition of “EPA
26 Requirements for Quality Assurance Project Plans,” as well as other guidance identified by EPA.
27 EPA guidance documents related to quality assurance and sampling can currently be found on the
Internet at: <http://yosemite.epa.gov/R10/OEA.NSF/>, then click on the quality assurance icon.

1 49. The name, address, and telephone number of each analytical laboratory Respondents
2 propose to use must be specified in the applicable Work Plan.

3 50. All Work Plans required under this Order shall include data quality objectives for each
4 data collection activity to ensure that data of known and appropriate quality are obtained and that data
5 are sufficient to support their intended use.

6 51. Respondents shall ensure that laboratories used by Respondents for analysis perform such
7 analysis according to the latest approved edition of "Test Methods for Evaluating Solid Waste (SW-
8 846)", or other methods satisfactory to EPA. If methods other than EPA methods are to be used,
9 Respondents shall specify all such protocols in the applicable Work Plan. EPA may reject any data
10 that does not meet the requirements of the approved Work Plan and EPA analytical methods and may
11 require resampling and additional analysis.

12 52. Respondents shall ensure that all laboratories they use for analyses participate in a quality
13 assurance/quality control program equivalent to that which is followed by EPA. Respondents shall
14 upon request by EPA, make arrangements for EPA to conduct a performance and quality
15 assurance/quality control audit of the laboratories chosen by Respondents before, during, or after
16 sample analyses. Upon request by EPA, Respondents shall have their laboratories perform analyses
17 of samples provided by EPA to demonstrate laboratory performance. If the audit reveals deficiencies
18 in a laboratory's performance or quality assurance/quality control, Respondents shall submit a plan to
19 address the deficiencies and conduct resampling and additional analysis as EPA requires.

20 53. Respondents shall notify EPA and YNEP in writing at least ten (10) days before engaging
21 in any field activities, such as well drilling, installation of equipment, or sampling, unless otherwise
22 agreed to by EPA. If Respondents believe they must commence emergency field activities without
23 delay, Respondents may seek emergency telephone authorization from the EPA Project Manager or,
24 if the EPA Project Manager is unavailable, his Unit Manager (Jamie Sikorski at (206) 553-5153) to
25 commence such activities immediately. At the request of EPA or YNEP, Respondents shall provide
26 or allow EPA and/or YNEP to take split samples or duplicate samples of all samples collected by
27 Respondents pursuant to this Order. Similarly, at the request of Respondents, EPA and YNEP will
allow Respondents or their authorized representatives to take split or duplicate samples of all samples

1 collected by EPA under this Order.
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4 **XI. PERIODIC REPORTING**

5 54. Progress Reports: Respondents shall submit a written progress report to EPA concerning
6 actions undertaken pursuant to this Order on the 15th of every third month after the effective date of
7 this Order until termination of this Order, unless otherwise directed by the EPA Project Manager.
8 These reports shall describe all significant developments during the preceding period, including the
9 actions performed and any problems encountered for all Work required by this Order, and the
10 developments anticipated during the next reporting period, including a schedule of actions to be
11 performed, anticipated problems, and planned resolutions of past or anticipated problems. In
12 addition, these reports shall include all information specified in this Order for inclusion in the
13 periodic progress reports, including but not limited to the results of all sampling or tests and all other
14 data generated by Respondents or their Contractors, or on Respondents' behalf, received during the
15 reporting period.

16
17 **XII. EPA APPROVAL OF PLANS AND OTHER SUBMITTALS**

18 55. After review of any plan, report, or other item which is required to be submitted for
19 approval pursuant to this Order, EPA, shall: (a) approve the submittal; (b) approve the submittal upon
20 specified conditions; (c) modify the submittal to correct the deficiencies; (d) disapprove, in whole or
21 in part, the submittal, directing that the Respondents modify the submittal; or (e) any combination of
22 the above. However, EPA shall not modify a submission without first providing Respondents at least
23 one notice of deficiency and an opportunity to cure within fourteen (14) days, except where to do so
24 would cause serious disruption to the Work or where previous submittals have been disapproved due
25 to material defects and the deficiencies in the submittal under consideration indicate a bad faith lack
26 of effort to submit an acceptable deliverable. EPA may also require approval for any other
27 Submittals, including the periodic progress reports required by Section XI (Periodic Reporting), and
exercise the process set forth in this Section in the event that EPA determines that such action is

1 necessary.

2 56. Upon receipt of approval, approval upon conditions, or modification by EPA, pursuant to
3 Paragraph 55.(a), (b), (c), (d) or (e), Respondents shall proceed to take any action required by the
4 plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the
5 Dispute Resolution procedures set forth in Section XVII (Dispute Resolution) with respect to any or
6 all the modifications or conditions made by EPA. Upon receipt of a notice of disapproval pursuant to
7 Paragraph 55.(d), Respondents shall, within thirty (30) days or such longer time as specified by EPA
8 in such notice, correct the deficiencies in accordance with EPA’s comments and directions and
9 resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the
10 Submittal, as provided in Section XVIII (Stipulated and Statutory Penalties), shall continue to accrue
11 during the period of time that the Respondents are given to correct the deficiencies, but shall not be
12 payable unless the resubmittal is disapproved or modified due to a material defect as provided in
13 Paragraph 58. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 55(d),
14 Respondents shall proceed, at the direction of EPA, to take any action required by any non-deficient
15 portion of the Submittal. Implementation of any non-deficient portion of a Submittal shall not relieve
16 Respondents of any liability for penalties under Section XVIII (Stipulated and Statutory Penalties).

17 57. In the event that a resubmitted plan, report, or other item, or portion thereof, is
18 disapproved by EPA, EPA may again require the Respondents to correct the deficiencies, in
19 accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan,
20 report, or other item. Respondents shall implement any such plan, report, or item as modified or
21 developed by EPA, subject only to its right to invoke the procedures set forth in Section XVII
22 (Dispute Resolution).

23 58. If upon resubmittal, a plan, report, or item is disapproved or modified by EPA due to
24 material defect, Respondents shall be deemed to have failed to submit such plan, report, or item
25 timely and adequately unless the Respondents invoke the dispute resolution procedures set forth in
26 Section XVII (Dispute Resolution) and EPA’s action is overturned pursuant to that Section. The
27 provisions of Section XVII (Dispute Resolution) and Section XVIII (Stipulated Penalties) shall
govern the implementation of the Work and accrual and payment of any stipulated penalties during

1 Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue
2 for such violation from the date on which the initial submittal was originally required, as provided in
3 Section XVIII.

4 59. All plans, reports, and other items required to be submitted to EPA under this Order shall,
5 upon approval or modification by EPA, be enforceable under this Order. In the event EPA approves
6 or modifies a portion of a plan, report, or other item required to be submitted to EPA under this
7 Order, the approved or modified portion shall be enforceable under this Order.

8 9 **XIII. ACCESS TO PROPERTY**

10 60. Respondents shall provide access at reasonable times to the Facility and to all records and
11 documentation in its possession or control, including those records and documents in the possession
12 or control of Respondents' Contractors and employees, related to the conditions at the Site and the
13 actions conducted pursuant to this Order. The Respondents may assert that certain documents,
14 records and other information are privileged under the attorney-client privilege or any other privilege
15 recognized by federal law. Such access shall be provided to EPA employees, contractors, agents,
16 consultants, designers, representatives, and YNEP representatives. Upon presentation of credentials,
17 these individuals shall be permitted to move freely at the Facility in order to conduct actions related
18 to this Order which EPA and YNEP determine to be necessary, including, but not limited to
19 interviewing facility personnel and Contractors, inspecting and copying records and contracts created
20 or generated pursuant to this Order related to the Facility, and using a camera, sound recording or
21 other documentary type equipment. Respondents' representative shall be allowed to accompany EPA
22 or YNEP. Within fifteen (15) Business days of Respondents' execution of the Order, the
23 Respondents shall send to EPA a copy of its safety regulations for the Facility.

24 61. Where action under this Order is to be performed in areas owned by, or in possession of,
25 someone other than Respondents, Respondents shall use their best efforts to obtain all necessary
26 access agreements within thirty (30) days of approval of any Work Plan for which access is required,
27 to satisfy the requirements of this Order. Any such access agreement shall provide for access by
EPA, YNEP and their representatives to move freely in order to conduct actions which EPA and

1 YNEP determines to be necessary to fulfill the requirements of this Order, and such agreements shall
2 specify that Respondents are not EPA or YNEP's representative, and that EPA and YNEP are not
3 Respondents' representative, with respect to any liabilities associated with the activities to be
4 performed. Respondents shall provide EPA's Project Manager with copies of any access agreements.
5 Respondents shall immediately notify EPA if after using its best efforts it is unable to obtain such
6 agreements within the time required. Best efforts as used in this Paragraph shall include, at a
7 minimum, a certified letter from Respondents to the present owners of such property requesting
8 access agreements to permit Respondents, EPA, and YNEP and their authorized representatives to
9 access such property, and the offer of payment of reasonable sums of money in consideration of
10 granting access. In addition to immediately notifying EPA, Respondents shall, within ten (10) days
11 of such immediate notice, submit in writing, a description of its efforts to obtain access. EPA may, at
12 its discretion, assist Respondents in obtaining access. In the event EPA obtains access, Respondents
13 shall undertake EPA-approved Work on such property and Respondents shall reimburse EPA for
14 costs and attorney fees incurred by the United States in obtaining such access.

15 62. The Respondents agree to indemnify the United States as provided in Section XXII
16 (Indemnification) for any and all claims arising from activities on such property.

17 63. Nothing in this Section limits or otherwise affects EPA or YNEP's right of access and
18 entry pursuant to applicable law, including but not limited to RCRA and CERCLA.

19 64. Nothing in this Section shall be construed to limit or otherwise affect Respondents'
20 liability and obligation to perform activities required by this Order, including activities required in
21 areas owned by, or in possession of, someone other than Respondents, notwithstanding the lack of
22 access, unless the lack of access is determined by EPA to be a Force Majeure in accordance with
23 Section XIX (Force Majeure).

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25 **XIV. RECORD RETENTION, DOCUMENTATION AND**
26 **AVAILABILITY OF INFORMATION**

27 65. Respondents shall preserve all documents and information relating to Work performed
under this Order, or relating to any Solid Waste or Hazardous Waste found at the Site, for ten (10)

1 years following completion of the actions required by this Order or commencement of construction of
2 the corrective measures selected for the Site, whichever is later. At the end of this ten (10) year
3 period and ninety (90) days before any document or information is destroyed, Respondents shall
4 notify EPA and YNEP that such documents and information are available to EPA and YNEP for
5 inspection, and upon request, shall provide the originals or copies of such documents and information
6 to EPA and YNEP. Such written notification shall reference the effective date, caption, and docket
7 number of this Order and shall be addressed to the Director, Office of Waste and Chemicals
8 Management, U.S. Environmental Protection Agency, Region 10 and to Manager, Yakama Nation
9 Environmental Program, Confederated Tribes and Bands of the Yakama Nation. The Respondents
10 may assert that certain documents, records and other information are privileged under the attorney-
11 client privilege or any other privilege recognized by federal law.

12 66. Respondents further agree that within thirty (30) days of retaining or employing any
13 agent, consultant, or Contractor for the purpose of carrying out the terms of this Order, Respondents
14 shall enter into an agreement with any such agent or Contractor whereby such agent or Contractor
15 will be required to provide Respondents a copy of all documents created or generated pursuant to this
16 Order.

17 67. All documents pertaining directly to the Work under this Order shall be stored by the
18 Respondents in a centralized location at the Facility, to facilitate access by EPA and YNEP and their
19 representatives.

20 68. Respondents may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b)
21 with respect to part or all of any information accessed by, or submitted to EPA pursuant to this Order.
22 This claim shall be asserted in the manner described in 40 C.F.R. § 2.203(b), and substantiated at the
23 time the claim is made. If no such claim accompanies the information when it is received by EPA,
24 EPA may make it available to the public without further notice to Respondents. Analytical and other
25 data shall not be claimed as confidential by the Respondents. EPA shall disclose information covered
26 by a business confidentiality claim only to the extent permitted by, and by means of, the procedures
27 set forth at 40 C.F.R. Part 2, Subpart B. Respondents shall maintain a running log of privileged
documents on a document-by-document basis, containing the date, authors, addressees, subject, the

1 privilege or grounds claimed (e.g., attorney work product, attorney-client), and the factual basis for
2 assertion of the privilege. Respondents shall keep the "privilege log" on file and available for
3 inspection. However, no documents, reports or other information created or generated pursuant to the
4 requirements of this Order shall be withheld on the grounds that they are privileged. EPA and YNEP
5 may at any time challenge claims of privilege.

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XV. NOTIFICATION AND DOCUMENT CERTIFICATION

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69. Unless otherwise specified, all reports, correspondence, notices, or other Submittals relating to or required under this Order shall be in writing and shall be sent to the EPA's Project Manager and to YNEP as specified in Paragraph 34.d. above. Reports, notices or other Submittals shall be delivered by hand, or placed in overnight courier service.

70. With regard to submittal of plans, reports or other documents by a specified time, EPA must be in receipt of the document by the time specified in this Order for Respondents to be in compliance with this Order.

71. Any report or work plan required to be submitted by Respondents pursuant to this Order which makes any representation concerning Respondents' compliance or noncompliance with any requirement of this Order shall be certified by a responsible corporate officer of the Respondents. A responsible corporate officer means: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation.

72. The certification required by Paragraph 71. above, shall be in the following form:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision according to a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Signature: _____

Name: _____

Title: _____

Date: _____

XVI. COMPLIANCE WITH OTHER LAWS

73. Respondents shall perform all actions required pursuant to this Order in accordance with all applicable tribal, local, state, and federal laws and regulations. Respondents shall timely obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations. Respondents' ability to obtain necessary permits or approvals may be a Force Majeure if such inability otherwise meets the requirements of Section XIX.

XVII. DISPUTE RESOLUTION

74. Unless otherwise expressly provided for in this Order, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Order. However, the procedures set forth in this Section shall not apply to actions by EPA to enforce obligations of Respondents. The Parties to this Order shall attempt to resolve, expeditiously and informally, any disagreements concerning this Order. If the Respondents object to any EPA action taken pursuant to this Order, Respondents shall notify EPA, in writing, of its objections within ten (10) business days of the date Respondents' Project Manager received notice of EPA's action to which it is objecting. Respondents' notification in writing of its objections shall be the only action that establishes that a dispute exists for purposes of this Section. Any dispute arising under this Order shall first be subject to informal negotiations between the Parties. The period for informal negotiations shall not exceed twenty (20) business days from the date of EPA receipt of written notification, unless extended by EPA in writing. During the period of informal negotiations, a Party may propose the use of third-party mediation to resolve a dispute. Mediation may be used if all Parties to the dispute agree to its use. However, no Party is required to agree to the use of mediation, and a Party's decision not to use mediation shall not be subject to review.

75. In the event that the Parties cannot resolve a dispute by informal negotiations, then the position advanced by EPA shall be binding on Respondents unless, within five (5) Business days after the conclusion of the informal negotiation period, Respondents invoke the formal dispute

1 approved under this Order.

2 a. For failure to submit to EPA any Submittal (except any progress reports required in
3 Section XI) required by this Order in accordance with its requirements, including the Attachments:

- 4 i. \$ 250 per day for the first through tenth days of noncompliance;
- 5 ii. \$1,250 per day for the eleventh through twenty-first days of noncompliance;
- 6 iii. \$2,500 per day for the twenty-second day and each succeeding day of
7 noncompliance thereafter.

8 b. For failure to submit a progress report required in Section XI (Periodic Reporting),
9 as required:

- 10 i. \$100 per day for the first through tenth days of noncompliance;
- 11 ii. \$500 per day for the eleventh through twenty-first days of noncompliance;
- 12 iii. \$1,000 per day for the twenty-second day and each succeeding day of
13 noncompliance thereafter.

14 c. For failure to commence, perform, and/or complete the Work specified in any Work
15 Plan submitted pursuant to this Order, as required:

- 16 i. \$500 per day for the first through tenth days of noncompliance;
- 17 ii. \$1,750 per day for the eleventh through twenty-first days of noncompliance;
- 18 iii. \$2,500 per day for the twenty-second day and each succeeding day of
19 noncompliance thereafter.

20 d. For failure to comply with any other provision of this Order:

- 21 i. \$ 250 per day for the first through tenth days of noncompliance;
- 22 ii. \$1,250 per day for the eleventh through twenty-first days of noncompliance;
- 23 iii. \$2,500 per day for the twenty-second day and each succeeding day of
24 noncompliance thereafter.

25 81. Penalties shall begin to accrue on the day after the complete performance is due or the
26 day a violation occurs, and shall continue to accrue through the final day of correction of the
27 violation or completion of the activity. However, stipulated penalties shall not accrue: (1) with

1 respect to a deficient submission under Section XII (EPA Approval of Plans and other Submissions),
2 during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the
3 date that EPA notifies Respondents of any deficiency: (2) with respect to a decision by the Director
4 of the Office of Waste & Chemical Management under Section XVII (Dispute Resolution), during the
5 period, if any, beginning on the 21st day after the date that the Respondents Statement of Position is
6 received until the date that the Director issues a final decision regarding such dispute.

7 82. Penalties shall continue to accrue as provided in Paragraph 80. during any dispute
8 resolution period.

9 83. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for
10 separate violations of this Order, even where those violations concern the same event. Penalties shall
11 continue to accrue regardless of whether EPA has notified the Respondents of a violation.

12 84. Respondents may dispute an EPA determination that they failed to comply with this
13 Order by invoking the Dispute Resolution procedures under Section XVII (Dispute Resolution),
14 unless the matter has already been in dispute resolution.

15 85. All penalties owed to the United States under this Section shall be due and payable within
16 thirty (30) days of the Respondents' receipt from EPA of a written demand for payment of the
17 penalties, unless Respondents invoke the dispute resolution procedures as provided in Paragraph 84,
18 in which case payment shall be made within thirty (30) days after the date of agreement between the
19 Parties or decision of EPA resolving the dispute. Such written demand, agreement or decision will
20 describe the violation and will indicate the amount of penalties due.

21 86. If payment is not made within thirty (30) days of the date of Respondents' receipt from
22 EPA of a written demand for payment of the penalties, or if Dispute Resolution procedures are
23 invoked under Paragraph 84, of the date of agreement or decision resolving the dispute, interest shall
24 begin to accrue on any unpaid stipulated penalty balance beginning on the first day after
25 Respondents' receipt of EPA's demand letter, or the date of the agreement or decision resolving the
26 dispute, and will accrue until such penalties and interest have been paid in full. Interest shall accrue
27 at the Current Value of Funds Rate established by the Secretary of the Treasury. Pursuant to 31

1 U.S.C. § 3717, an additional penalty of six percent (6 %) per annum on any unpaid principal shall be
2 assessed for any stipulated penalty payment which is overdue for ninety (90) days or more.

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7 87. All penalties shall be made payable by certified or cashier's check to the United States
8 Treasury and shall be remitted to:

9 Mellon Client Services Center
10 EPA, Region 10
11 500 Ross Street
12 P.O. Box 360903
13 Pittsburgh, Pennsylvania 15251-6903

14 All such checks shall reference the name of the Facility, the Respondents' names and addresses, and
15 the EPA docket number of this action. Copies of all such checks and letters forwarding the checks
16 shall be sent simultaneously to the EPA Project Manager.

17 88. Neither the invocation of dispute resolution nor the payment of penalties shall alter in any
18 way Respondents' obligation to comply with the terms and conditions of this Order.

19 89. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any
20 other remedies or sanctions which may be available to EPA by reason of Respondents' failure to
21 comply with any of the terms and conditions of this Order.

22 90. No payments under this Section shall be deducted for federal tax purposes.

23 91. Notwithstanding any other provision of this Section, EPA may, in its unreviewable
24 discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

25 92. Violation of any provision of this Order may subject Respondents to civil penalties of up
26 to five thousand five hundred dollars (\$ 5,500.00) per violation per day, as provided in Section
27 7003(b) of RCRA, 42 U.S.C. § 6973(b). However, every four years, adjustments to the penalty
amount are required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by
the Debt Collection Improvement Act of 1996. Should Respondents violate this Order or any portion

1 hereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42
2 U.S.C. § 9604, or other applicable authorities, and/or may seek judicial enforcement of this Order
3 pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973.

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6 **XIX. FORCE MAJEURE**

7 93. Respondents agree to perform all requirements under this Order within the time limits
8 established under this Order, unless the performance is delayed by a Force Majeure. For purposes of
9 this Order, a Force Majeure is defined as any event arising from causes beyond the control of
10 Respondents, including but not limited to its Contractors, that delays or prevents performance of any
11 obligation under this Order despite Respondents' best efforts to fulfill the obligation. The
12 requirement that Respondents exercise "best efforts to fulfill the obligation" includes using best
13 efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any
14 potential Force Majeure event (1) as it is occurring, and (2) following the potential force majeure
15 event, such that the delay is minimized to the greatest extent possible. Force Majeure does not
16 include financial inability to complete the Work or increased cost of performance or any changes in
17 Respondents' business or economic circumstances or a failure to attain performance standards.

18 94. Respondent shall notify EPA orally within forty-eight (48) hours, and in writing within
19 five (5) business days after Respondents become or should have become aware of an event that might
20 cause a delay and which may constitute a Force Majeure. Such notice shall: identify the event
21 causing the delay, or anticipated to cause delay, and the anticipated duration of the delay; provide
22 Respondents' rationale for attributing such delay to a Force Majeure event; state the measures taken
23 or to be taken to prevent or minimize the delay; estimate the timetable for implementation of those
24 measures; and state whether, in the opinion of Respondents, such event may cause or contribute to an
25 endangerment to public health, welfare or the environment. Respondents shall undertake best efforts
26 to avoid and minimize the delay. Failure to comply with the requirements of this Section, including
27 the notice provision, shall waive any claim of Force Majeure by the Respondents. Respondents shall

1 be deemed to have notice of any circumstances of which its Contractors had or should have had
2 notice.

3 95. If EPA determines that a delay in performance or anticipated delay of a requirement
4 under this Order is or was attributable to a Force Majeure, the time period for performance of that
5 requirement and such other obligations directly affected by the Force Majeure will be extended as
6 deemed necessary by EPA. If EPA determines that the delay or anticipated delay has been or will be
7 caused by a Force Majeure, EPA will notify Respondents, in writing, of the length of the extension, if
8 any, for performance of such obligations affected by the Force Majeure. Any such extensions shall
9 not alter Respondents' obligation to perform or complete other tasks required by the Order which are
10 not directly affected by the Force Majeure.

11 96. If EPA disagrees with Respondents' assertion of a Force Majeure, EPA will provide
12 notice of such disagreement in writing. If EPA provides such notice, Respondent may elect to invoke
13 the dispute resolution provision, and shall follow the time frames set forth in Section XVII (Dispute
14 Resolution). In any such proceeding, Respondents shall have the burden of demonstrating by a
15 preponderance of the evidence that the delay or anticipated delay has been or will be caused by a
16 Force Majeure, that the duration of the delay or the extension sought was or will be warranted under
17 the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and
18 that Respondents complied with the requirements of this Section. If Respondents satisfy this
19 burden, the time for performance of such obligation will be extended by EPA for such time as is
20 necessary to complete such obligation as determined by EPA and the delay at issue shall be deemed
21 not to be a violation by Respondent of the affected obligations of this Order.

22

23 **XX. RESERVATION OF RIGHTS**

24 97. Notwithstanding any other provisions of this Order, the United States retains all of its
25 authority, including but not limited to information gathering and inspection authorities and rights, and
26 the right to bring enforcement actions under RCRA, CERCLA, and any other applicable statutes or
27 regulations.

1 98. Nothing herein shall limit the power and authority of EPA or the United States to take,
2 direct, or order all actions necessary to protect public health, welfare, or the environment or to
3 prevent, abate, or minimize an actual or threatened release of oil, hazardous substances, pollutants or
4 contaminants, or hazardous or solid waste on, at, or from the Site.

5 99. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies,
6 both legal and equitable, which may pertain to Respondents' failure to comply with any of the
7 requirements of this Order, including without limitation the assessment of penalties under Section
8 7003 of RCRA, 42 U.S.C. § 6973. This Order shall not be construed as a covenant not to sue,
9 release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal,
10 which EPA has under RCRA, CERCLA, or any other statutory, regulatory, or common law authority
11 of the United States.

12 100. EPA reserves its right to seek reimbursement from Respondents for costs incurred by the
13 United States. Notwithstanding compliance with the terms of this Order, Respondents are not
14 released from liability, if any, for the costs of any response actions taken or authorized by EPA.
15 Respondents reserve all rights consistent with this Order to defend any cost recovery action.

16 101. If EPA determines that activities in compliance or noncompliance with this Order have
17 caused or may cause a release of Hazardous Waste or Hazardous Constituents, or a threat to human
18 health, welfare and/or the environment, or that Respondents are not capable of undertaking any of
19 the Work ordered, EPA may order and Respondents shall: stop further implementation of this Order
20 for such period of time as EPA determines may be needed to abate any such release or threat; and/or
21 EPA may undertake any action which EPA determines is necessary to abate such release or threat.

22 102. This Order is not intended to be nor shall it be construed as a permit. The Parties
23 acknowledge and agree that EPA's approval of any Work Plan does not constitute a warranty or
24 representation that the Work Plans will achieve the required cleanup or performance standards.
25 Compliance by Respondents with the terms of this Order shall not relieve Respondents of their
26 obligations to comply with RCRA or any other applicable local, state, tribal (if any) or federal laws
27 and regulations.

1 103. Respondents agree not to contest the validity or terms of this Order, or the procedures
2 underlying or relating to it in any action brought by the United States, including EPA, to enforce its
3 terms.

4 104. Notwithstanding any other provision of this Order, no action or decision by EPA
5 pursuant to this Order, including without limitation, decisions of the Regional Administrator, the
6 Director of the Waste & Chemicals Management Office, or any authorized representative of EPA,
7 shall constitute final agency action giving rise to any right of judicial review prior to EPA's initiation
8 of a judicial action to enforce this Order, including an action for penalties or an action to compel
9 Respondents' compliance with the terms and conditions of this Order.

10 105. In any subsequent administrative or judicial proceeding initiated by the United States for
11 injunctive or other appropriate relief relating to the Facility, Respondents shall not assert, and may
12 not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral
13 estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the
14 claims raised by the United States in the subsequent proceeding were or should have been raised in
15 the present matter. EPA or Respondents' failure to specifically reserve a particular right herein shall
16 not be construed as a waiver of that right. Except as expressly provided in this Order, each Party
17 reserves all rights and defenses it may have.

18

19

XXI. OTHER CLAIMS

20 106. By issuance of this Order, the United States and EPA assume no liability for injuries or
21 damages to persons or property resulting from any acts or omissions of Respondents. The United
22 States and EPA shall not be deemed a party to any contract entered into by the Respondents or its
23 directors, officers, employees, agents, successors, representatives, assigns or Contractors in carrying
24 out actions pursuant to this Order.

25 107. Nothing in this Order constitutes a satisfaction or release from any claim or cause of
26 action against the Respondents or any person not a party to this Order, for any liability such person
27 may have under RCRA, CERCLA, other statutes, or the common law, including, but not limited to,

1 any claims of the United States for costs, damages, and interest under Sections 106(a) and 107(a) of
2 CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a).

3 108. This Order does not constitute a preauthorization of funds under Section 111(a)(2) of
4 CERCLA, 42 U.S.C. § 9611(a)(2). The Respondents waive any claim to payment under Sections
5 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, against the United States
6 or the Hazardous Substance Superfund arising out of any action performed under this Order.

7 109. Respondents shall bear their own costs and attorney fees.

8 110. Yakama Nation treaty, statutory and regulatory powers, authorities, rights and remedies,
9 both legal and equitable, are reserved, including but not limited to requiring actions necessary to
10 protect the health, welfare and environment of the Yakama Nation. Respondents do not submit to, do
11 not waive any defenses to the assertion of, and specifically reserve all rights and defenses to, the
12 exercise of Yakama Nation treaty, statutory and regulatory powers, authorities, rights and remedies,
13 both legal and equitable.

14
15 **XXII. INDEMNIFICATION**

16 111. Respondents agree to indemnify, save and hold harmless the United States, its officials,
17 agents, contractors, employees, and representatives from any and all claims or causes of action: (i)
18 arising from, or on account of, acts or omissions of Respondents, Respondents' officers, directors,
19 employees, agents, Contractors, receivers, trustees, successors or assigns, in carrying out actions
20 pursuant to this Order, except in the case of negligence, unlawful conduct or other wrongful acts of
21 the EPA, YNEP, officials, agents, contractors or employee; and (ii) for damages or reimbursement
22 arising from or on account of any contract, agreement, or arrangement between (any one or more of)
23 Respondents, and any persons for performance of work on or relating to the Site, including claims on
24 account of construction delays. In addition, Respondents agree to pay the United States costs
25 incurred by the United States, including litigation costs arising from or on account of claims made
26 against the United States based on any of the acts or omissions referred to in the preceding sentence.

27

1 **XXIII. INSURANCE**

2 112. At least seven (7) days prior to commencing any on-Site Work under this Order, the
3 Respondents shall secure, and shall maintain in force for the duration of this Order and for two (2)
4 years after the completion of all activities required by this Order, comprehensive general liability
5 insurance and automobile insurance with limits of two million dollars, combined single limit. Within
6 the same time period, and annually thereafter on the anniversary of the effective date of this Order,
7 the Respondents or their Contractor shall provide EPA with certificates of such insurance and a copy
8 of each insurance policy upon request. If the Respondents demonstrate by evidence satisfactory to
9 EPA that its Contractor maintains insurance described above, or insurance covering some or all of the
10 same risks but in an equal or lesser amount, then the Respondents need provide only that portion of
11 the insurance described above which is not maintained by such Contractor.

12 113. Respondents or their Contractors shall also secure, and maintain in force for the duration
13 of this Order and for two years after the completion of all activities required by this Order the
14 following: (i) Professional Errors and Omissions Insurance in the amount of two million dollars per
15 occurrence, and (ii) Pollution Liability Insurance in the amount of two million dollars per occurrence,
16 covering as appropriate both general liability and professional liability arising from pollution
17 conditions. Upon request, Respondents shall provide EPA with certificates of such insurance and a
18 copy of each insurance policy.

19 114. For the duration of this Order, Respondents shall satisfy, or shall ensure that their
20 Contractors satisfy, all applicable laws and regulations regarding the provision of employer's liability
21 insurance and workmen's compensation insurance for all persons performing work on behalf of the
22 Respondents, in furtherance of this Order.

23 115. At least seven (7) days prior to commencing any Work under this Order, Respondents
24 shall certify to EPA that the required insurance has been obtained by their Contractors.

25
26 **XXIV. FINANCIAL ASSURANCE**

27 116. Within forty-five (45) days after the effective date of this Order, Respondents shall

1 submit to EPA for review and approval, documents that would establish financial assurance in the
2 amount of \$250,000.00 for the Site Investigation and the Corrective Measures Study in one or more
3 of the following forms:

- 4 a. A surety bond guaranteeing performance of the Work;
- 5 b. One or more irrevocable letters of credit with a standby trust;
- 6 c. A trust fund;
- 7 d. A guarantee to perform the work by one or more parent corporations or subsidiaries, or by
8 one or more unrelated corporations that have a substantial business relationship with at
9 least one of the Respondents; or,
- 10 e. a demonstration that one or more of the settling Respondents satisfies the requirements of
11 40 C.F.R. § 264.143(f).

12 Within thirty (30) days of EPA approval or approval with modifications or conditions, Respondents
13 shall cause the financial assurance documents approved by EPA to be issued. Such documents shall
14 remain in force until EPA releases Respondents from this financial assurance obligation in writing
15 upon EPA approval of the Site Investigation and Final CMS Reports and completion of all Interim
16 Measure pursuant to this Section IX.

17 117. Within sixty (60) days of receiving approval of the final CMS Report, Respondents shall
18 submit to EPA for review and approval a written cost estimate and proposed financial assurance
19 document(s) for the Corrective Measures Implementation Plan in one or more of the forms specified
20 in Paragraph 116.

21 118. The cost estimate for the selected corrective measures must include the costs to
22 Respondents of hiring an independent third party to satisfactorily perform all activities, the costs of
23 which are required to be included in the respective cost estimate. An independent third party is a
24 party who is neither a parent nor a subsidiary of Respondents.

25 119. Within thirty (30) days of EPA approval, or approval with modifications, financial
26 assurance for the selected Corrective Measures shall be established in accordance with the documents
27 approved by EPA, unless Respondents have withdrawn their consent to implement said Corrective

1 Measures in accordance with Paragraph 37.b. The financial assurance documents shall remain in
2 effect until EPA releases Respondents from this financial assurance obligation in writing upon an
3 EPA determination that all of the Order's requirements have been fully satisfied.

4 120. If the Respondents seek to demonstrate financial assurance for any of the Work required
5 by this Order through a guarantee by a third party pursuant to Paragraph 116(d) of this Order,
6 Respondents shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f).
7 If Respondents seek to demonstrate their ability to complete the Work by means of the financial test
8 or the corporate guarantee pursuant to Paragraph 116(d) or 116(e), they shall resubmit sworn
9 statements conveying the information required by 40 C.F.R. § 264.143(f) annually, on the
10 anniversary of the Effective Date of this Order.

11 121. In the event that EPA determines at any time that the financial assurances provided
12 pursuant to this Section are inadequate to assure that the Work required by this order will be
13 completed in a timely manner, Respondents shall, within thirty (30) days of receipt of notice of EPA's
14 determination, obtain and present to EPA for approval adequate financial assurance in one of the
15 forms of financial assurance listed in Paragraph 116 of this Order. Respondents' inability to
16 demonstrate financial ability to complete the Work shall not excuse performance of any activities
17 required under this Order.

18 122. Each financial document obtained pursuant to this Section must be established and used
19 solely for the purpose of conducting the activities required by this Order at and for this Facility. Each
20 financial document submitted to EPA for approval pursuant to this Section shall satisfy the
21 requirements for financial assurance documents for closure specified at 40 C.F.R. § 264.151, except
22 that references to closure and closure regulatory requirements shall be revised to refer to the Work
23 required by this Order. Each financial assurance document established and maintained by
24 Respondents in accordance with this Section must allow the funds provided by the financial
25 assurance to be available in the event that Respondents prove unable or unwilling to undertake any
26 actions prescribed in this Order while it is in effect so that the activities covered by the instrument
27 may be completed by Respondents, EPA or others, as determined by EPA.

1 123. If Settling Respondents can show that the estimated cost to complete the remaining
2 Work has diminished below the amount set forth in the financial assurance instrument(s),
3 Respondents may, on any anniversary date of entry of this Order, or at any other time agreed to by
4 EPA, reduce the amount of the financial security provided under this Section to the estimated cost of
5 the remaining work to be performed, upon written approval by EPA. Respondents shall submit such
6 a request to EPA for review and approval.

7 124. Respondents may change the form of financial assurance provided under this Section at
8 any time, upon notice to and approval by EPA, provided that the new form of assurance meets the
9 requirements of this Section.

10 125. A copy of each document related to the financial assurance required by this Section shall
11 be delivered to:

12 Shawn Blocker
13 Project Manager
14 Mail Stop WCM-126
15 U.S. Environmental Protection Agency, Region 10
16 1200 Sixth Avenue
17 Seattle, Washington 98101

18 Andrew Boyd
19 Associate Regional Counsel
20 Mail Stop ORC-158
21 U.S. Environmental Protection Agency, Region 10
22 1200 Sixth Avenue
23 Seattle, Washington 98101

24 Regional Administrator
25 Mail Stop RA-140
26 U.S. Environmental Protection Agency, Region 10
27 1200 Sixth Avenue
 Seattle, Washington 98101

 Mr. Moses Squeochs, Manager
 Yakama Nation Environmental Program
 Confederated Tribes and Bands of the Yakama Nation
 P.O. Box 151
 Fort Road
 Toppenish, Washington 98948

XXV. MODIFICATION

1 the additional work. If required by EPA, Respondents shall submit for EPA approval a Work Plan for
2 the additional work. Such Work Plan shall be submitted within thirty (30) days of receipt of EPA's
3 determination that additional work is necessary, or according to an alternative schedule established
4 by EPA. Upon approval of a Work Plan, Respondents shall implement it in accordance with the
5 schedule and provisions contained therein.

6

7 **XXVII. TERMINATION AND SATISFACTION**

8 130. The provisions of this Order shall be deemed satisfied by Respondents on written
9 notice from EPA that Respondents have demonstrated that all of the terms of this Order including
10 any additional work as may be required pursuant to Section XXVI (Additional Work) of this Order,
11 have been completed to the satisfaction of EPA. Termination of this Order shall not, however,
12 terminate Respondents' obligation to comply with Sections XIV (Record Retention, Documentation
13 and Availability of Information), XX (Reservation of Rights), and XXII (Indemnification) of this
14 Order.

15

16 **XXVIII. PUBLIC COMMENT ON THIS ORDER**

17 131. Final acceptance by EPA of this Order shall be subject to Section 7003(d) of RCRA, 42
18 U.S.C. § 6973(d), which requires EPA to provide notice, opportunity for a public meeting and a
19 reasonable opportunity to comment on the proposed settlement prior to its final entry. After
20 consideration of any comments submitted during a public comment period of not less than fifteen
21 (15) days (may be extended by EPA) held pursuant to Section 7003(d) of RCRA, EPA may withhold
22 consent to all or part of this Order if EPA determines that comments received disclose facts or
23 considerations which indicate that this Order is inappropriate, improper, or inadequate.

24

25 **XXIX. SEVERABILITY**

26 132. If a court issues an order that invalidates any provision of this Order or finds that
27 Respondents have sufficient cause not to comply with one or more provisions of this Order,

1 Respondents shall remain bound to comply with all provisions of this Order not invalidated or
2 determined to be subject to a sufficient cause defense by the court's order.

3
4 **XXX. EFFECTIVE DATE**

5 133. This Order shall be effective when EPA signs the Order after the public comment period
6 as specified in Section XXVIII (Public Comment on This Order) above is completed. Within two (2)
7 Business days of signing the Order, EPA will provide Respondents with a copy of the signature page
8 of the Order signed by the Director of the Office of Waste & Chemicals Management by telefax.
9 Each undersigned representative of the Respondents certifies that he or she is fully authorized to
10 enter into the terms and conditions of this Order and to bind the party it represents to this document.

11
12 Agreed this ____ day of _____, 2002.

13
14 By: _____ Signature _____
15 Signature _____
16 _____ Print Name _____
17 Print Name _____
18 _____ Title _____
19 Title _____
20 YAKIMA HOPS, INC. HOP UNION USA, INC
21 Address Address
22 _____
23 _____
24 _____
25 _____

26
27 It is so ORDERED this ____ day of _____, 2003.

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By: _____ Date: _____

Richard Albright, Director
Office of Waste & Chemicals Management
U.S. Environmental Protection Agency, Region 10