

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

BOJO Investments, LLC

AGREED ORDER
No. DE-08-TCPSR-5223

TO: BOJO Investments, LLC
Attention: Mr. Bart Olson
Attention: Mr. Jerry Olson
6728 Klein Street NW
Olympia, Washington 98502

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I. INTRODUCTION

The mutual objectives of the State of Washington, Department of Ecology (Ecology) and **BOJO Investments, LLC (“BOJO”)** under this Agreed Order is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. Specifically, this Agreed Order will:

1. Require BOJO to develop and implement a Remedial Investigation/Feasibility Study (RI/FS) Work Plan for the Site. The Work Plan is to be approved by Ecology and conducted in accordance with the requirements of Chapter 70.105D RCW and Chapter 173-340 WAC. The Work Plan shall include a summary of the results of previous site investigations. After completion and Ecology approval of the RI/FS, BOJO shall prepare a draft Cleanup Action Plan (CAP) according to the requirements of WAC 173-340-380.

Ecology believes the actions required by this Agreed Order are in the public interest.

II. JURISDICTION

This Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. BOJO agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter BOJO's responsibility under this Order. BOJO shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms in this Order.

A. Site: The Site is generally referred to as the Reliable Steel Site with an address of 1218 West Bay Drive, Olympia, Washington. The Site spans six parcels, identified in the Findings of Fact section below. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. Based upon factors currently known to Ecology, the Site is more particularly described in the Site Diagram (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(4).

B. Parties: Refers to Ecology and BOJO Investments, LLC.

C. Potentially Liable Person (PLP): Refers to the parties currently notified of PLP status: BOJO Investments, LLC and Brown-Minneapolis Tank Northwest (BMT-NW). Ecology may identify additional parties, not currently identified in this Order, as PLPs in the future based upon credible evidence. BMT-NW is declining to participate in this Agreed Order.

D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits to this Order.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by BOJO:

- A. The Reliable Steel facility occupies six parcels. The Thurston County Assessor's Parcel Numbers (APNs) are: 91013000000, 91013500000, 72600200201, 67400000102, 72600300000, and 72600200200. Parcel 72600200201 is an abandoned railroad right-of-way formerly operated by the Northern and Santa Fe Railway company.
- B. The Site was originally operated as a lumber mill. In 1941, the property was purchased by A.W. Lewis and his wife Hazel (Bart and Jerry Olson's grandparents) for their expanding Reliable Welding business. Boat building was also a past use at the Site.
- C. During the late 1940s, Mr. and Mrs. Lewis formed a partnership comprised of family members. In 1974, the partnership incorporated as Reliable Steel Fabricators. In 1983, Bart and Jerry Olson purchased the other family members interests. In January 1998,

ownership of all of the parcels except the former railroad right-of-way was transferred from Reliable Steel Fabricators, Inc. to BOJO Investments, LLC (also owned by Bart and Jerry Olson). Ownership of the former railroad right-of-way was transferred to BOJO Investments, LLC in 2004.

- D.** According to the *Final Report, Environmental Compliance Audit, Reliable Steel Fabricators, Inc., Olympia, Washington for ITEQ, Inc.*, prepared by Tetra Tech EM in May 1998, the facility occupies approximately 4.25 acres and includes four buildings (office/plate shop, structural shop, maintenance shop, and the paint booth building), an inactive rail line, a crane and crane way, and a dock. The crane and crane way were the only above-ground appurtenances present on the site when purchased by the Lewis's in 1941. The office/plate shop and maintenance building were built in 1941. The dock was installed in the 1940s. The paint shop was built in 1964 and the structural shop was built in 1980.
- E.** The 1998 Tetra Tech EM report referenced above stated that Reliable Steel manufactured steel tanks, vessels, and beams. The manufacturing process involved the shaping, assembly, and welding of steel plates and beams of various thicknesses. Upon completion, the items would be sandblasted with silica sand and then painted with a coating. The coatings used included polyurethane, zinc epoxy, coal tar, poly-epoxies, and red oxide primer.
- F.** The above-referenced Tetra Tech EM report also stated that two past spills are known at the site. The first occurred in 1992 when a transformer owned by Puget Sound Energy (PSE) exploded and spilled transformer oil on the ground. According to Mr. Bart Olson, the oil was on fire when it hit the ground and the oil was "mostly consumed by the fire." Mr. Olson also stated that the oil fell onto asphalt pavement and "there was nothing left to pick up." The second spill occurred in 1996 and consisted of an oil spill of approximately 15 gallons of hydraulic oil from the crane. According to Mr. Bart Olson,

- the spill occurred on a concrete work pad in the area west of the paint shop. This spill was immediately cleaned up by site employees.
- G.** Two underground storage tanks (USTs) were removed in 1990. These tanks consisted of a 2000 gallon gasoline tank and a 885 gallon diesel tank. The closure notice submitted to Ecology stated that no contamination was found. However, no site assessment was performed during the tank removal.
- H.** Currently, one UST is confirmed to be present at the site and other USTs may also be present. The confirmed UST is located in the Plate Shop and was apparently closed in place by Cecon in 1999. No site assessment was performed for this tank. The LSI ADaPT Phase I Environmental Site Assessment report dated July 31, 2001, stated that an additional fuel oil UST may remain south of the plate shop.
- I.** According to the LSI ADaPT report, prior to 1976, the facility generated calcium chlorite sludge as a result of manufacturing acetylene gas for cutting steel. This waste was disposed either into a UST or to Budd Inlet.
- J.** During an Ecology inspection on February 10, 1993, a sample was collected from a pile of welding slag and analyzed for priority pollutant metals. The results exceeded the marine sediment quality standards for arsenic and copper. In a letter dated April 23, 1993, Ecology stressed the need to keep welding slag and debris out of Budd Inlet and out of any area where stormwater runoff could carry it to the bay. Also, the letter stated that any debris that are still on or near the shore of Budd Inlet should be removed.
- K.** On August 28, 2001, BMT Properties (BMT) acquired the operating assets of Reliable Steel, Inc. and leased the real property. BMT simultaneously assigned the operating assets and lease to BMT-NW.
- L.** In a letter dated January 2, 2002, Ecology directed BMT Northwest to immediately implement management practices to prevent the discharge of paint overspray to surface water.

- M. During a stormwater inspection by Ecology on September 21, 2004, several findings were noted. These findings included: 1) incomplete Best Management Practices (BMPs) for the above-ground diesel tank; 2) the potential for stormwater flowing down the walkway to carry industrial contaminants into the bay; 3) a large oil stain was noted next to an unprotected storm drain; 4) considerable metal grit was observed mixed into the soil in the area between the fabrication shop and the paint/blasting shop; 5) considerable blasting grit was noticed in the land area from the end of the paint/blasting shop to the high water line. A small depression directs runoff from this area directly to the bay. Some of this material could have discharged into the bay.
- N. In January 2006, Stemen Environmental reported to Ecology by telephone that diesel fuel, heavy metals, and solvents were present at levels exceeding the MTCA cleanup levels in soil and/or groundwater.
- O. On May 30, 2006 the site was placed on the State list of "Confirmed or Suspected Contaminated Sites."
- P. On May 31, 2006, Paul Stemen entered the site into the Voluntary Cleanup Program (VCP). The VCP application listed two reports as completed for the site by Stemen Environmental: *Limited Phase II Environmental Site Assessment Report* dated November 26, 2005 and the *Additional Remedial Investigation Activities Report* dated January 27, 2006.
- Q. In a letter dated June 19, 2006, Ecology formally requested copies of the two reports prepared by Stemen Environmental. These reports had also been requested in a telephone conversation on June 6, 2006.
- R. In August 2006, the site was identified as a Puget Sound Initiative (PSI) site. The PSI program is a Governor initiated program to prioritize the cleanup of sites that may be impacting the waters of Puget Sound. The cleanup of PSI sites is considered a high priority by Ecology.

- S. Between November 2006 and March 2007, Ecology made several additional requests to Stemen Environmental for copies of the reports prepared by them. On May 10, 2007, Ecology removed the site from the Voluntary Cleanup Program.
- T. On May 15, 2007, Ecology received copies of the 1998 Tetra Tech EM report, the 2001 LSI ADaPT report, and both Stemen Environmental reports. Data from the Stemen Environmental reports show that site soil and/or groundwater exceeds the Model Toxics Control Act (MTCA) cleanup standards for total petroleum hydrocarbons (TPH), and/or metals.

ECOLOGY DETERMINATIONS

- A. BOJO is an "owner or operator" as defined in RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4). The facility is known as the Reliable Steel Site.
- B. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(20) and RCW 70.105D.020(7), respectively, has occurred at the Site.
- C. Based upon credible evidence, Ecology issued a potentially liable person status letter to both PLPs on May 15, 2007, pursuant to RCW 70.105D.040, 70.105D.020(16) and WAC 173-340-500. After providing notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued determinations on June 20, 2007 and July 11, 2007, respectively, that BOJO Investments, LLC and BMT-NW are potentially liable persons (PLPs) under RCW 70.105D.040.
- D. Based upon credible evidence, Ecology may identify additional PLPs for this Site which are not currently identified in this Order.

- E. Pursuant to RCW 70.105D.030(1) and 70.105D.050(1), Ecology may require the PLPs to investigate or conduct other remedial actions with respect to the release or threatened release of hazardous substances, whenever it believes such action to be in the public interest.
- F. Interim action(s) may be necessary if, based on credible evidence, site conditions warrant an interim action consistent with WAC 173-340-430. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study or design of a cleanup action.
- G. Based on the foregoing facts, Ecology believes the remedial action required by this Order is in the public interest.

VI. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that BOJO take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

- A. Develop and implement a RI/FS Work Plan, for the Site in accordance with Chapter 173-340-350 and 173-340-360 WAC. The Work Plan shall incorporate and summarize all previous investigations done at the site. The RI/FS Work Plan shall include a sampling and analysis plan (SAP) and a site specific health and safety plan (HASP). The SAP and HASP shall meet the requirements of WAC 173-340-820 and WAC 173-340-810, respectively. Sediment sample methods should be consistent with the Ecology guidance

document Sediment Sampling and Analysis Plan Appendix (03-09-043, revised April 2003). The remedial investigation shall include a surface geophysical survey to locate all current and previous USTs at the site. If additional USTs are found, these tanks shall be permanently closed according to WAC 173-360-385. Each UST at the formerly or currently present at the site shall be assessed consistent with the Ecology's *Guidance for Site Checks and Site Assessments for Underground Storage Tanks* (Publication #90-52). The Draft RI/FS work plan shall be submitted to Ecology for review, comment, and approval. Ecology's comments on the draft work plan shall be incorporated into the final work plan, which shall be submitted to Ecology within thirty (30) days of receipt of such comments.

- B. Implement the Remedial Investigation (RI) according to the Ecology approved Final RI/FS Work Plan. The implementation of the Final RI/FS Work Plan shall be in accordance with the schedule shown in the Final RI/FS Work Plan.
- C. Prepare a draft RI/FS report in accordance with WAC 173-340-350 that provides information fully documenting the nature and extent of contamination at the Site. The RI/FS shall report the results of the remedial investigations including the vertical and lateral distribution of contaminants in soil, surface water, groundwater, and sediments. Additionally, the report shall include an analysis of potential remedial alternatives and recommendations regarding a preferred remedial action to be implemented. The draft RI/FS Report shall be submitted to Ecology for review and comment. Ecology's comments on the draft RI/FS Report shall be incorporated into the final RI/FS Report.
- D. If Ecology concludes that an Interim Action at the site is necessary, then a Draft Interim Remedial Action Work Plan shall be prepared and submitted to Ecology within 30 days of Ecology's notification to BOJO that an Interim Action is necessary. Ecology's

comments on the Draft Interim Action Work Plan shall be incorporated into the final work plan, which shall be submitted to Ecology within thirty (30) days of receipt of such comments.

- E. Implement the approved Final Interim Action Work Plan according to the Ecology approved Final Interim Action Work Plan. The implementation of the Final Interim Action Work Plan shall be in accordance with the schedule shown in the approved Final Interim Action Work Plan.
- F. Upon Ecology approval of the Final RI/FS report, BOJO shall prepare a Draft Cleanup Action Plan (DCAP) in accordance with WAC 173-340-380 that details the proposed cleanup action for addressing the contamination present on the Site, and addresses the requirements for developing a cleanup action in WAC 173-340-350 through 173-340-390, including Ecology's expectations for cleanup alternatives in WAC 173-340-370. The DCAP shall include a general description of the proposed cleanup action, cleanup standards from the RI/FS and a rationale regarding their selection, a proposed schedule for implementation, description of any institutional controls proposed, and a summary of federal, state and local laws that are applicable to the proposed cleanup action.
- G. Preparation of a Final CAP is not a part of this Order. Ecology intends to draft the Final CAP and implement the Final CAP in a subsequent Agreed Order, Enforcement Order, or Consent Decree.
- H. In accordance with WAC 173-340-840(5) and Ecology Toxics Cleanup Program Policy 840 (Data Submittal Requirements), data generated for contaminated site investigations and cleanups shall be submitted in both a written and electronic format. For additional information regarding electronic format requirements, see the website

<http://www.ecy.wa.gov/eim>. All laboratory analyses shall be performed by the State of Washington Certified Laboratory for each analytical method used.

I. Schedule of Deliverables

Each deliverable, once approved by Ecology, becomes incorporated by reference and shall be an integral and enforceable part of the Order.

SCHEDULE OF DELIVERABLES	
Deliverable	Schedule
Draft RI/FS Work Plan, including Sampling and Analysis Plan and Health and Safety Plan (HASP).	60 days following the Agreed Order and Public Participation Plan public comment period.
Final RI/FS Work Plan incorporating Ecology's comments.	30 days after receiving Ecology's written comments on the Draft RI/FS Work Plan.
Complete RI/FS Work Plan Field Work	According to the schedule shown in the Final RI/FS Work Plan.
Draft RI/FS Report	60 days after the completion of field work or when all laboratory data are received.
Draft Final RI/FS Report incorporating Ecology's comments.	30 days after Ecology's written comments on the Draft RI report are received
Final RI/FS Report	30 days after Ecology's written comments on the Draft Final RI/FS report are received
Draft CAP (paper and electronic format)	30 days after the Final RI/FS Report is issued.
Draft Interim Remedial Action Work Plan	Submit to Ecology for review and approval 30 days after notification by Ecology that an Interim Action is necessary.
Final Interim Action Work Plan incorporating Ecology's comments.	30 days after receiving Ecology's written comments on the Draft Interim Action Work Plan.
Complete Interim Remedial Action	According to the schedule shown in the Final Interim Action Work Plan.
Draft Interim Action Report	60 days after the completion of field work or when all laboratory data are received.
Final Interim Action Report incorporating Ecology's comments.	30 days after Ecology's written comments on the Draft Interim Action Report are received

J. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this Section, Ecology may complete and issue the final deliverable.

VII. TERMS AND CONDITIONS OF ORDER

A. Public Notice

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that this Order is inadequate or improper in any respect.

B. Remedial Action Costs

BOJO shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). BOJO shall pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

Pursuant to RCW 70.105D.055, Ecology has authority to recover unreimbursed remedial action costs by filing a lien against real property subject to the remedial actions.

C. Implementation of Remedial Action

If Ecology determines that BOJO has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to BOJO, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of BOJO's failure to comply with its obligations under this Order,

BOJO shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.B (Remedial Action Costs), provided that BOJO is not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

Except where necessary to abate an emergency situation, BOJO shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

D. Designated Project Coordinators

The project coordinator for Ecology is:

Steve Teel, LHG
Toxics Cleanup Program
Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775
(360) 407-6247

The project coordinator for **BOJO Investments, LLC** is:

Mr. Bart Olson
BOJO Investments, LLC
6728 Klein Street NW
Olympia, WA 98502

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and BOJO, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Decree.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

E. Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist licensed in the State of Washington or under the direct

supervision of an engineer registered in the State of Washington, except as otherwise provided for by Chapters 18.220 and 18.43 RCW.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrologic or engineering work shall be under the seal of an appropriately licensed professional as required by Chapter 18.220 RCW or RCW 18.43.130.

BOJO shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

F. Access

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that BOJO either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing BOJO's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by BOJO. BOJO shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by BOJO where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by BOJO unless an emergency prevents such notice. All persons who access the Site pursuant to this Section shall comply with any applicable Health and Safety Plan(s). Ecology employees and

their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

G. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, BOJO shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, BOJO shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by BOJO pursuant to implementation of this Order. BOJO shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow BOJO and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.F (Access), Ecology shall notify BOJO prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

H. Public Participation

A Public Participation Plan is required for this Site. Ecology shall review any existing Public Participation Plan to determine its continued appropriateness and whether it requires amendment, or if no plan exists, Ecology shall develop a Public Participation Plan alone or in conjunction with BOJO.

Ecology shall maintain the responsibility for public participation at the Site. However, BOJO shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing list, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify BOJO prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by BOJO that do not receive prior Ecology approval, BOJO shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. Olympia Timberland Library
313 8th Ave. SE
Olympia WA
(360) 352-0595
- b. South Puget Environmental Education Clearinghouse (SPEECH)
209 4th Ave. E., Suite 206
Olympia WA
(360) 786-6349
- c. Ecology's Southwest Regional Office
300 Desmond Drive
Lacey, WA 98503

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports, supplemental remedial planning documents,

and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

I. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, BOJO shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, BOJO shall make all records available to Ecology and allow access for review within a reasonable time.

J. Resolution of Disputes

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII.B (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

a. Upon receipt of Ecology's project coordinator's written decision or the itemized billing statement, BOJO has fourteen (14) days within which to notify Ecology's project coordinator in writing of its objection to the decision or itemized statement.

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

c. BOJO may then request regional management review of the decision. This request shall be submitted in writing to the **Southwest** Region Toxics Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's written decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of BOJO's request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

K. Extension of Schedule

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended;
- b. The length of the extension sought;
- c. The reason(s) for the extension; and
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on BOJO to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

- a. Circumstances beyond the reasonable control and despite the due diligence of BOJO including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by BOJO;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII.M (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of BOJO.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give BOJO written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.L (Amendment of Order) when a schedule extension is granted.

4. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:

- a. Delays in the issuance of a necessary permit which was applied for in a timely manner;
- b. Other circumstances deemed exceptional or extraordinary by Ecology; or
- c. Endangerment as described in Section VIII.M (Endangerment).

L. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.N (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and BOJO. BOJO shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J (Resolution of Disputes).

M. Endangerment

In the event Ecology determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct BOJO to cease such activities for such period of time as it deems necessary to abate the danger. BOJO shall immediately comply with such direction.

In the event BOJO determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, BOJO may cease such activities. BOJO shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction, BOJO shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with BOJO's cessation of activities, it may direct BOJO to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to Section VIII.M (Endangerment), BOJO's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.K (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

N. Reservation of Rights

This Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against BOJO to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against BOJO regarding remedial actions required by this Order, provided BOJO complies with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

O. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by BOJO without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to BOJO's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, BOJO shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, BOJO shall notify Ecology of said transfer. Upon transfer of any interest, BOJO shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

P. Compliance with Applicable Laws

1. All actions carried out by BOJO pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. The permits or specific federal, state or local requirements that the agency has preliminarily determined to be applicable and that are known at the time of entry of this Order have been identified in Exhibit B.

2. Pursuant to RCW 70.105D.090(1), BOJO is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, BOJO shall comply with the substantive requirements of such permits or approvals. A list of such permits and

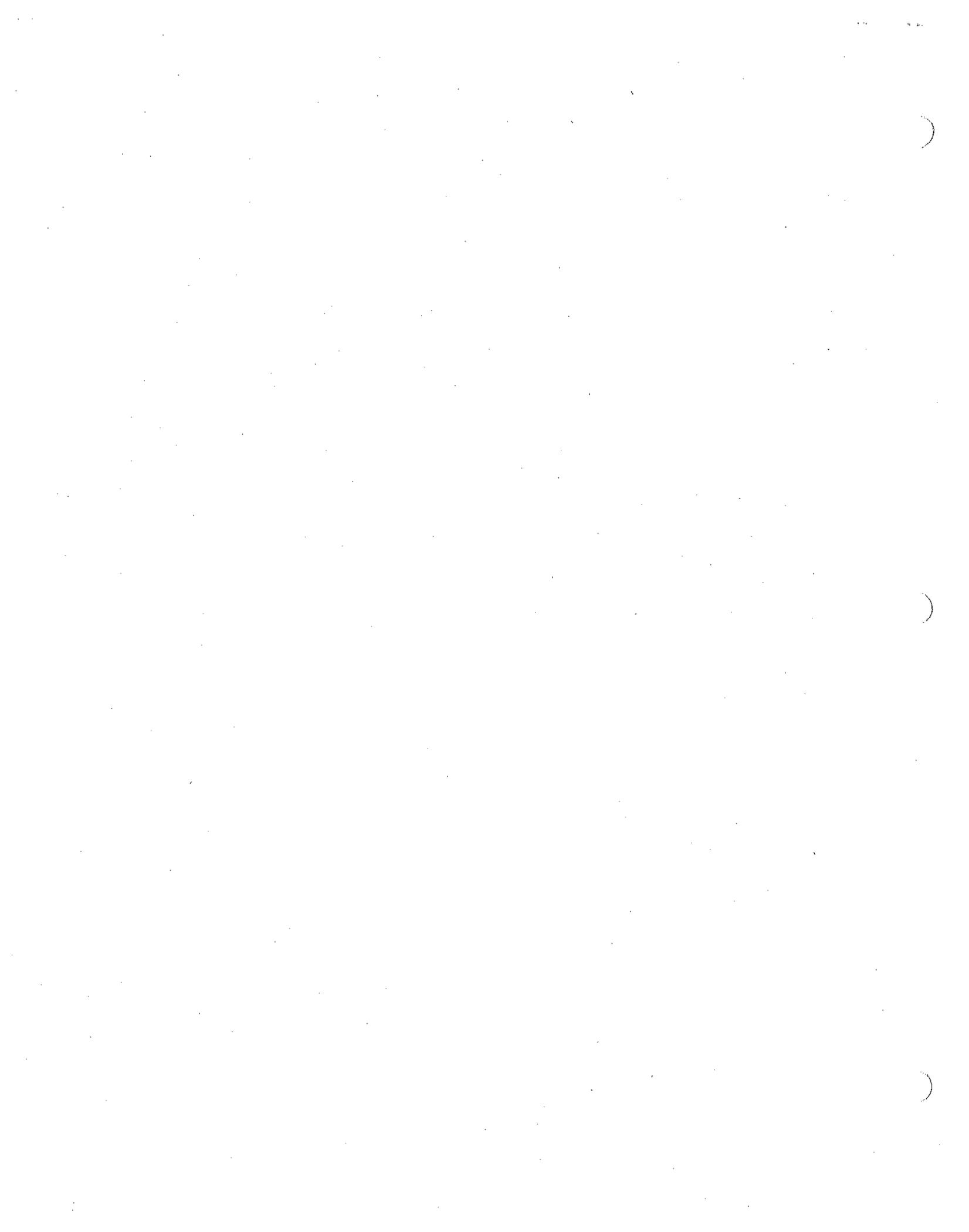
approvals and/or the substantive requirements of those permits and approvals as they are known to be applicable at the time of entry of this Order have been included in Exhibit B.

BOJO has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or BOJO determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or BOJO shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, BOJO shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by BOJO and on how **they** must meet those requirements. Ecology shall inform BOJO in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. BOJO shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

3. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for the State to administer any federal law, the exemption shall not apply and BOJO shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

Q. Indemnification

BOJO agree to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property to the extent arising from or on account of acts or omissions of BOJO, its officers, employees, agents, or contractors in entering into and implementing this Order. However, BOJO shall not indemnify the State of Washington nor save nor hold its



employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

VIII. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon BOJO's receipt of written notification from Ecology that BOJO has completed the remedial activity required by this Order, as amended by any modifications, and that BOJO has complied with all other provisions of this Agreed Order.

IX. ENFORCEMENT

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

C. In the event BOJO refuses, without sufficient cause, to comply with any term of this Order, BOJO will be liable for:

a. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and

b. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70.105D.060.

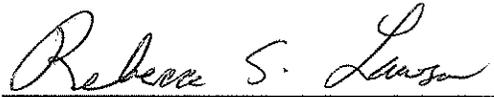
Effective date of this Order: 1/28/08

BOJO INVESTMENTS, LLC



Bart Olson
6728 Klein Street NW
Olympia, WA 98502

**STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY**



Rebecca S. Lawson, P.E., L.G., L. HG
Section Manager
Toxics Cleanup Program

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Southwest Regional Office
(360) 407-6241

Exhibit A
SITE DIAGRAM

EXHIBIT A

SITE DIAGRAM

Map created from Thurston County GeoData Center 2007 (<http://www.geodata.org/online.htm>).
Yellow lines indicate approximate parcel boundaries. Aerial photo base was taken in 2005.

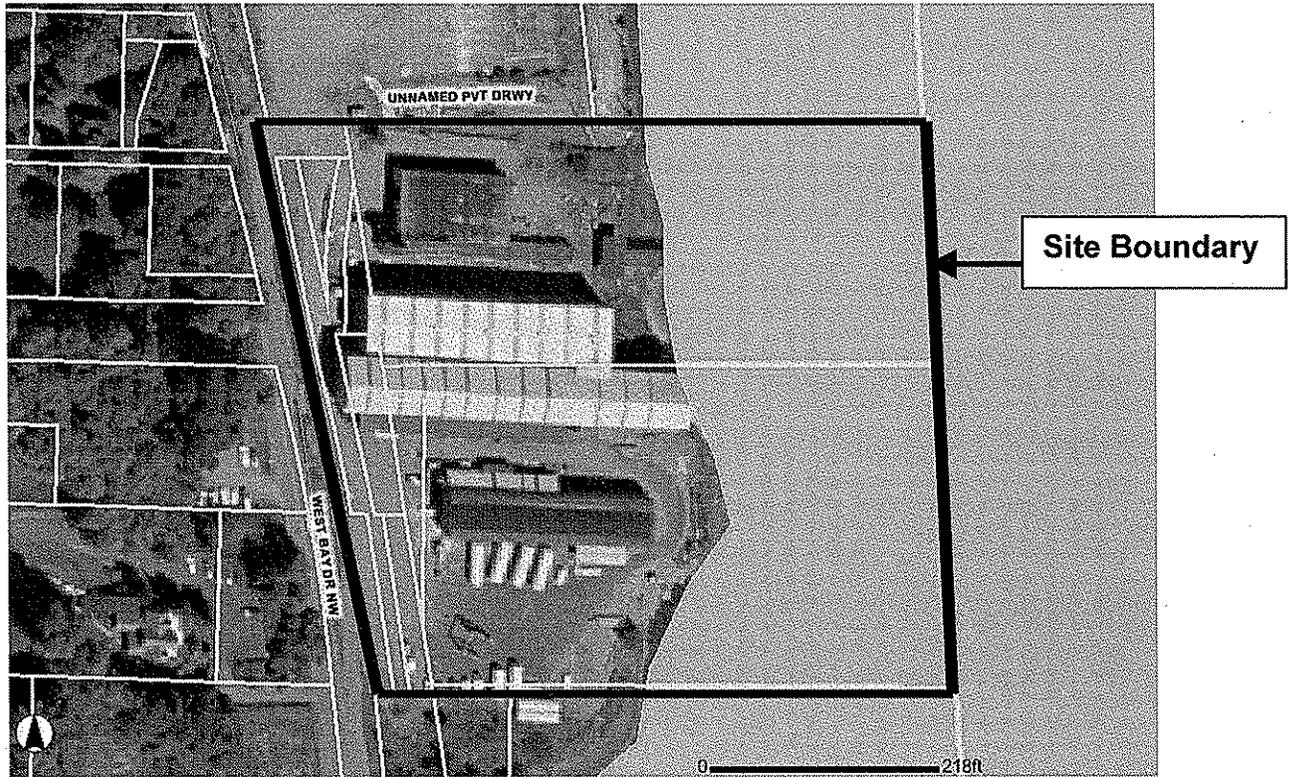


Exhibit B

APPLICABLE PERMITS AND SUBSTANTIVE REQUIREMENTS

WORK PERFORMED SHALL BE DONE IN ACCORDANCE WITH SUBSTANTIVE
REQUIREMENTS OF THE FOLLOWING LAWS

- Chapter 70.105D RCW (Model Toxics Control Act), and Chapter 173-340 WAC (MTCA Regulations)
- Chapter 70.105 RCW (Washington State Hazardous Waste Management Act), and Chapter 173-303 WAC (State Dangerous Waste Regulations)
- Chapter 90.48 RCW (State Water Pollution Control Act)
- Chapter 70.95 RCW (Solid Waste Management – Reduction and Recycling)
- Chapter 70.94 RCW (Washington Clean Air Act) and any required permits by the Olympic Region Clean Air Agency (ORCAA)
- Chapter 173-160 RCW (Minimum Standards for Construction and Maintenance of Wells)
- Chapter 43.21C RCW (State Environmental Policy Act), and Chapter 197-11 WAC (State Environmental Policy Act Rules)
- Chapter 77.55 RCW (Construction Projects in State Waters)
- Washington Industrial Safety and Health Act (WISHA)
- Applicable City of Olympia Municipal Codes
- Applicable Thurston County Municipal Codes