

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by: **AGREED ORDER**

BNSF Railway Company
Koch Materials, LLC
SemMaterials, L.P.
Marathon Oil Company

No: _____

TO:

Mr. Randy Lair, Vice-President
Koch Materials, LLC
P.O. Box 2338
Wichita, Kansas 67201

Mr. Brent Hansen
SemMaterials, L.P.
Two Warren Place, Suite 700
6120 S Yale Avenue
Tulsa, OK 74136

Mr. Bruce Sheppard
Environmental Remediation Manager
BNSF Railway Company
2454 Occidental Ave., Suite IA
Seattle, WA 98134

Mr. Ed Strenkowski
Marathon Oil Company
555 San Felipe Street
P.O. Box 4813
Houston, TX 77210

TABLE OF CONTENTS

I.	INTRODUCTION.....	2
II.	JURISDICTION	2
III.	PARTIES BOUND.....	2
IV.	DEFINITIONS	3
V.	FINDINGS OF FACT	3
VI.	ECOLOGY DETERMINATIONS.....	6
VII.	WORK TO BE PERFORMED.....	7
VIII.	TERMS AND CONDITIONS OF ORDER	9
	A. Public Notice	9
	B. Remedial Action Costs	9
	C. Implementation of Remedial Action	10
	D. Designated Project Coordinators	10
	E. Performance.....	11
	F. Access.....	12
	G. Sampling, Data Submittal, and Availability.....	13
	H. Public Participation.....	13
	I. Retention of Records	15
	J. Resolution of Disputes.....	15
	K. Extension of Schedule	16
	L. Amendment of Order.....	18
	M. Endangerment.....	19
	N. Reservation of Rights	20
	O. Transfer of Interest in Property	20
	P. Compliance with Applicable Laws.....	21
	Q. Indemnification.....	22
	R. Notice.....	23
IX.	SATISFACTION OF ORDER	23
X.	ENFORCEMENT.....	23
	EXHIBIT A SITE MAP	
	EXHIBIT B SCOPE OF WORK	
	EXHIBIT C PUBLIC PARTICIPATION PLAN	

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and BNSF Railway Company (BNSF), Koch Materials LLC (Koch Materials), SemMaterials L.P. (SemMaterials), and Marathon Oil Company (Marathon) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the Potentially Liable Persons (PLPs) to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the PLPs to conduct a remedial investigation/feasibility study (RI/FS) at the SemMaterials facility located at 4327 North Thor Street, Spokane, WA. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed 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. The PLPs agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the PLPs' responsibility under this Order. The PLPs 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 referred to as the SemMaterials Site and is generally located at 4327 North Thor Street, Spokane, WA. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. 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 the State of Washington, Department of Ecology and the BNSF Railway Company (BNSF), Koch Materials LLC (Koch Materials), SemMaterials L.P. (SemMaterials), and Marathon Oil Company (Marathon).

C. Potentially Liable Person (PLP): Refers to BNSF, Koch Materials, SemMaterials, and Marathon.

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 the PLPs:

A. BNSF owns the property currently leased and operated by SemMaterials at 4327 North Thor Street, Spokane, Washington. BNSF (including its predecessors) has owned the property since approximately the early 1900's.

B. In the 1950s, Blackline Asphalt ("Blackline") began operations at the Site. Husky Oil Company of Delaware, a predecessor of Marathon, operated at the Site from the 1970s until 1982. Intermountain Asphalt Company operated the Site from 1982 until 1983. Koch Materials operated the Site from 1983 to 2005.

C. In December 1992 three aboveground storage tanks (ASTs) at the Site were dismantled. Petroleum-contaminated soil was discovered under the ASTs (the "release") during or around the time of the dismantling work. Koch was the operator of the facility at the time.

D. Ecology was notified by Koch Materials on December 4, 1992, of the petroleum release at the facility.

E. Ecology conducted an initial investigation of the facility on January 20, 1993, and informed Koch Materials by letter dated February 23, 1993, that the facility would be listed on Ecology's hazardous sites database. Ecology met with Koch Materials on March 8, 1993, to discuss the investigation of the release area.

F. Spokane County Health District completed a Site Hazard Assessment of the facility in January 1995. The facility received a hazard ranking of three on a scale of one to five with one being considered the highest ranking.

G. Since the discovery of the release, there has been limited investigation of the contamination and some independent interim remedial measures.

H. SemMaterials L.P. currently operates the facility at 4327 North Thor Street, Spokane, Washington.

VI. ECOLOGY DETERMINATIONS

A. BNSF is an "owner or operator" as defined in RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4).

B. Koch Materials is an "owner or operator" as defined in RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4).

C. Marathon, is a successor in interest to an "owner or operator" as defined in RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4).

D. SemMaterials is an "owner or operator" as defined in RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4).

E. 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.

F. Based upon credible evidence, Ecology issued a PLP status letter to BNSF dated May 12, 2006, pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that BNSF is a PLP under RCW 70.105D.040 and notified BNSF of this determination by letter dated September 11, 2006. Ecology issued a PLP status letter to Koch Materials dated October 10, 2006. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability,

Ecology finalized Koch Material's PLP status in a letter dated November 27, 2006. Ecology sent Marathon Oil a PLP status letter on July 17, 2007. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology finalized Marathon's PLP status in a letter dated September 21, 2007. Ecology sent SemMaterials a PLP status letter on May 12, 2006. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology finalized SemMaterial's PLP status in a letter dated February 1, 2008.

G. Pursuant to RCW 70.105D.030(1) and -.050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the PLPs 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. Plan, implement, and report on the conduct of a Remedial Investigation and Feasibility Study (RI/FS) for the SemMaterials Facility. Attached hereto as Exhibit B is a Scope of Work for the completion of a RI/FS. Exhibit B is incorporated by reference as an integral and enforceable part of the Order.

B. Submit all necessary work plans to implement the Scope of Work (Exhibit B) to Ecology for review and approval according to the Schedule of Deliverables included in Exhibit B. Upon approval by Ecology, the PLPs will proceed with field implementation of the Work Plans in accordance with an agreed upon schedule.

C. Work Plans shall consist of a detailed description of site conditions, work to be performed, personnel requirements, and schedules for implementation and deliverables for the following:

- a. TASK I. Project Plan including RI Work Plan, Sampling and Analysis Plan, Health and Safety Plan, and Public Participation Plan.
- b. TASK II. Conduct RI Field Investigations.
- c. TASK III. Remedial Investigation/Feasibility Study Report.

These work plans and each element thereof shall be designed, implemented, and completed in accordance with the Model Toxics Control Act (Chapter 70.105D RCW) and its implementing regulation (Chapter 173-340 WAC) as amended, and all applicable federal, state, and local laws and regulations.

D. 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.

VIII. 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

The PLPs 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). The PLPs 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 the PLPs have failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to the PLPs, perform any or all

portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of the PLPs' failure to comply with its obligations under this Order, the PLPs shall reimburse Ecology for the costs of doing such work in accordance with Section VIII B. - Remedial Action Costs, provided that the PLPs are 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, the PLPs 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:

William J. Fees
4601 N. Monroe
Spokane, WA 99203
509/329-3589

The project coordinator for the PLPs is:

Will Ratliffe, P. Geol. (Alberta)
Environmental Specialist
Husky Oil Operations Limited
707 8th Ave. S.W. Calgary, AB
Box 6525, Stn. D, T2P 3G7
Phone (403) 750-1392 Cell (403) 826-4612

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 the PLPs, 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 Order.

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.

The PLPs shall notify Ecology in writing of the identity of any engineers and geologists, contractors and subcontractors, 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 the PLPs either own, control, or have 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 the PLPs' 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 the PLPs. The PLPs shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the PLPs 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 the PLPs unless an emergency prevents such notice. All persons who access the Site pursuant to this Section shall comply with any applicable Health and Safety Plans. 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, the PLPs 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, the PLPs shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the PLPs pursuant to implementation of this Order. The PLPs shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the PLPs 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, Terms and Conditions, subsection F, Access, Ecology shall notify the PLPs prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all laboratory 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. If no plan exists, Ecology shall develop a public participation plan alone or in conjunction with the PLPs.

Ecology shall maintain the responsibility for public participation at the Site and the PLPs will cooperate with Ecology.

1. Ecology will develop appropriate mailing lists with input from the PLPs, 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, interim actions, and cleanup action plans. Ecology will edit, finalize and distribute such fact sheets

and prepare and distribute public notices of Ecology's presentations and meetings. The PLPs will be provided an opportunity to review fact sheets and public notices prior to distribution.

2. The PLPs shall notify Ecology's project coordinator prior to any of the following regarding the Site: the issuance of all press releases; distribution of fact sheets; performance of other outreach activities; meetings with the interested public and/or local governments. Likewise, Ecology shall notify the PLPs prior to the issuance of all press releases and fact sheets, and before meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the PLPs that do not receive prior Ecology approval, the PLPs 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, the PLPs shall 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, the PLPs shall arrange and/or continue information repositories to be located at the following locations:

Spokane City Public Library
Hillyard Branch
4005 North Cook Street
Spokane, WA 99207

WA Dept. of Ecology
Eastern Regional Office
4601 North Monroe Street
Spokane, WA 99205

At a minimum, copies of public notices including fact sheets and documents associated with the public comment period 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, the PLPs 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, the PLPs 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. Terms and Conditions, subsection 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, the PLPs have thirty (30) days within which to notify Ecology's project coordinator in writing of its objection to the decision or itemized statement. The PLPs will verbally notify Ecology's project coordinator of its objection within fourteen (14) days.

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. The PLPs may then request regional management review of the decision. This request shall be submitted in writing to the Eastern Region Toxics Cleanup Section Manager within fourteen (14) 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 the PLPs' 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 the PLPs 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 the PLPs 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 the PLPs;
- b. Acts of God including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII. Terms and Conditions, subsection 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 the PLPs.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the PLPs 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. Terms and Conditions, subsection 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 timely manner;

- b. Other circumstances deemed exceptional or extraordinary by Ecology; or
- c. Endangerment as described in Section VIII Terms and Conditions, subsection 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 Terms and Conditions, subsection 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 the PLPs. The PLPs 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 Terms and Conditions, subsection 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 the PLPs to cease such activities for such period of time as it deems necessary to abate the danger. The PLPs shall immediately comply with such direction.

In the event the PLPs determine that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, the PLPs may cease such activities. The PLPs 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 the PLPs shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the PLPs' cessation of activities, it may direct the PLPs to resume such activities.

If Ecology concurs with, or orders, a work stoppage pursuant to Section VIII Terms and Conditions, subsection M, Endangerment, the PLPs' 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 Terms and Conditions, subsection 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 the PLPs to recover remedial action costs paid to and received by Ecology under this Order.** In addition, Ecology will not take additional enforcement actions against the PLPs regarding remedial actions required by this Order, provided the PLPs comply 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 the PLPs 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 the PLPs' transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the PLPs 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, the PLPs shall notify Ecology of said transfer. Upon transfer of any interest, the PLPs 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 the PLPs 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. At this time, no federal, state or local requirements, including permit requirements, have been identified as being applicable to the actions required by this Order.

2. Pursuant to RCW 70.105D.090(1), the PLPs are 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, the PLPs shall comply with the substantive requirements of such permits or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this Section.

The PLPs have 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 the PLPs determine 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 the PLPs shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the PLPs 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 the PLPs and on how the PLPs must meet those requirements. Ecology shall inform the PLPs in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The PLPs 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 the PLPs 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

The PLPs 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 the PLPs, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the PLPs 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.

R. Notice

Where Ecology is required to provide notice to the PLPs under provisions of this Section VIII, and specifically for notices required under Section VIII(C), (F), (G), (H), (J), (K), (M) and (P), such notice shall be given to the PLP project coordinator

Will Ratliffe
Environmental Specialist
Husky Oil Operations Limited
707 8th Ave. S.W.
Calgary, AB
Box 6525, Stn. D, T2P 3G7

IX. SATISFACTION OF ORDER

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

X. 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 the PLPs refuse, without sufficient cause, to comply with any term of this Order, the PLPs will be liable for:
 - 1. 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
 - 2. 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: _____

Bruce Sheppard

BNSF Railway Co.
Environmental Remediation Manger
2454 Occidental Ave., Suite 1A
Seattle, WA 98134

Michael A. Hibbler

Section Manager
WA Dept. of Ecology
4601 N. Monroe
Spokane, WA 99205-1295

Randy Lair

Vice-President
Koch Materials, LLC
P.O. Box 2338
Wichita, Kansas 67201

Mr. Ed Strenkowski

Marathon Oil Company
555 San Felipe Street
P.O. Box 4813
Houston, TX 77210

Mr. Brent Hanson

SemMaterials, L.P.
Two Warren Place, Suite 700
6120 S Yale Avenue
Tulsa, OK 74136

Exhibit A



SemMaterials Site Map

EXHIBIT B

**SemMaterials Site
Scope of Work
Remedial Investigation/Feasibility Study**

This Scope of Work is to investigate contamination at the SemMaterials Site (Site) located at 4327 North Thor Street, Spokane, Washington. This Scope of Work prepared by the Washington Department of Ecology (Ecology) is to be used by the potentially liable persons (PLPs) to develop Work Plans in order to complete a Remedial Investigation/Feasibility Study (RI/FS) at the Site.

The RI is to supplement existing data and determine the nature and extent of contamination at the Site. The FS will evaluate remedial alternatives that are applicable for the Site. The information and data gathered during the RI/FS will be used to identify if additional data needs to be collected and determine an appropriate remedial action. The PLPs will furnish all personnel, materials, and services necessary for, or incidental to, performing the Remedial Investigation at the Site.

The RI/FS must contain the following tasks:

Task I: RI/FS Project Plan

A. RI/FS Work Plan

A Work Plan outlining procedures for the Remedial Investigation must be prepared which includes the following information:

1. Background Summary

Any pertinent Site information including, but not limited to:

- a. Maps – topographical, property lines, underground tank locations, surface water bodies near the vicinity of the Site, previous Site investigations; all maps will be consistent with the requirement set forth in WAC 173-340-840(4) and be of sufficient detail and accuracy to locate and report all current and future work performed at the Site.
- b. A discussion of Site history, including the location of current and former activities at the Site.
- c. General hydrogeology of the Site area.

2. Evaluation of Existing Data

A brief discussion of activities and data already collected during previous investigations, including but not limited to the identification of proposed locations for downgradient monitoring wells, and the potential requirement for additional data.

3. Task II Work Plans and Schedules.

B. Sampling and Analysis Plan

The PLPs must prepare a Sampling and Analysis Plan for use during all Site characterization studies. The Sampling and Analysis Plan must contain:

1. Field Sampling and Testing Plans – The plan will describe in detail the sampling, testing, and data gathering methods, locations, frequency and other field study procedures that will be used for obtaining data required to complete the RI/FS. The Sampling and Testing Plan will include the following:
 - a. Specific sampling methods, including number and type of Quality Assurance/Quality Control (QA/QC) samples.
 - b. Sampling locations and designations, including access considerations.
 - c. Types of media to be sampled and the number of samples of each.
 - d. Schedule and task assignments.
 - e. Supplies and equipment.
 - f. Monitoring well construction requirements.
 - g. Analytical procedures, methods, and detection limits.
 - h. Sample custody procedures, including holding times, containers, and preservation.
 - i. Shipping and handling arrangements.
2. Quality Assurance Project Plan (QAPP)
 - a. Field QA/QC methods.
 - b. Chain of custody procedures.
 - c. Decontamination procedures.

- d. Laboratory QA/QC methods.
- 3. Health and Safety Plan
 - a. Level of protection.
 - b. Hazard evaluation.
 - c. Waste characteristics.
 - d. Special considerations and emergency information.

C. Public Participation Plan

Ecology will prepare a Public Participation Plan in accordance with WAC 173-340-600. The PLP Group will be provided an opportunity to provide feedback about the Plan and participate in the implementation.

Task II: Remedial Investigation

The purpose of the Remedial Investigation is to obtain the information necessary to supplement and verify existing data. That information will be used to characterize the Site and sources, types, and extent of contamination present to sufficiently complete the Feasibility Study and select the appropriate Remedial Action. The resulting data must meet the criteria set out in the QAPP and be of sufficient quality to develop an appropriate remedial action for the Site. The investigation will meet the requirements stated in WAC 173-340-350 and, more specifically, must include the following elements:

A. Site Characterization

Collect analytical data on groundwater and soils contamination in the vicinity of the Site. Considering information on historical operations and hydrogeology, the data must be sufficient to delineate the depth, areal extent, velocity and direction of contaminant movement, type, and concentration of contaminants.

- 1. Collect background information from the previous environmental investigations, other Ecology information, and any other historical data.

- 2. Hydrogeology

An investigation of the regional and Site-specific geologic and hydrogeologic characteristics affecting groundwater flow beneath the Site:

- a. Evaluate and monitor all existing monitoring wells.
- b. Install new groundwater monitoring wells and soil borings where needed.
- c. Measure water levels in all wells and new borings.

- d. Characterize regional stratigraphy and lithology based on well logs, maps, and any other information available.
 - e. Estimate hydraulic conductivity and porosity based on well logs, samples, and other general information available.
 - f. Prepare maps showing water levels and regional/Site hydrogeology.
3. Soils
- a. Install soil borings and/or test pits, where needed.
 - b. Characterize soil samples using the Unified Soil Classification System (USCS).
 - c. Prepare boring logs for each boring.

B. Source and Contamination Characterization

- 1. Sampling locations will be selected to characterize the contamination.
- 2. Analytical data collected must help describe the nature, extent, and potential sources of contamination.

C. Potential Receptor Information

Collect data on the surrounding human and ecological populations that may be in contact with contaminants and potential routes of exposure for those populations:

- 1. Public Use/Site Access – Potential uses of the affected properties and the presence or absence of controls on Site access.
- 2. Potential Groundwater/Surface Water Uses – Any consumptive, recreational, or other use of groundwater and surface water in the area, and used by which populations.
- 3. Environmental Receptors – Information on the presence of endangered or threatened species, potential habitats, and ecological environments.

Task III: RI/FS Report

The PLPs will complete a report documenting the Remedial Investigation/Feasibility Study as required by WAC 173-340-350(7) and (8). This report will include the following elements:

A. Remedial Investigation

1. Background Information

- a. Site History.
- b. Previous Studies.

2. Nature and Extent of Contamination

The PLPs will prepare an assessment and description of the degree and extent of contamination. This should include:

- a. Data Analysis – Analyze all data collected during Task II and prepare supporting maps and tables.
- b. Lab reports, previous investigations, well and boring logs, and any other documentation of characterization activities must be included.

3. Applicable Relevant and Appropriate Requirements (ARARs) Analysis

Identify Applicable State and Federal Laws for cleanup of the Site in accordance with WAC 173-340-710.

4. Cleanup Levels/Risk Assessment Analysis

Perform a baseline Model Toxics Cleanup Act (MTCA) cleanup levels analysis/baseline risk assessment characterizing the current and potential threats to public health and the environment that may be posed by hazardous substances at the facility. The assessment will integrate cleanup standards and risk assessment as required by WAC 173-340-357 and WAC 173-340-708.

5. Discussion and Recommendations

- a. Interpret and discuss data to determine the nature and extent of the contamination and to support final recommendations for the Site.
- b. A summary of all possible and suspected source areas of contamination based on the data collected will be included.
- c. Any known or potential risks to the public health, welfare, and the environment should be discussed.
- d. Recommendations should be provided identifying additional data requirements.

B. Feasibility Study

- a. Identification of contamination to be remediated.
- b. Identification and initial screening of treatment technologies.
- c. Proposed remedial alternatives and evaluation with respect to MTCA criteria.
- d. Recommended alternative.

Schedule of Deliverables

<u>Deliverables</u>	<u>Date Due</u>
Effective date of Order	Start
PLPs to Submit Draft RI/FS Work Plan, Sampling and Analysis Plan, Health and Safety Plan, and Schedule of Work to be Performed	30 days after start
PLPs to Submit Final RI/FS Work Plan, Sampling and Analysis Plan, Health and Safety Plan, and Schedule of Work to be Performed	30 days after PLPs receive written approval of documents from Ecology
PLPs to begin implementation of RI following written Schedule of Work to be Performed	30 days after PLPs receives accepted approval of plans from Ecology
PLPs to Submit Draft RI/FS Report	As approved in RI/FS Work Plan
Final RI/FS Report	30 days after PLPs receive Ecology's written approval of draft
Progress Reports	Every 3 months

EXHIBIT C

SEMMATERIALS, L.P.

(Formerly Known as Koch Materials)

Draft Public Participation Plan

Agreed Order for a Remedial Investigation/ Feasibility Study

Prepared by:
Washington State Department of Ecology

Para asistencia en Español Sr. Gregory Bohn 509/454-4174
Если вам нужно помощь по русский, звоните
Tatyana Bistrevsky 509/477-3881

March 2008

Getting Involved in the Cleanup at SemMaterials

Ecology encourages the public to learn about and get involved in decision-making opportunities at the SemMaterials, L.P. site (site). Opportunities are available during specific stages of the investigation and cleanup of petroleum product in soil at the site. The site is located at 4327 North Thor Street in the City of Spokane, Spokane County, Washington.

The Public Participation Plan (Plan) provides an overview of the Plan and the Model Toxics Control Act (MTCA), which guides the formal cleanup process at sites in Washington State. This document also outlines the purpose of the Plan, when public notice will occur, the amount of time the public has to comment, where the potentially affected area is located and ways the public may get involved in providing feedback. It also provides site background, a community profile, and community concerns.

Purpose of the Plan

The Public Participation Plan has three main purposes:

- To promote public understanding of the Washington Department of Ecology's (Ecology) responsibilities, planning, and cleanup activities at the site.
- To serve as a way of gathering information from the public. This information will assist Ecology and the potentially liable persons (PLPs) to conduct the investigation and plan for cleanup in a manner that is protective of human health and the environment.
- To inform the community living near the site, as well as the general public about cleanup activities and how to contribute to the decision-making process.

Overview of the Public Participation Plan and Model Toxics Control Act (MTCA)

The Plan is required under authority of the Model Toxics Control Act. MTCA is a "citizen-mandated" law that became effective in 1989 to provide guidelines for the cleanup of contaminated sites in Washington State. This law sets standards to make sure the cleanup of sites is protective of human health and the environment. A glossary of MTCA terms is included as Appendix C of this Plan.

Ecology's Toxic Cleanup Program investigates reports of contamination that may threaten human health and the environment. If contaminants are confirmed during an investigation, the site is generally ranked and placed on a Hazardous Sites List (HSL).

The SemMaterials, L.P. site ranked a three on the Hazardous Sites List. A rank of one represents the highest level of concern and five the lowest. Current and former owners or operators, as well as any other PLPs of a site, may be held responsible for cleanup of contamination based on MTCA. The PLPs identified by Ecology for this site are BNSF Railway Company (BNSF), Koch Materials LLC (Koch), Marathon Oil Company (Marathon), and SemMaterials, L.P. (SemMaterials)

Public participation is an important part of cleanup under the MTCA process. The participation needs are assessed at each site according to the level of public interest and degree of risk posed by

contaminants. Individuals who live near the site, community groups, businesses, government, other organizations and interested parties are provided an opportunity to become involved in commenting on the cleanup process.

The Plan includes requirements for public notice such as: identifying reports about the site and the repositories where reports may be read; providing public comment periods; and holding public meetings or hearings. Other forms of participation may be interviews, citizen advisory groups, questionnaires, or workshops.

Public Participation Grants and Technical Assistance

Additionally, citizen groups living near contaminated sites may apply for public participation grants (during open application periods). These grants help citizens receive technical assistance in understanding the cleanup process and create additional public participation avenues.

NOTE: Ecology currently does not have a citizen technical advisor for providing technical assistance to citizens on issues related to the investigation and cleanup of the site.

Amendments

The Plan was developed by Ecology and complies with the Model Toxics Control Act regulations (Chapter 173-340-600 WAC). It will be reviewed as cleanup progresses and may be amended if necessary. Amendments may be submitted to Ecology's site manager, William Fees, for review and consideration. Ecology will determine final approval of the Plan as well as any amendments.

Review of Documents and Project Contacts

Documents relating to the cleanup may be reviewed at the repositories listed on pages 4 of this Plan. If individuals are interested in knowing more about the Site or have comments regarding the Public Participation Plan, please contact one of the individuals listed on page 4.

<p>WA Department of Ecology Contacts: Mr. William J. Fees, P.E., Site Manager WA State Department of Ecology Toxics Cleanup Program 4601 N. Monroe Spokane, WA 99205 509-329-3589 wfee461@ecy.wa.gov</p> <p>Ms. Carol Bergin, Public Involvement WA State Department of Ecology Toxics Cleanup Program 4601 N. Monroe Spokane, WA 99205 509-329-3546 cabe461@ecy.wa.gov</p> <p>Mrs. Johnnie Landis, Public Disclosure WA State Department of Ecology 4601 N. Monroe Spokane, WA 99205 509-329-3415 johh@ecy.wa.gov</p>	<p>Para asistencia Espanol Sr. Greg Bohn WA State Department of Ecology Toxics Cleanup Program 15 W. Yakima Avenue, Suite 200 Yakima, WA 98902-3401 509-454-4174 gboh461@ecy.wa.gov</p> <p>Если вам нужно помощь по русский, звоните Tatyana Bistrevsky 509-477-3881</p> <p>-----</p> <p>SemMaterials, L.P. Contact: Mr. Will Ratliffe Environmental Specialist Husky Oil Operations Limited 707 8th Ave. S.W. Calgary, AB Box 6525, Stn. D, T2P 3G7 403/750-1392</p>
--	---

SITE BACKGROUND

Site Description and History

The Washington State Department of Ecology is proposing to enter into an Agreed Order with BNSF Railway Company (BNSF), Koch Materials, LLC (Koch), Marathon Oil Company (Marathon), and SemMaterials, L.P. (SemMaterials) to conduct a Remedial Investigation and Feasibility Study (RI/FS) at the site. The site is located at 4327 North Thor Street in the City of Spokane, Spokane County, Washington (See Appendix A – Site Map Figure 1).

The Agreed Order is a legal document issued by Ecology. It formalizes the agreement between Ecology and PLPs for the cleanup actions needed at the site. The purpose of the Remedial Investigation is to gather more information to determine where and how much petroleum contamination may be in site-related soil and groundwater. The Feasibility Study will evaluate cleanup alternatives and prepare for a cleanup action.

SemMaterials is the current operator of the leased facility formerly known as Koch Materials. BNSF Railway Company owns the property. The facility operates as a receiving and supply depot for petroleum products used in the manufacture of asphalt and sealants. Koch Materials operated the facility from 1983 to 2005. Prior to Koch Materials operation, Husky Oil of Delaware

operated the facility until 1983, when it merged with Marathon Oil Company. The site has reportedly been used for petroleum-related operations since 1910.

In December 1992 three petroleum storage tanks were removed from the northeast corner of the site. During the tank removal, petroleum-contaminated soil was found. Soil borings were drilled to determine the depth of contamination. Contamination was discovered to a depth of 125 feet. Because the site is over the Spokane Valley-Rathdrum Prairie Aquifer, precautions were taken as soil evaluations continued. Concerns were raised that contamination may have moved into the aquifer.

Ecology became involved at the site in 1993 and ranked the site a three on the Hazardous Sites List. The Hazardous Sites List is a record of contaminated sites throughout the state that are ranked on a scale of one to five. One represents the greatest potential threat to human health and the environment; five represents the least potential threat. The site ranked a three because of the level of contamination in soil and the potential for groundwater and aquifer contamination.

Companies responsible for contamination at a site have an opportunity to pursue cleanup through Ecology's Voluntary Cleanup Program (VCP). If Ecology determines the VCP program is not an appropriate avenue for the cleanup it becomes part of Ecology's formal cleanup process. The Agreed Order between the PLPs and Ecology at this site begins the formal cleanup process.

Contaminants of Concern

Petroleum product in soil and potentially in groundwater is the primary contaminant of concern at this time. The Remedial Investigation will provide additional information to identify the extent and concentration of contaminants at the site.

COMMUNITY BACKGROUND

Community Profile

Hillyard existed as a small town in the late 1800s and became famous as home of the Great Northern Railway. It was named after James J. Hill, head of the railroad, and was the largest railroad shop in the country. The town expanded in the early 1900s to accommodate railroad workers coming to work in the area. Hillyard was known as a center where locomotives were made and repaired. In the 1980s the locomotive shops were closed. BNSF Railway Company still has property and connections in the area as well as an operating rail line.

The site is surrounded by industrial and commercial businesses as well as residential homes. The neighborhood population, although predominantly Caucasian, continues to become more diverse as the area grows. Slavic, Vietnamese, Native American, Asian, and Hispanic as well as people from other backgrounds are increasingly becoming part of the rich culture of people living in this neighborhood.

The general population of Hillyard falls into the poverty range, and although the neighborhood has financial struggles, it is known for having one of the most active neighborhood community groups in Spokane County. Hillyard has an active neighborhood council and neighborhood steering committee. It is also home of the annual Hillyard Festival, has a downtown area that is on the National Register of Historic Places, and houses the Northeast Community Center. Recently, community leaders secured a \$600,000 grant from the City of Spokane. This money will be used toward the \$6 million needed for expansion of the center. Hillyard has a reputation as a neighborhood that stands up for itself, does its homework about community challenges, and can be a formidable opponent on tough issues.

Community Concerns

Community interviews are still being conducted near the site. Some of the primary concerns expressed during interviews already conducted are listed below:

- Historically, fumes from the site were identified as a problem for some residents. Most people interviewed reported a positive change in the air quality, but indicated fumes can still be strong some evenings.
- People want to be informed about what is happening at the site early in the process. They want opportunities to be involved where they can, and they would like Ecology to talk with local Hillyard groups about the project.
- Some concerns expressed were not related to Ecology's project, but to the North/South Freeway and BNSF property activities.

Ecology will focus on addressing site-related concerns through the activities listed in the Public Participation Activities and Timeline section below.

Public Participation Activities and Timeline

The following is a list of some of the public participation efforts that will occur until the cleanup actions are completed:

- ❖ A **mailing list** is being developed for individuals who live near the site. The potentially affected vicinity covers any adjacent properties and homes and businesses within close proximity to the site, and areas to be investigated. These persons, along with the PLPs, will receive copies of all fact sheets developed regarding the cleanup process via first class mail. Additionally, individuals, organizations, local, state, and federal governments, and any other interested parties will be added to the mailing list as requested. Other interested persons may request to be on the mailing list at any time by contacting Carol Bergin at the Department of Ecology (see page 4 for details).

- ❖ **Public Repositories** are locations where documents may be reviewed. Due to reduced hours at many libraries throughout the county, three repositories have been established. The following locations will contain copies of any documents that go through the public review process related to this site:

WA Department of Ecology
4601 North Monroe
Spokane, WA 99205-1295
Contact: Mrs. Johnnie Landis
Public Disclosure Coordinator
509-329-3415

Spokane Public Library
Hillyard Branch 4005
4005 North Cook Street
Spokane, WA 99207

Ecology's Web Site at
http://www.ecy.wa.gov/programs/tcp/sites/semMat/semMat_hp.htm

- ❖ **Opportunity to Comment**

- During each stage of cleanup **fact sheets** are created by Ecology, then distributed to individuals on the mailing list. These fact sheets explain the stage of cleanup, the site background, what happens next in the cleanup process and ask for comments from the public.
- A **30-day comment period** allows interested parties time to comment on the process. The fact sheet contains contact information about where to submit comments and where and when public meetings or hearings will be held if requested.
- The information from these fact sheets is also published in a statewide **Site Register** which is sent to those who request to be on that mailing list. Persons interested in receiving the Site Register should contact Linda Thompson of Ecology at 360-407-6069 or e-mail Ltho461@ecy.wa.gov. The fact sheets are also posted on Ecology's web page under the Toxics Cleanup Program at http://www.ecy.wa.gov/programs/tcp/sites/semMat/semMat_hp.htm

- ❖ **Display ads or legal notices** are published in the Spokesman Review, ethnic newspapers when available, and on Ecology's Public Events Calendar <http://www.ecy.wa.gov> to inform the general public. These notices are published at the beginning of the 30-day comment period for the public notices. They are also used to announce public meetings and workshops or public hearings.

- ❖ **Public meetings, workshops, open houses, and public hearings** are held based on the level of community interest. If ten or more persons request a public meeting or hearing based on the subject of the public notice, Ecology will hold a meeting or hearing and gather comments. These meetings, workshops, or hearings will be held at a location that meets ADA standards and is close to the site. They may be held away from the site if it is necessary to accommodate large numbers of interested persons. These events are announced using the same methods as display ads or legal notices.

- ❖ Flyers may also be made available in various locations throughout the community (e.g., postings at local businesses, schools, libraries, etc.) to announce public comment periods, meetings, workshops, etc.

Answering Questions from the Public

Individuals in the community may want to ask questions to better understand the cleanup process. Page 4 lists the contacts for Ecology and the project manager for SemMaterials. Interested persons are encouraged to contact these persons by phone or e-mail to obtain information about the site, the process and potential decisions.

Public Notice and Comment Periods

Timeline

DATE	ACTION TAKEN
August 31, 2007	Begin Community Interviews
Agreed Order for a Remedial Investigation and Feasibility Study	February 2008
Fact Sheet and Public Comment Period about the Agreed Order for the Remedial Investigation and Feasibility Study	March 2008
Public Meeting	March 2008

APPENDIX B

CURRENT MAILING LIST

(to be included in final hard copy of the Agreed Order)

SEMMATERIALS SITE

APPENDIX C GLOSSARY

Agreed Order: A legal document issued by Ecology which formalizes an agreement between the department and potentially liable persons (PLPs) for the actions needed at a site. An agreed order is subject to public comment. If an order is substantially changed, an additional comment period is provided.

Applicable State and Federal Law: All legally applicable requirements and those requirements that Ecology determines are relevant and appropriate requirements.

Area Background: The concentrations of hazardous substances that are consistently present in the environment in the vicinity of a site which are the result of human activities unrelated to releases from that site.

Carcinogen: Any substance or agent that produces or tends to produce cancer in humans.

Chronic Toxicity: The ability of a hazardous substance to cause injury or death to an organism resulting from repeated or constant exposure to the hazardous substance over an extended period of time.

Cleanup: The implementation of a cleanup action or interim action.

Cleanup Action: Any remedial action, except interim actions, taken at a site to eliminate, render less toxic, stabilize, contain, immobilize, isolate, treat, destroy, or remove a hazardous substance that complies with cleanup levels; utilizes permanent solutions to the maximum extent practicable; and includes adequate monitoring to ensure the effectiveness of the cleanup action.

Cleanup Action Plan: A document which identifies the cleanup action and specifies cleanup standards and other requirements for a particular site. After completion of a comment period on a Draft Cleanup Action Plan, Ecology will issue a final Cleanup Action Plan.

Cleanup Level: The concentration of a hazardous substance in soil, water, air or sediment that is determined to be protective of human health and the environment under specified exposure conditions.

Cleanup Process: The process for identifying, investigating, and cleaning up hazardous waste sites.

Consent Decree: A legal document approved and issued by a court which formalizes an agreement reached between the state and potentially liable persons (PLPs) on the actions needed at a site. A decree is subject to public comment. If a decree is substantially changed, an additional comment period is provided.

Containment: A container, vessel, barrier, or structure, whether natural or constructed, which confines a hazardous substance within a defined boundary and prevents or minimizes its release into the environment.

Contaminant: Any hazardous substance that does not occur naturally or occurs at greater than natural background levels.

Enforcement Order: A legal document, issued by Ecology, requiring remedial action. Failure to comply with an enforcement order may result in substantial liability for costs and penalties. An enforcement order is subject to public comment. If an enforcement order is substantially changed, an additional comment period is provided.

Environment: Any plant, animal, natural resource, surface water (including underlying sediments), ground water, drinking water supply, land surface (including tidelands and shorelands) or subsurface strata, or ambient air within the state of Washington.

Exposure: Subjection of an organism to the action, influence or effect of a hazardous substance (chemical agent) or physical agent.

Exposure Pathways: The path a hazardous substance takes or could take from a source to an exposed organism. An exposure pathway describes the mechanism by which an individual or population is exposed or has the potential to be exposed to hazardous substances at or originating from the site. Each exposure pathway includes an actual or potential source or release from a source, an exposure point, and an exposure route. If the source exposure point differs from the source of the hazardous substance, exposure pathway also includes a transport/exposure medium.

Facility: Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly-owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft; or any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed or, placed, or otherwise come to be located.

Feasibility Study (FS): A study to evaluate alternative cleanup actions for a site. A comment period on the draft report is required. Ecology selects the preferred alternative after reviewing those documents.

Free Product: A hazardous substance that is present as a nonaqueous phase liquid (that is, liquid not dissolved in water).

Groundwater: Water found beneath the earth's surface that fills pores between materials such as sand, soil, or gravel. In aquifers, groundwater occurs in sufficient quantities that it can be used for drinking water, irrigation, and other purposes.

Hazardous Sites List: A list of sites identified by Ecology that requires further remedial action. The sites are ranked from 1 to 5 to indicate their relative priority for further action.

Hazardous Substance: Any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (5) (any discarded, useless, unwanted, or abandoned substances including, but not limited to, certain pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes; (a) have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or (b) are corrosive, explosive, flammable, or may generate pressure through decomposition or other means,) and (6) (any dangerous waste which (a) will persist in a hazardous form for several years or more at a disposal site and which in its persistent form presents a significant environmental hazard and may affect the genetic makeup of man or wildlife; and is highly toxic to man or wildlife; (b) if disposed of at a disposal site in such quantities as would present an extreme hazard to man or the environment), or any dangerous or extremely dangerous waste as designated by rule under Chapter 70.105 RCW: any hazardous substance as defined in RCW 70.105.010 (14) (any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the characteristics or criteria of hazardous waste as described in rules adopted under this chapter,) or any hazardous substance as defined by rule under Chapter 70.105 RCW; petroleum products.

Hazardous Waste Site: Any facility where there has been a confirmation of a release or threatened release of a hazardous substance that requires remedial action.

Independent Cleanup Action: Any remedial action conducted without Ecology oversight or approval, and not under an order or decree.

Initial Investigation: An investigation to determine that a release or threatened release may have occurred that warrants further action.

Interim Action: Any remedial action that partially addresses the cleanup of a site.

Mixed Funding: Any funding, either in the form of a loan or a contribution, provided to potentially liable persons from the state toxics control account.

Model Toxics Control Act (MTCA): Washington State's law that governs the investigation, evaluation and cleanup of hazardous waste sites. Refers to RCW 70.105D. It was approved by voters at the November 1988 general election and known as Initiative 97. The implementing regulation is WAC 173-340.

Monitoring Wells: Special wells drilled at specific locations on or off a hazardous waste site where groundwater can be sampled at selected depths and studied to determine the direction of groundwater flow and the types and amounts of contaminants present.

Natural Background: The concentration of hazardous substance consistently present in the environment which has not been influenced by localized human activities.

National Priorities List (NPL): EPA's list of hazardous waste sites identified for possible long-term remedial response with funding from the federal Superfund trust fund.

Owner or Operator: Any person with any ownership interest in the facility or who exercises any control over the facility; or in the case of an abandoned facility, any person who had owned or operated or exercised control over the facility any time before its abandonment.

Polynuclear Aromatic Hydrocarbon (PAH): A class of organic compounds, some of which are long-lasting and carcinogenic. These compounds are formed from the combustion of organic material and are ubiquitous in the environment. PAHs are commonly formed by forest fires and by the combustion of fossil fuels.

Potentially Liable Person (PLP): Any person whom Ecology finds, based on credible evidence, to be liable under authority of RCW 70.105D.040.

Public Notice: At a minimum, adequate notice mailed to all persons who have made a timely request of Ecology and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropriate news media; published in the local (city or county) newspaper of largest circulation; and opportunity for interested persons to comment.

Public Participation Plan: A plan prepared under the authority of WAC 173-340-600 to encourage coordinated and effective public involvement tailored to the public's needs at a particular site.

Recovery By-Products: Any hazardous substance, water, sludge, or other materials collected in the free product removal process in response to a release from an underground storage tank.

Release: Any intentional or unintentional entry of any hazardous substance into the environment, including, but not limited to, the abandonment or disposal of containers of hazardous substances.

Remedial Action: Any action to identify, eliminate, or minimize any threat posed by hazardous substances to human health or the environment, including any investigative and monitoring activities of any release or threatened release of a hazardous substance and any health assessments or health effects studies.

Remedial Investigation (RI): A study to define the extent of problems at a site. When combined with a study to evaluate alternative cleanup actions it is referred to as a Remedial Investigation/Feasibility Study (RI/FS). In both cases, a comment period on the draft report is required.

Responsiveness Summary: A compilation of all questions and comments to a document open for public comment and their respective answers/replies by Ecology. The

Responsiveness Summary is mailed, at a minimum, to those who provided comments and its availability is published in the Site Register.

Risk Assessment: The determination of the probability that a hazardous substance, when released into the environment, will cause an adverse effect in exposed humans or other living organisms.

Sensitive Environment: An area of particular environmental value, where a release could pose a greater threat than in other areas including: wetlands; critical habitat for endangered or threatened species; national or state wildlife refuge; critical habitat, breeding or feeding area for fish or shellfish; wild or scenic river; rookery; riparian area; big game winter range.

Site: See Facility.

Site Characterization Report: A written report describing the site and nature of a release from an underground storage tank, as described in WAC 173-340-450 (4) (b).

Site Hazard Assessment (SHA): An assessment to gather information about a site to confirm whether a release has occurred and to enable Ecology to evaluate the relative potential hazard posed by the release. If further action is needed, an RI/FS is undertaken.

Site Register: Publication issued every two weeks of major activities conducted statewide related to the study and cleanup of hazardous waste sites under the Model Toxics Control Act. To receive this publication, please call (360) 407-7200.

Surface Water: Lakes, rivers, ponds, streams, inland waters, salt waters, and all other surface waters and water courses within the state of Washington or under the jurisdiction of the state of Washington.

TCP: Toxics Cleanup Program at Ecology

Total Petroleum Hydrocarbons (TPH): A scientific measure of the sum of all petroleum hydrocarbons in a sample (without distinguishing one hydrocarbon from another). The “petroleum hydrocarbons” include compounds of carbon and hydrogen that are derived from naturally occurring petroleum sources or from manufactured petroleum products (such as refined oil, coal, and asphalt).

Toxicity: The degree to which a substance at a particular concentration is capable of causing harm to living organisms, including people, plants and animals.

Underground Storage Tank (UST): An underground storage tank and connected underground piping as defined in the rules adopted under Chapter 90.76 RCW.

Washington Ranking Method (WARM): Method used to rank sites placed on the hazardous sites list. A report describing this method is available from Ecology.

