

1. The City is the current owner of 17 acres of undeveloped land located between South 30th and 32nd Avenues on the east and west and Mead Avenue and Wide Hollow Creek on the north and south, in Yakima, Washington (the "Site"). A vicinity map of the Site has been provided in Attachment A (Figures 1 and 2)
2. The Site is the location of a former orchard. Earlier last century, lead arsenate was commonly used as a spray-on insecticide on orchard sites in the Yakima Valley to control the codling moth.
3. Most recently, the Site has been used for agricultural purposes by the Yakima School District. This agricultural use involves plowing, discing and other activities that loosen soil and allow it to become airborne.

4. In August 2000, the City collected samples at the Site because of the agricultural use of the Site. Samples were taken at five locations within the Site, at several depths. Sample results indicated lead and arsenic present in soil at the Site at all five locations sampled. The average concentration of arsenic in the soil at all depths was 30 mg/kg, with a maximum concentration of 68 mg/kg. The MTCA Method A soil cleanup level for arsenic is 20 mg/kg. The average concentration of lead at all depths was 144 mg/kg, with a maximum of 357 mg/kg. The MTCA Method A soil cleanup level for lead is 250 mg/kg.
5. The City plans to develop the Site as a public park (to be known as "Kissel Park"), and has proposed entering into this Agreed Order to govern and integrate the remedial action into the design and construction of Kissel Park.
6. A pilot study at the Kissel Park site to evaluate the effectiveness of various soil tilling remedial methodologies would be useful to the development of environmentally protective and cost effective remedial methodologies that could be applied elsewhere in the Yakima Valley where levels of lead arsenate in the soil are of concern.

III.

Ecology Determinations

1. The City is an "owner" as defined in RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4).
2. The substances found at the Site as described above are "hazardous substances" as defined at RCW 70.105D.020(7).
3. Based on the presence of hazardous substances at the Site, and all factors known to the Ecology, Ecology has determined that there has been a release of hazardous substances as defined in RCW 70.105D.020(20).
4. Ecology alleges that the City of Yakima is a "potentially liable person" under RCW 70.105D.040. By separate letter, dated February 22, 2001, the City has waived the procedural requirements of WAC 173-340-500, pertaining to the determination of status as a "potentially liable person" and has accepted, for purposes of this Agreed Order, the status of "potentially liable person."
5. Pursuant to RCW 70.105D.030(1) and 70.105D.050, Ecology may require potentially liable persons 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.

6. The City's plans for development of the Site as a public park are not likely to interfere with remedial actions that may be needed on the Site.
7. Based on the foregoing facts, Ecology believes the remedial action required by this Order is in the public interest.

IV.

Work to be Performed

Based on the foregoing Facts and Determinations, it is hereby ordered that the City will undertake the following remedial actions and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein. This remedial action shall include: a site environmental study plan, hereinafter referred to as the "ES Plan;" followed by a focused site remedial investigation and feasibility study, hereinafter referred to as the "RI/FS;" followed by a Cleanup Action Plan, hereinafter referred to as the "CAP." The RI/FS will include a pilot study to evaluate the effectiveness of various soil tilling remedial methodologies which, if environmentally protective and cost effective, could be applied elsewhere in the Yakima Valley where levels of lead arsenate in the soil are of concern. The ES Plan and preferred schedule for the remedial action has been provided in Attachment B.

The City and its contractors shall provide to Ecology the Draft RI/FS Report and Draft CAP no later than April 13, 2001 for Ecology review and approval. Thereafter, the City and Ecology shall meet and attempt to reach agreement on a public review draft CAP that can be integrated into the City's plans for development of the Site as a public park.

V.

Terms and Conditions of Order

1. Definitions. Unless otherwise specified, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms used in this Order.
2. Public Notices. 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 propose modifications or to propose withdrawing any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper.

in any respect Ecology agrees to provide the City with notice and an opportunity to comment prior to modifying or withdrawing any provision of this Order.

- 3 Remedial Action Costs The City shall pay to Ecology costs incurred by Ecology pursuant to this Order. These costs shall include work performed by Ecology or its contractors for oversight and administration. Ecology costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). The City shall pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a general description of the work performed, a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. Site logs prepared by the involved staff will be provided upon request. Itemized statements shall be prepared quarterly by Ecology. Failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges.

4 Designated Project Coordinators

The project coordinator for Ecology is:

Name: Rick Roeder, Site Manager, Toxics Cleanup Program
Address: 15 W. Yakima Ave., Ste 200, Yakima, WA 98902
Telephone: (509) 454-7837
Fax: (509) 575-2809
Email: rroe461@ecy.wa.gov

The project coordinator for the City is:

Name: Denise Nichols, Parks and Recreation Manager
Address: 2301 Fruitvale Blvd., Yakima, WA 98902
Telephone: (509) 575-6020
Fax: (509) 575-6238
Email: dnichols@ci.yakima.wa.us

The project coordinators shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and the City, 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. Should Ecology or the City change project coordinator(s), written notification shall be provided to Ecology and the City at least ten (10) calendar days prior to the change.

5. Performance All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer, hydrogeologist, or similar expert, with appropriate training, experience and expertise in hazardous waste site investigation and cleanup. The City shall notify Ecology as to the identity of such engineer(s) or hydrogeologist(s), and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the Site. The City 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 will be in compliance with this Order.

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

WAC 173-340-400(7)(b)(i) requires that "construction" performed on the Site shall be under the supervision of a professional engineer registered in Washington.

5. Access Ecology or any Ecology-authorized representative shall have the authority to enter and freely move about the Site 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 progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator 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 City. The City agrees, upon reasonable advance notice from Ecology, to allow access to the Site at all reasonable times for purposes of overseeing work performed under this Order. Ecology shall allow split or replicate samples to be taken by the City during an inspection unless doing so interferes with Ecology's sampling. Ecology shall provide to the City reasonable notice before conducting any sampling activity such that the City has the opportunity to take split sampling. The City shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before conducting any sampling activity.
6. Public Participation. The City shall help prepare and/or update a public participation plan for the Site. Ecology shall maintain the responsibility for public participation at the Site. The City shall help coordinate and implement reasonable public participation for the Site.

7. Retention of Records. The City shall preserve in a readily retrievable fashion, during the pendency of this Order and for seven (7) years from the date of completion of the work performed pursuant to this Order, all records, reports, documents, and underlying data in its possession produced pursuant to this Order not otherwise protected by legal privileges. If any portion of the work performed hereunder is undertaken through contractors or agents of the City, then the City agrees to include in its contracts with such contractors or agents a record retention requirement meeting the terms of this paragraph.
8. Dispute Resolution The City may request Ecology to resolve disputes which may arise during the implementation of this Order. Such request shall be in writing and directed to the Ecology signatory, or his/her successor(s), to this Order. Ecology resolution of the dispute shall be in writing and shall constitute a final administrative decision. The City is not relieved of any requirement of this Order during the pendency of the dispute and remains responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.
9. Reservation of Rights No Settlement. This Agreed Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a general covenant not to sue or a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against the City to recover remedial action costs paid to and received by Ecology under this Agreed Order. In addition, Ecology will not take additional enforcement actions against the City to require those remedial actions required by this Order, provided the City complies with this Agreed Order. Ecology reserves the right, however, to require additional remedial action at the Site should it deem such actions necessary.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the releases or threatened releases of hazardous substances from the Site.

In the event Ecology determines that conditions at the Site are creating or have the potential to create a danger to the health or welfare of people on the Site or in the surrounding area or to the environment, Ecology may order the City to stop further implementation of this Order for such period of time as needed to abate the danger.

The City expressly reserves all rights. Nothing in this Order shall be construed as an admission of any liability or a waiver of any rights on the part of the City.

10. Transference of Property. No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the City 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

Until the work described in this Order is completed, prior to transfer of any legal or equitable interest the City may have in the Site or any portions thereof, the City shall serve a copy of this Order and any further requirements that may arise under the CAP upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, the City shall notify Ecology of the contemplated transfer.

12. Compliance with Other Applicable Laws.

- a. All actions carried out by the City 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 paragraph (b) of this section.
- b. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial action under this Order that are known to be applicable at the time of issuance of the Order, have been included in Attachment C, and are binding and enforceable requirements of the Order.
- c. The City 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 the City 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 Ecology of this determination. Ecology shall determine whether Ecology or the City shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the City 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 City and on how the City must meet those requirements. Ecology shall inform the City in writing of those requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The City shall not begin or continue the remedial action

- potentially subject to these additional requirements until Ecology makes its final determination.
- d. Ecology shall ensure that notice and opportunities for comment are provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.
 - e. 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, which is necessary for the State to administer any federal law, Ecology shall notify the City that the exemption shall not apply and the City 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.

VI.

Extension of Deadlines and Force Majeure

1. An extension of the deadlines for submission of the Study Plan, Draft and Final RI/FS and Draft Cleanup Action Plan shall be granted only when a request for an extension is submitted in a timely fashion and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify the reason(s) the extension is needed. An extension shall only be granted for such period of time as is reasonable under the circumstances. Any changes to the schedule approved under this section shall be incorporated by reference into this Agreed Order.
2. The burden shall be on the City to demonstrate to the satisfaction of Ecology that the request for an extension have been submitted in a timely fashion and that good cause exists for granting the extension. Good cause includes, but is not limited to, the following:
 - a. Weather conditions which prevent or significantly hinder field work and sampling of soil conditions; or
 - b. Discovery of different or more extensive contamination than expected which requires additional time for sampling, analysis, or inclusion in the Draft or Final RI/FS or Draft Cleanup Action Plan; or
 - c. Circumstances beyond the reasonable control and despite the due diligence of the City 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 City or the failure of

- other regulatory agencies to issue permits or approvals in a timely manner;
or
 - d. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, wave or water conditions, or other unavoidable casualty.
3. Ecology shall give the City written notice as to whether an extension request will be granted or denied, within ten (10) days after the City's written request is received.

VII.

Satisfaction of this Order

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

VIII.

Enforcement

1. 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 court of competent jurisdiction
 - 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 this Site.
 - c. In the event the City refuses, without sufficient cause, to comply with any term of this Order, the City will be liable for:
 1. up to three (3) times the amount of any reasonable costs incurred by the state of Washington as a result of the refusal to comply; and
 2. civil penalties of up to \$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 Chapter 70.105D.060 RCW

IX.

Termination of Agreed Order

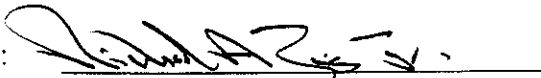
Either party may withdraw unilaterally from this Agreed Order at any time by providing the other party with thirty (30) days notice of such intent to withdraw. Such notice of intent to withdraw shall be in writing. Nothing in this section shall be construed to diminish or otherwise affect Ecology's rights and responsibilities under RCW 70.105D.050.

Effective date of this Order: March 21, 2001

CITY OF YAKIMA


STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By:



Richard A. Zais, Jr.
City Manager
City of Yakima

By:



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