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STATE OF WASHINGTON  
KITTITAS COUNTY SUPERIOR COURT

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

SMITH-KEM ELLENSBURG, INC.;  
AD GRO, L.L.C.; and EQUILON  
ENTERPRISES LLC DBA SHELL OIL  
PRODUCTS US,

Defendants.

NO. **23 2 00247 19**

ORDER ENTERING CONSENT  
DECREE

RE: SMITH-KEM ELLENSBURG,  
INC. SITE

[PROPOSED]

Having reviewed the Joint Motion for Entry of the Consent Decree, it is hereby  
ORDERED AND ADJUDGED that the Consent Decree in this matter is entered and that the  
Court shall retain jurisdiction over the Consent Decree to enforce its terms.

DATED this 21 day of Aug 2023

**SCOTT R. SPARKS**

JUDGE/COMMISSIONER  
Kittitas County Superior Court

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JUDGE  
Kittitas County Superior Court

Conformed

**STATE OF WASHINGTON  
KITITAS COUNTY SUPERIOR COURT**

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SMITH-KEM ELLENSBURG, INC.; AD  
GRO, L.L.C.; and EQUILON  
ENTERPRISES LLC DBA SHELL OIL  
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NO. 23-2-00247-19

CONSENT DECREE

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EXHIBIT A	Site Location Diagram and Site Boundary Diagram
EXHIBIT B	Cleanup Action Plan
EXHIBIT C	Scope of Work and Schedule
EXHIBIT D	Attachment A of TCP Procedure 440A

## I. INTRODUCTION

1. The mutual objective of the Plaintiff, State of Washington, Department of Ecology (Ecology) and Defendants Smith-Kem Ellensburg, Inc (Smith-Kem), Ad Gro, LLC, and Equilon Enterprises LLC DBA Shell Oil Products US (Equilon) (each a Defendant) (Plaintiff and Defendants are collectively the Parties) under this Consent Decree (Decree) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Decree requires Defendants to perform remedial actions at the Smith-Kem Ellensburg Inc. Site (Site) as specified in a Cleanup Action Plan (CAP) issued by Ecology and attached as Exhibit B to this Decree. These remedial actions include, but are not limited to:

- a. Performance of soil excavation with off-site disposal;
- b. Installation of a geosynthetic clay liner;
- c. Implementation of in-situ groundwater treatment;
- d. Performance of groundwater monitoring to include conditional points of compliance; and
- e. Imposition of institutional controls.

2. Ecology has determined that these actions are necessary to protect human health and the environment.

3. The Complaint in this action is being filed simultaneously with this Decree. An Answer has not been filed, and there has not been a trial on any issue of fact or law in this case. However, the Parties wish to resolve the issues raised by Ecology's Complaint. In addition, the Parties agree that settlement of these matters without litigation is reasonable and in the public interest, and that entry of this Decree is the most appropriate means of resolving these matters.

4. By signing this Decree, the Parties agree to its entry and agree to be bound by its terms.

5. By entering into this Decree, the Parties do not intend to discharge non-settling parties from any liability they may have with respect to matters alleged in the Complaint. The

Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for sums expended under this Decree.

6. This Decree shall not be construed as proof of liability or responsibility for any releases of hazardous substances or cost for remedial action nor an admission of any facts; provided, however, that Defendants shall not challenge the authority of the Attorney General and Ecology to enforce this Decree.

7. The Court is fully advised of the reasons for entry of this Decree, and good cause having been shown:

Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter and over the Parties pursuant to the Model Toxics Control Act (MTCA), RCW 70A.305.

2. Authority is conferred upon the Washington State Attorney General by RCW 70A.305.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if, after public notice and any required public meeting, Ecology finds the proposed settlement would lead to a more expeditious cleanup of hazardous substances. RCW 70A.305.040(4)(b) requires that such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

3. Ecology has determined that a release or threatened release of hazardous substances has occurred at the Site that is the subject of this Decree.

4. Ecology has given notice to Defendants of Ecology's determination that Defendants are PLPs for the Site, as required by RCW 70A.305.020(26) and WAC 173-340-500.

5. The actions to be taken pursuant to this Decree are necessary to protect public health and the environment.

6. This Decree has been subject to public notice and comment.

7. Ecology finds that this Decree will lead to a more expeditious cleanup of hazardous substances at the Site in compliance with the cleanup standards established under RCW 70A.305.030(2)(e) and WAC 173-340.

8. Defendants have agreed to undertake the actions specified in this Decree and consent to the entry of this Decree under MTCA.

### **III. PARTIES BOUND**

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

### **IV. DEFINITIONS**

1. Unless otherwise specified herein, all definitions in RCW 70A.305.020 and WAC 173-340 shall control the meanings of the terms in this Decree.

A. Site: The Site is referred to as Smith-Kem Ellensburg, Inc. Site, Cleanup Site ID 4257, Facility Site ID 12832256. The Site constitutes a facility under RCW 70A.305.020(8). The Site is generally located at 200 South Railroad Avenue, Ellensburg, Washington (Property) and a small portion of adjacent properties as shown in the Site Boundary Diagram (Exhibit A). The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.



B. Consent Decree or Decree: Refers to this Consent Decree and each of the exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent Decree.

C. Defendants: Refers to Smith-Kem Ellensburg, Inc. (Smith-Kem), Ad Gro, LLC, and Equilon Enterprises LLC DBA Shell Oil Products US (Equilon).

D. Parties: Refers to the State of Washington, Department of Ecology and Defendants.

## V. FINDINGS OF FACT

1. Ecology makes the following findings of fact without any express or implied admissions of such facts by Defendants.

A. Based upon factors currently known to Ecology, the Site is generally located at 200 South Railroad Avenue, Ellensburg, Washington (46° 59' 28.284" N, 120° 33' 16.812" W) as shown in the Site Location Diagram and in the Site Boundary Diagram (Exhibit A). The Site is listed on Ecology's Hazardous Sites List as the "Smith-Kem Ellensburg, Inc. Site," Facility Site ID No. 12832256.

B. The Property is owned by Ad Gro, L.L.C. The property is identified as parcel number 226833.

C. Contamination at the Site is related to bulk fuel distribution and agricultural products businesses. Between approximately 1923 and 1972, the Site was owned and operated by Shell Oil Company for bulk fuel operations including receiving, storing, and distributing fuel products. From 1948 until 1972, Shell leased a portion of the Property to James R. and Jean Smith and, later, Smith-Kem, which conducted fertilizer blending and pesticide storage at the Property until 2015. Since 2015, The McGregor Company has leased the Property, where it runs a fertilizer blending and pesticide storage operation.

D. An investigation in 2007 identified a release of petroleum hydrocarbons in soil and groundwater. Subsequent investigations in soil and groundwater documented elevated levels of certain pesticides, chlorinated herbicides, nitrite and nitrate, in addition to total petroleum hydrocarbons (TPH). These chemicals are present at concentrations above their respective MTCA cleanup levels.

E. On February 29, 2016, the Parties entered into Agreed Order DE 12908, which required the Defendants to conduct a remedial investigation/feasibility study (RI/FS) for the Site. On the effective date of this Consent Decree, any outstanding obligations under Agreed Order No. DE 12908 shall be subsumed within the Decree as provided in Section VI and XXI of the Decree and the Agreed Order shall be deemed satisfied pursuant to Section IX of the Agreed Order.

F. Release(s) and/or potential release(s) of hazardous substances occurred at the Site. The final RI/FS report, dated October 1, 2021, and prepared by Floyd Snider on behalf of Defendants, documented the nature and extent of hazardous substances in various media including soil and groundwater.

G. Release(s) and/or potential release(s) of hazardous substances occurred at the Site. The following hazardous substances at the Site have been detected at concentrations above MTCA cleanup levels. In soil, the following contaminants are present: diesel- and oil-range total petroleum hydrocarbons, pesticides (aldrin, beta-benzene hexachloride, chlordane, alpha-chlordane, dieldrin, total DDT, toxaphene, atrazine, and simazine), dioxins/furans and lead. In groundwater, the following contaminants are present: diesel- and oil-range total petroleum hydrocarbons, nitrate, nitrite, pesticides and herbicides (aldrin, beta-benzene hexachloride, chlordane, dieldrin, toxaphene, 2,4-D, atrazine, and MCPA). These hazardous substances have been, and may continue to be, released at the Site into the environment including groundwater.

H. On August 14, 2008, a Site Hazard Assessment was completed by Ecology and the Site was assigned an overall priority ranking of three (3) pursuant to MTCA and WAC 173-340-330.

I. As documented in the CAP (Exhibit B), Ecology has chosen a final cleanup action to be implemented at the Site.

## **VI. WORK TO BE PERFORMED**

1. This Decree contains a program designed to protect human health and the environment from the known release, or threatened release, of hazardous substances at, on, or from the Site. All remedial action(s) conducted by Defendants at the Site shall be done in accordance with WAC 173-340.

2. The Defendants shall implement the CAP (Exhibit B) in accordance with the Scope of Work and Schedule attached to this Decree (Exhibit C). Among other remedial actions, the CAP requires Defendants to:

- A. Prepare an Agency Review Draft Pre-Design Investigation (PDI) Work Plan for Ecology review, followed by preparation of a revised PDI Work Plan incorporating Ecology's comments. The revised version becomes the final PDI Work Plan upon meeting Ecology's approval.
- B. Implement the PDI Work Plan.
- C. Prepare an Agency Review Draft Engineering Design Report (EDR) that includes the PDI results for Ecology review, followed by preparation of a revised EDR incorporating Ecology's comments. The revised version becomes the final EDR upon meeting Ecology's approval.
- D. Prepare all applicable permits.
- E. Construct and implement the cleanup action in accordance with the design documents. The cleanup action will consist generally of the following elements:

- a. Performance of soil excavation with off-site disposal;
- b. Installation of a geosynthetic clay liner;
- c. Implementation of in-situ groundwater treatment;
- d. Performance of groundwater monitoring to include conditional points of compliance; and
- e. Imposition of institutional controls.

F. Prepare and submit an Agency Review Draft Remedial Action Completion Report (RACR) and Agency Review Draft Long-Term Compliance Monitoring Report (LTCMP), including a Soil Management Plan (SMP) and a Groundwater Monitoring Plan (GMP), for Ecology review, followed by preparation and submission of a revised RACR and LTCMP incorporating Ecology's comments. The revised versions of these documents become final upon meeting Ecology's approval.

G. Implement the final LTCMP.

3. All plans or other deliverables submitted by Defendants for Ecology's review and approval under the CAP (Exhibit B), or Scope of Work and Schedule (Exhibit C) shall, upon Ecology's approval, become integral and enforceable parts of this Decree.

4. If Defendants learn of a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in soil or groundwater, Defendants, within seven (7) days of learning of the change in condition, shall notify Ecology in writing of said change and provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.

5. Pursuant to WAC 173-340-440(11), Defendants shall maintain sufficient and adequate financial assurance mechanisms to cover all costs associated with the operation and

maintenance of the remedial action at the Site, including institutional controls, compliance monitoring, and corrective measures.

A. Within ninety (90) days of the effective date of this Decree, Defendants shall submit to Ecology for review and approval an estimate of the costs associated with the operation and maintenance of the remedial action at the Site that it will incur in carrying out the terms of this Decree. Within sixty (60) days after Ecology approves the aforementioned cost estimate, Defendants shall provide proof of financial assurances sufficient to cover those costs in a form acceptable to Ecology.

B. Defendants shall adjust the financial assurance coverage and provide Ecology's project coordinator with documentation of the updated financial assurance for:

i. Inflation, annually, within thirty (30) days of the anniversary date of the entry of this Decree; or if applicable, the modified anniversary date established in accordance with this section, or if applicable, ninety (90) days after the close of Defendant's fiscal year if the financial test or corporate guarantee is used.

ii. Changes in cost estimates, within thirty (30) days of issuance of Ecology's approval of a modification or revision to the CAP that result in increases to the cost or expected duration of remedial actions. Any adjustments for inflation since the most recent preceding anniversary date shall be made concurrent with adjustments for changes in cost estimates. The issuance of Ecology's approval of a revised or modified CAP will revise the anniversary date established under this section to become the date of issuance of such revised or modified CAP.

C. The Financial Assurance Officer for Ecology shall work with the project coordinators to review and approve financial assurance coverage pursuant to this Decree and make determinations on any adjustments necessary based on the annual reporting.

As of the execution date of this Decree, Ecology's Financial Assurance Officer is Joanna Richards, (360) 485-5992 or [Joanna.richards@ecy.wa.gov](mailto:Joanna.richards@ecy.wa.gov).

6. As detailed in the CAP, institutional controls are required at the Site. Environmental (Restrictive) Covenants will be used to implement the institutional controls.

A. In consultation with Defendants, Ecology will prepare the Environmental (Restrictive) Covenants consistent with WAC 173-340-440, RCW 64.70, and any policies or procedures specified by Ecology. The Environmental (Restrictive) Covenants shall restrict future activities and uses of the Site as outlined in the CAP and as agreed to by Ecology and Defendants.

B. After approval by Ecology, Defendants shall record the Environmental (Restrictive) Covenant for affected properties it owns with the office of the Kittitas County Auditor as detailed in the Schedule (Exhibit C). Defendants shall provide Ecology with the original recorded Environmental (Restrictive) Covenants within thirty (30) days of the recording date.

C. As detailed in the CAP, as part of the remedial action for the Site, institutional controls may be required on properties not owned by Defendants. If Ecology determines that an Environmental (Restrictive) Covenant is necessary for such a property, Defendants will make a good faith effort to ensure that the owner of each affected property records an Ecology-approved Environmental (Restrictive) Covenant as detailed in the Schedule (Exhibit C). Upon a showing that Defendants have made a good faith effort to secure an Environmental (Restrictive) Covenant for an affected property and failed to do so, Ecology may provide assistance to Defendants. Unless Ecology determines otherwise, affected properties include Kittitas County parcel numbers 246833 and 216833 Defendants shall provide Ecology with the original recorded Environmental (Restrictive) Covenant within thirty (30) days of the recording date.

7. Unless otherwise directed by Ecology, Defendants shall submit to Ecology written monthly Progress Reports that describe the actions taken during the previous month to implement the requirements of this Decree. All Progress Reports shall be submitted by the tenth (10th) day of the month in which they are due after the effective date of this Decree. Unless otherwise specified in writing by Ecology, Progress Reports and any other documents submitted pursuant to this Decree shall be sent by electronic mail to Ecology's project coordinator. The Progress Reports shall include the following:

- A. A list of on-site activities that have taken place during the month.
- B. Description of any sample results which deviate from the norm.
- C. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests.
- D. Description of all deviations from the Scope of Work and Schedule (Exhibit C) during the current month and any planned deviations in the upcoming month.
- E. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.
- F. All raw data (including laboratory analyses) received during the previous quarter (if not previously submitted to Ecology), together with a detailed description of the underlying samples collected.
- G. A list of planned activities for the upcoming month.

8. Except in the case of an emergency, Defendants agree not to perform any remedial actions at the Site outside the scope of this Decree without prior written approval of Ecology. In the case of an emergency, Defendants must notify Ecology of the event and remedial action(s) as soon as practical, but no later than twenty-four (24) hours after discovery of the emergency.

## **VII. DESIGNATED PROJECT COORDINATORS**

1. The project coordinator for Ecology is:

John Mefford  
Washington State Department of Ecology  
Toxics Cleanup Program  
Central Regional Office  
1250 W. Alder Street, Union Gap, WA 98903  
Tel: 509.731.9613  
Email: [john.mefford@ecy.wa.gov](mailto:john.mefford@ecy.wa.gov)

2. The project coordinators for Defendants are:

For SOPUS:

Ms. Andrea Wing  
Principal Program Manager  
Shell Oil Products US  
20945 S. Wilmington Avenue  
Carson, CA 90810  
Tel: 714.731.1050  
[andrea.wing@shell.com](mailto:andrea.wing@shell.com)

For Smith-Kem:

Allison Geiselbrecht, Ph.D., Principal  
Floyd Snider  
601 Union Street, Suite 600  
Seattle, WA 98101  
Tel: 206.292.2078  
Fax: 206.682.7867  
[Allison.Geiselbrecht@floydsnider.com](mailto:Allison.Geiselbrecht@floydsnider.com)

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



4. 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.

### **VIII. PERFORMANCE**

1. Except as otherwise provided for by RCW 18.43 and 18.220, all geologic and hydrogeologic work performed pursuant to this Decree shall be under the supervision and direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct supervision of an engineer registered by the State of Washington.

2. Except as otherwise provided for by RCW 18.43.130, all engineering work performed pursuant to this Decree shall be under the direct supervision of a professional engineer registered by the State of Washington.

3. Except as otherwise provided for by RCW 18.43.130, all construction work performed pursuant to this Decree shall be under the direct supervision of a professional engineer registered by the State of Washington or a qualified technician under the direct supervision of a professional engineer registered by the State of Washington.

4. As required by RCW 18.43 and 18.220, any documents submitted containing geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed professional.

5. Defendants shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and other key personnel to be used in carrying out the terms of this Decree, in advance of their involvement at the Site.

### **IX. ACCESS**

1. Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that Defendants 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 Decree; reviewing Defendants' progress in carrying out the terms of this Decree; 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 Decree; and verifying the data submitted to Ecology by Defendants.

2. Nothing in this Decree is intended by the Defendants to waive any right it may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If Defendants withhold any requested records based on an assertion of privilege, they shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Decree shall be considered privileged.

3. Defendants shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by Defendants where remedial activities or investigations will be performed pursuant to this Decree.

4. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by Defendants unless an emergency prevents such notice. All Parties who access the Site pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

#### **X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY**

1. With respect to the implementation of this Decree, Defendants shall make the results of all sampling, laboratory reports, and/or test results generated by them or on their behalf available to Ecology by submitting data as detailed in this section. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with paragraph 8 of Section VI (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.

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

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

## XI. ACCESS TO INFORMATION

1. Defendants shall provide to Ecology, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Defendants' possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the work. Defendants shall also make available to Ecology, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the work.

2. Nothing in this Decree is intended to waive any right Defendants may have under applicable law to limit disclosure of Records protected by the attorney work-product privilege,

and/or the attorney-client privilege. If Defendants withhold any requested Records based on an assertion of privilege, they shall provide Ecology with a privilege log specifying the Records withheld and the applicable privilege. No Site-related data collected pursuant to this Decree shall be considered privileged, including: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, biological, or engineering data, or the portion of any other record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Order.

3. Notwithstanding any provision of this Order, Ecology retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under any other applicable statutes or regulations.

## **XII. RETENTION OF RECORDS**

During the pendency of this Decree, and for ten (10) years from the date this Decree is no longer in effect as provided in Section XXVI (Duration of Decree), Defendants shall preserve all records, reports, documents, and underlying data in their possession relevant to the implementation of this Decree and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, Defendants shall make all records available to Ecology and allow access for review within a reasonable time, except as provided in Subsection (2) of Section XI of this Decree.

## **XIII. TRANSFER OF INTEREST IN PROPERTY**

1. No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by Defendants without provision for continued operation and maintenance of any containment system, treatment system, and/or monitoring system installed or implemented pursuant to this Decree.

2. Prior to Defendants' transfer of any interest in all or any portion of the Site, and during the effective period of this Decree, Defendants shall provide a copy of this Decree to any

prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, Defendants shall notify Ecology of said transfer. Upon its transfer of any interest, Defendants shall notify all transferees of the restrictions on the activities and uses of the property under this Decree and incorporate any such use restrictions into the transfer documents.

#### **XIV. RESOLUTION OF DISPUTES**

1. In the event that Defendants elect to invoke dispute resolution, Defendants must utilize the procedure set forth below.

A. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), Defendants have fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of their dispute (Informal Dispute Notice).

B. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision (Informal Dispute Decision) stating: the nature of the dispute; the Defendants' position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

C. Defendants may then request regional management review of the dispute. Defendants must submit this request (Formal Dispute Notice) in writing to the Central Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

D. The Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar days of receipt of the Formal Dispute Notice.

E. If Defendants find Ecology's Regional Section Manager's decision of the disputed matter unacceptable, Defendants may then request final management review of that decision. Defendants must submit this request (Final Review Request) in writing to the Toxics Cleanup Program Manager within seven (7) calendar days of Defendants' receipt of the Decision on Dispute. The Final Review Request shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Defendant's position with respect to the dispute; and the information relied upon to support its position.

F. Ecology's Toxics Cleanup Program Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute (Final Decision on Dispute) within thirty (30) calendar days of receipt of the Final Review Request. The Toxics Cleanup Program Manager's decision shall be Ecology's final decision on the disputed matter.

2. If Ecology's Final Decision on Dispute is unacceptable to Defendants, Defendants have the right to submit the dispute to the Court for resolution. The Parties agree that one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising under this Decree. Under RCW 70A.305.070, Ecology's investigative and remedial decisions shall be upheld unless they are arbitrary and capricious.

3. 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. Where either party utilizes the dispute resolution process in bad faith or for purposes of delay, the other party may seek sanctions.

4. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Decree, unless Ecology agrees in writing to a schedule extension or the Court so orders.

5. In case of a dispute, failure to either proceed with the work required by this Decree or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable and may result in Ecology undertaking the work under Section XXIII (Implementation of Remedial Action).

#### **XV. AMENDMENT OF DECREE**

1. The Parties may agree to minor changes to the work to be performed without formally amending this Decree. Minor changes will be documented in writing by Ecology.

2. Substantial changes to the work to be performed shall require formal amendment of this Decree. This Decree may only be formally amended by a written stipulation among the Parties that is entered by the Court, or by order of the Court. Ecology will provide its written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment. Such amendment shall become effective upon entry by the Court. Agreement to amend the Decree shall not be unreasonably withheld by any party.

3. When requesting a change to the Decree, Defendants shall submit a written request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request is received. If Ecology determines that the change is substantial, then the Decree must be formally amended. Reasons for the disapproval of a proposed change to this Decree shall be stated in writing. If Ecology does not agree to the requested change, the disagreement may be addressed through the dispute resolution procedures described in Section XIV (Resolution of Disputes).

#### **XVI. EXTENSION OF SCHEDULE**

1. Defendants' request for 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.
- D. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on Defendants 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 Defendants 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 Defendants.
- B. A shelter in place or work stoppage mandated by state or local government order due to public health and safety emergencies.
- C. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty.
- D. Endangerment as described in Section XVII (Endangerment).

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

4. Ecology shall act upon any Defendant's written request for extension in a timely fashion. Ecology shall give Defendants written notification of any extensions granted pursuant to this Decree. A requested extension shall not be effective until approved by Ecology or, if required, by the Court. Unless the extension is a substantial change, it shall not be necessary to



amend this Decree pursuant to Section XV (Amendment of Decree) when a schedule extension is granted.

5. At Defendant's request 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 one of the following:

- A. Delays in the issuance of a necessary permit which was applied for in a timely manner.
- B. Other circumstances deemed exceptional or extraordinary by Ecology.
- C. Endangerment as described in Section XVII (Endangerment).

## **XVII. ENDANGERMENT**

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

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

3. If Ecology concurs with or orders a work stoppage pursuant to this section, Defendant's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the

time for any other work dependent upon such activities, shall be extended, in accordance with Section XVI (Extension of Schedule), for such period of time as Ecology determines is reasonable under the circumstances.

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

### **XVIII. COVENANT NOT TO SUE**

1. Covenant Not to Sue: In consideration of Defendants' compliance with the terms and conditions of this Decree, Ecology covenants not to institute legal or administrative actions against Defendants regarding the release or threatened release of hazardous substances at the Site, as described in Section IV (Definitions) and Section V(1) (Finding of Facts). This Covenant Not to Sue does not cover any other hazardous substance(s) or area. Ecology retains all of its authority relative to any hazardous substance(s) or area not covered by this Decree.

This Covenant Not to Sue shall have no applicability whatsoever to:

- A. Criminal liability.
- B. Liability for damages to natural resources.
- C. Any Ecology action, including cost recovery, against PLPs not a party to this Decree.

2. Pursuant to RCW 70A.305.040(4)(c), the Court shall amend this Covenant Not to Sue if factors not known at the time of entry of this Decree are discovered and present a previously unknown threat to human health or the environment.

3. Reopeners: Ecology specifically reserves the right to institute legal or administrative action against Defendants to require them to perform additional remedial actions at the Site and to pursue appropriate cost recovery, pursuant to RCW 70A.305.050, under any of the following circumstances:

- A. Upon Defendants' failure to meet the requirements of this Decree.

B. Failure of the remedial action to meet the cleanup standards identified in the CAP (Exhibit B).

C. Upon Ecology's determination that remedial action beyond the terms of this Decree is necessary to abate an imminent and substantial endangerment to human health or the environment.

D. Upon the availability of information previously unknown to Ecology regarding Site factors including the nature, quantity, migration, pathway, or mobility of hazardous substances, and Ecology's determination, in light of this information, that further remedial action is necessary at the Site to protect human health or the environment.

E. Upon Ecology's determination that additional remedial actions are necessary to achieve cleanup standards within the reasonable restoration time frame set forth in the CAP.

4. Except in the case of an emergency, prior to instituting legal or administrative action against Defendants pursuant to this section, Ecology shall provide Defendants with fifteen (15) calendar days' notice of such action.

#### **XIX. CONTRIBUTION PROTECTION**

1. With regard to claims for contribution against Defendants, the Parties agree that Defendants are entitled to protection against claims for contribution for matters addressed in this Decree as provided by RCW 70A.305.040(4)(d).

#### **XX. INDEMNIFICATION**

1. Defendants 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 (1) for death or injuries to persons, or (2) for loss or damage to property to the extent arising from or on account of acts or omissions of Defendants, their officers, employees, agents, or contractors in entering

into and implementing this Decree. However, Defendants 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 Decree.

## **XXI. COMPLIANCE WITH APPLICABLE LAWS**

1. *Applicable Law.* All actions carried out by Defendants pursuant to this Decree shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70A.305.090. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Decree. Defendants have a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Decree, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or the Defendants, Ecology will document in writing if they are applicable to actions carried out pursuant to this Decree, and the Defendants must implement those requirements.

2. *Relevant and Appropriate Requirements.* All actions carried out by Defendants pursuant to this Decree shall be done in accordance with relevant and appropriate requirements identified by Ecology. The relevant and appropriate requirements that Ecology has determined apply have been identified in Table 5 of Exhibit B. If additional relevant and appropriate requirements are identified by Ecology or the Defendants, Ecology will document in writing if they are applicable to actions carried out pursuant to this Decree and the Defendants must implement those requirements.

3. Pursuant to RCW 70A.305.090(1), Defendants may be exempt from the procedural requirements of RCW 70A.15, 70A.205, 70A.300, 77.55, 90.48, and 90.58 and of

any laws requiring or authorizing local government permits or approvals. However, Defendants shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70A.305.090(1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Decree to enforce those local government permits and/or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

4. Defendants have a continuing obligation to determine whether additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Decree. In the event either Ecology or Defendants determine that additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Decree, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or Defendants shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Defendants 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 Defendants and on how Defendants must meet those requirements. Ecology shall inform Defendants in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Decree. Defendants shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

5. Pursuant to RCW 70A.305.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70A.305.090(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 Defendants shall

comply with both the procedural and substantive requirements of the laws referenced in RCW 70A.305.090(1), including any requirements to obtain permits or approvals.

## **XXII. REMEDIAL ACTION COSTS**

1. Defendants shall pay to Ecology costs incurred by Ecology pursuant to this Decree 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 RCW 70A.305, including remedial actions and Decree preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). For all costs incurred, Defendants shall pay the required amount within thirty (30) 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.

2. In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70A.305.060, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

## **XXIII. IMPLEMENTATION OF REMEDIAL ACTION**

1. If Ecology determines that the Defendants have failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to Defendants, perform any or all portions of the remedial action or at Ecology's discretion allow the Defendants an opportunity to correct. In an emergency, Ecology is not required to provide notice to Defendants or an opportunity for dispute resolution. The Defendants shall reimburse

Ecology for the costs of doing such work in accordance with Section XXII (Remedial Action Costs).

2. Except where necessary to abate an emergency or where required by law, the Defendants shall not perform any remedial actions at the Site outside those remedial actions required by this Decree to address the contamination that is the subject of this Decree, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section XV (Amendment of Decree). In the event of an emergency, or where actions are taken as required by law, Defendants must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

#### **XXIV. PERIODIC REVIEW**

1. So long as remedial action continues at the Site, the Parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of monitoring the Site as often as is necessary and appropriate under the circumstances. Unless otherwise agreed to by Ecology, at least every five (5) years after the initiation of cleanup action at the Site the Parties shall confer regarding the status of the Site and the need, if any, for further remedial action at the Site. At least ninety (90) days prior to each periodic review, Defendants shall submit a report to Ecology that documents whether human health and the environment are being protected based on the factors set forth in WAC 173-340-420(4). Under Section XVIII (Covenant Not to Sue), Ecology reserves the right to require further remedial action at the Site under appropriate circumstances. This provision shall remain in effect for the duration of this Decree.

#### **XXV. PUBLIC PARTICIPATION**

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

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

B. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. Likewise, Ecology shall notify Defendants prior to the issuance of all press releases and fact sheets related to remedial action work to be performed at the Site, and before meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. For all press releases, fact sheets, meetings, and other outreach efforts by Defendants that do not receive prior Ecology approval, Defendants shall clearly indicate to their audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

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

D. When requested by Ecology, arrange and/or continue information repositories at the following location:

- i. Ellensburg Public Library  
209 N. Ruby Street, Ellensburg, WA 98926
- ii. Ecology's Central Regional Office  
1250 W. Alder Street, Union Gap, WA 98903
- iii. Ecology's Website  
<https://apps.ecology.wa.gov/cleanupsearch/site/4257>



At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Site shall be maintained in the repository at Ecology's Central Regional Office in Union Gap, Washington.

#### **XXVI. DURATION OF DECREE**

1. The remedial program required pursuant to this Decree shall be maintained and continued until Defendants have received written notification from Ecology that the requirements of this Decree have been satisfactorily completed. This Decree shall remain in effect until dismissed by the Court. When dismissed, Section XII (Retention of Records), Section XVIII (Covenant Not to Sue), Section XIX (Contribution Protection), Section XX (Indemnification), and Section XXVII (Claims Against the State) shall survive.

#### **XXVII. CLAIMS AGAINST THE STATE**

1. Defendants hereby agree that it will not seek to recover any costs accrued in implementing the remedial action required by this Decree from the State of Washington or any of its agencies; and further, that Defendants will make no claim against any MTCA account for any costs incurred in implementing this Decree. Except as provided above, however, Defendants expressly reserve their right to seek to recover any costs incurred in implementing this Decree from any other PLP. This section does not limit or address funding that may be provided under WAC 173-322A.

#### **XXVIII. EFFECTIVE DATE**

1. This Decree is effective upon the date it is entered by the Court.

#### **XXIX. WITHDRAWAL OF CONSENT**

1. If the Court withholds or withdraws its consent to this Decree, it shall be null and void at the option of any party and the accompanying Complaint shall be dismissed without costs and without prejudice. In such an event, no party shall be bound by the requirements of this Decree.

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON  
Attorney General

\_\_\_\_\_  
Barry Rogowski  
Program Manager  
Toxics Cleanup Program  
(360) 485-3738

\_\_\_\_\_  
Derek Threet, WSBA #45808  
Assistant Attorney General  
(360) 586-6762

Date: \_\_\_\_\_

Date: \_\_\_\_\_

SMITH-KEM ELLENSBURG, INC.

\_\_\_\_\_  
Laurie Erickson  
President  
(509) 962-2229


Date: \_\_\_\_\_

AD GRO, L.L.C.

\_\_\_\_\_  
Laurie Erickson  
Managing Member  
(509) 962-2229

Date: \_\_\_\_\_

EQUILON ENTERPRISES LLC DBA SHELL OIL PRODUCTS US

DocuSigned by:  


\_\_\_\_\_  
DfEB61F4A46A4CB...  
William Platt  
Attorney-in-Fact  
(832) 337-0688

Date: Jun 21, 2023  
\_\_\_\_\_

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY



Barry Rogowski  
Program Manager  
Toxics Cleanup Program  
(360) 485-3738

Date: 7/11/23

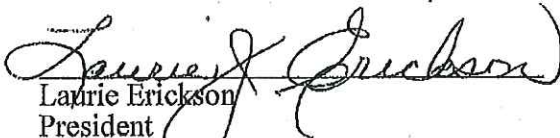
ROBERT W. FERGUSON  
Attorney General



Derek Threet, WSBA #45808  
Assistant Attorney General  
(360) 586-6762

Date: 7/31/2023

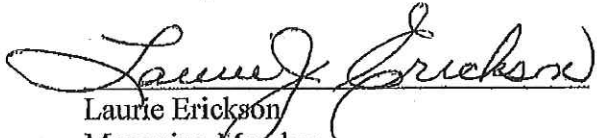
SMITH-KEM ELLENSBURG, INC.



Laurie Erickson  
President  
(509) 962-2229

Date: 6-14-2023

AD GRO, L.L.C.



Laurie Erickson  
Managing Member  
(509) 962-2229

Date: 6-14-2023

EQUILON ENTERPRISES LLC DBA SHELL OIL PRODUCTS US

\_\_\_\_\_  
William Platt  
Attorney-in-Fact  
(832) 337-0688

Date: \_\_\_\_\_

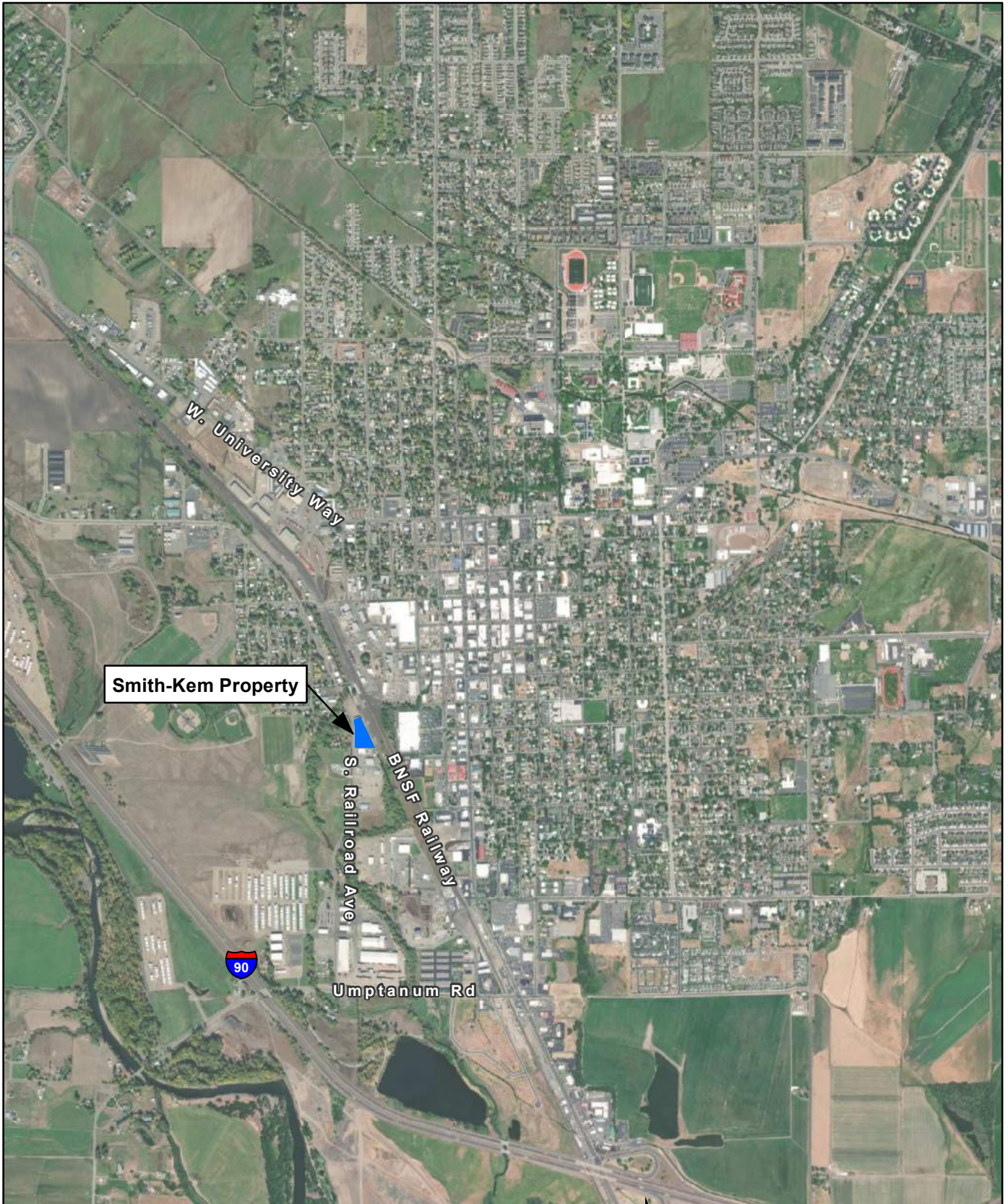
ENTERED this 21 day of Aug 2023

**SCOTT R. SPARKS**

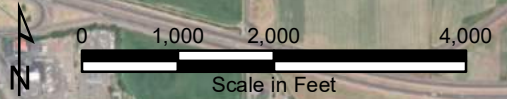
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JUDGE  
Kittitas County Superior Court

EXHIBIT A



Notes:  
 · Property boundary drawn from CAD Survey by Cruse & Associates, 2013.  
 · Aerial imagery obtained from ESRI, 2016.



**Remedial Investigation/  
 Feasibility Study  
 Smith-Kem Site  
 Ellensburg, Washington**

Figure 1.1  
 Site Vicinity Map

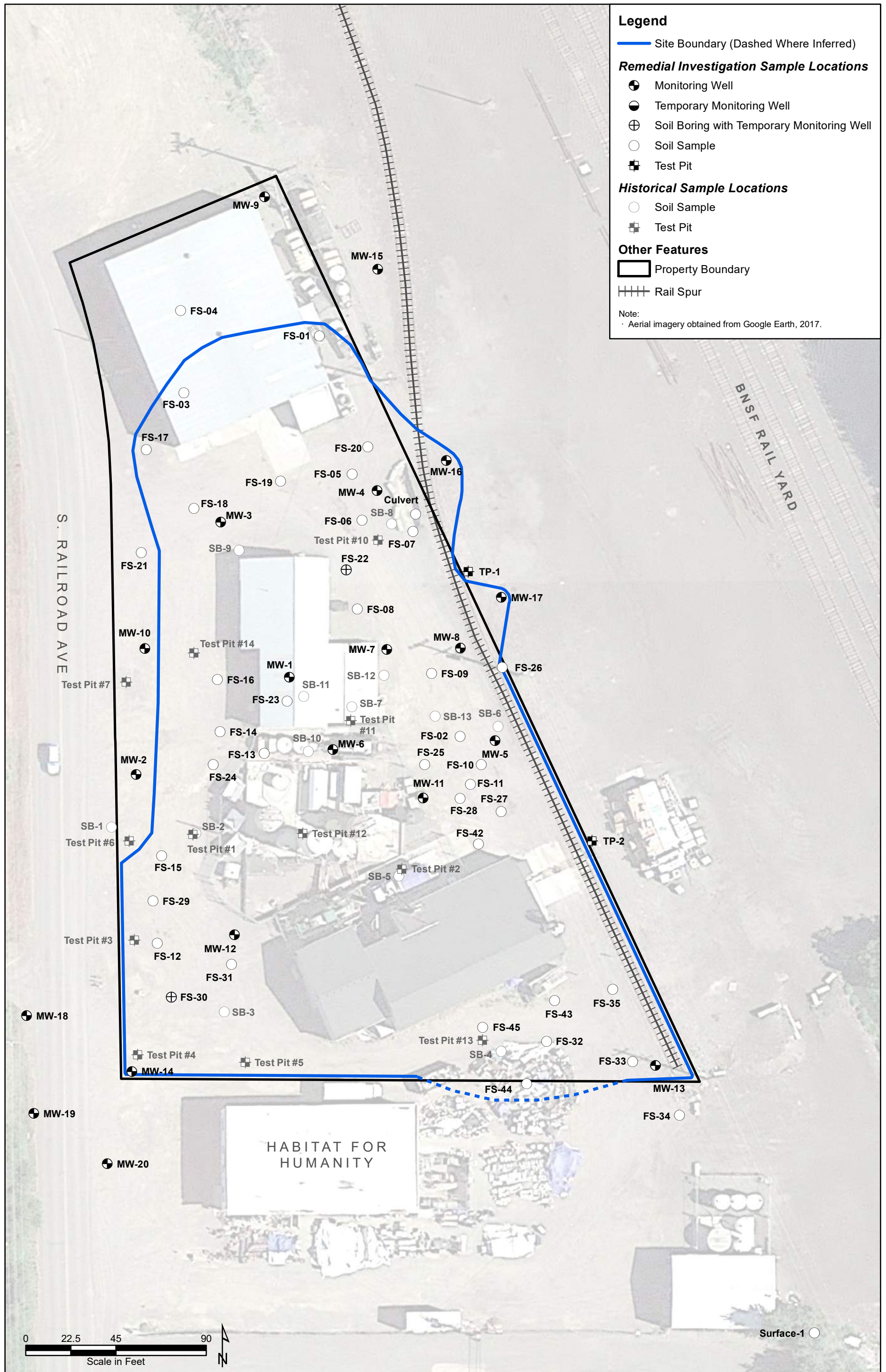


EXHIBIT B





DEPARTMENT OF  
**ECOLOGY**  
State of Washington

## **CLEANUP ACTION PLAN**

Smith-Kem Ellensburg, Inc. Site,  
Ellensburg, WA  
FSID 12832256, CSID 4257

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May 2023

Issued by the Department of Ecology  
Under Agreed Order DE 12908

Washington Department of Ecology  
Toxics Cleanup Program  
Central Regional Office  
Union Gap, WA

## Executive Summary

This document presents the Washington State Department of Ecology's (Ecology's) draft Cleanup Action Plan (CAP) for the Smith-Kem Ellensburg Inc. (Smith-Kem) site (Site) located at 200 S. Railroad Avenue in Ellensburg, Washington. A CAP is required as part of the site cleanup process under Chapter 173-340 of the Washington Administrative Code (WAC), which is promulgated under the Model Toxics Control Act (MTCA) cleanup regulations. This draft CAP describes the Selected Cleanup Action for this Site and sets forth the requirements that the cleanup action must meet. It will be revised as appropriate by Ecology following receipt of public comment.

The Smith-Kem property (property) is zoned as "heavy industrial" and located in Kittitas County (parcel no. 226833) on approximately 2 acres with a surface covered with compacted imported gravel. The Site is bounded to the north by vacant properties and to the south by various light-industrial and other commercial businesses. To the east is the BNSF Railway Company rail yard and the rail spur that comes onto the eastern portion of the property. To the west of S. Railroad Avenue is a rural residential property that is zoned as "Residential Suburban."

The Site is relatively flat with an approximate elevation at 1,500 feet above mean sea level. The general topography of the area slopes slightly toward the south. The nearest bodies of surface water include Mercer Creek, approximately 225 feet west of the Site, and Wilson Creek, approximately 125 feet east of the Site.

Starting in the mid-1920s, Shell Oil Products US (Shell) operated a bulk fuel facility on the property and continued operations until the early 1970s. From 1948 until 1972, Shell leased a portion of the property to James R. and Jean Smith (Smiths) to conduct their agricultural products business. The Smiths operated under the Shell Chemical Company brand during that time and provided fertilizers, pesticides, and herbicides. The Smiths, and later, Smith-Kem, conducted fertilizer blending and pesticide storage at the Site until 2015. The McGregor Company began leasing the property in 2015 and operates a fertilizer blending and pesticide storage operation.

In 2008, Ecology identified the Site as a MTCA site based on an investigation that found elevated levels of total petroleum hydrocarbons (TPH) in soil and groundwater. Several investigations between 2007 and 2020 documented the presence of pesticides, chlorinated herbicides, nitrate, and ammonia in soil or groundwater in addition to TPH. Ecology entered into Agreed Order No. DE 12908 with Shell and Smith-Kem (two of the potentially liable parties for the Site) in 2016.

A Remedial Investigation (RI)/Feasibility Study (FS), which was submitted to Ecology in October 2021 and approved by Ecology in January 2022, evaluated the most appropriate cleanup action alternatives for the Site (Floyd|Snider 2021). To support the development of cleanup action alternatives in the FS, remediation levels (RELS) were developed for soil to identify the contaminant concentrations at which different cleanup actions are taken. Proposed soil RELs will result in achievement of the Remedial Action Objectives using a combination of source removal

and soil containment. Four cleanup action alternatives were evaluated, which included combinations of the following:

- Excavation of surface soil and placement of an asphalt cap where concentrations in soil are greater than RELs and cleanup levels (CULs)
- Excavation of soil that exceeds direct-contact RELs, leaching RELs, and/or soil CULs
- Installation of a geosynthetic clay liner (GCL) to provide a protective barrier to remaining pesticide contamination at concentrations greater than RELs or CULs
- In situ groundwater treatment consisting of a liquid-activated carbon matrix to passively treat groundwater contamination
- Monitored natural attenuation (MNA) and groundwater monitoring
- Implementation of institutional controls (ICs), including restrictions on land use and resource use (i.e., prohibit the use of groundwater within Site boundaries, including for drinking or domestic use, irrigation, or industrial use)

Alternative 3 was identified in the FS as the Preferred Cleanup Action Alternative for the remediation of soil and groundwater at the Site because it is permanent to the maximum extent practicable, is a comprehensive cleanup action for the Site that complies with all the applicable cleanup action selection requirements under MTCA, and provides the greatest environmental benefit for the associated cost based on the Disproportionate Cost Analysis. Ecology's selected cleanup action includes the following components:

- Excavation and off-site disposal of soil in all areas of concern (AOCs) with chemical of concern (COC) concentrations greater than RELs or CULs
- Excavation to CULs in AOC 6 and an area around soil boring location FS-01
- Installation of a GCL and drainage in portions of AOC 1 and AOC 2 for protection of groundwater
- In situ groundwater treatment by injecting liquid activated carbon along the downgradient edge of AOC 5 to immobilize COCs (pesticides and TPH) in groundwater migrating from beneath the office and storage building
- Capping contaminated soil with COC concentrations greater than the RELs to protect worker direct contact exposure, including pesticide and TPH contamination beneath the office and storage building in AOC 5 and deeper TPH contamination beneath the gravel cap in AOC 4
- ICs to prohibit use of Site groundwater as drinking water or for domestic use, irrigation, or industrial use and to maintain the cap
- MNA for groundwater recovery

This executive summary was prepared for introductory purposes only, and the information provided should be used only in conjunction with the full text of this report. A complete description of the project and selected cleanup action is contained within this report.

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## List of Abbreviations

<b>Abbreviation</b>	<b>Definition</b>
2,4-D	2,4-Dichlorophenoxyacetic acid
AO	Agreed Order
AOC	Area of concern
ARAR	Applicable or relevant and appropriate requirement
AST	Aboveground storage tank
bgs	Below ground surface
BHC	gamma-Benzene hexachloride
BNSF	BNSF Railway Company
CAP	Cleanup Action Plan
CCMP	Construction Compliance Monitoring Plan
COC	Chemical of concern
COPC	Chemicals of potential concern
CD	Consent Decree
CPOC	Conditional point of compliance
CSBC	Crushed surfacing base course
CSM	Conceptual site model
CUL	Cleanup level
CY	Cubic yard
DCA	Disproportionate Cost Analysis
DDT	Dichlorodiphenyltrichloroethane
Ecology	Washington State Department of Ecology
EDR	Engineering Design Report
FS	Feasibility Study
GCL	Geosynthetic clay liner
GMP	Groundwater Monitoring Plan
HASP	Health and Safety Plan
IC	Institutional control
LTCMP	Long-Term Compliance Monitoring Plan

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<b>Abbreviation</b>	<b>Definition</b>
McGregor	The McGregor Company
MCPA	2-Methyl-4-chlorophenoxyacetic acid
µg/L	Micrograms per liter
mg/kg	Milligrams per kilogram
MNA	Monitored natural attenuation
MTCA	Model Toxics Control Act
PCUL and COPC Memo	<i>Development of PCULs and Identification of COPCs for Evaluation in the Remedial Investigation Report Memorandum</i>
PDI	Pre-design investigation
PLP	Potentially liable persons
POC	Point of compliance
property	Smith-Kem property
RAO	Remedial Action Objective
REL	Remediation level
RI	Remedial Investigation
Sage	Sage Earth Sciences
Shell	Shell Oil Products US
Site	Smith-Kem site
Smith-Kem	Smith-Kem Ellensburg, Inc.
Smiths	James R. and Jean Smith
SMP	Soil Management Plan
TEE	Terrestrial Ecological Evaluation
TPH	Total petroleum hydrocarbons
UST	Underground storage tank
VCP	Voluntary Cleanup Program
VI	Vapor intrusion
WAC	Washington Administrative Code

## 1.0 Introduction

This document is the Washington State Department of Ecology's (Ecology's) draft Cleanup Action Plan (CAP), which was prepared per the requirements of Agreed Order (AO) No. DE 12908 (Ecology 2016) between Ecology and the potentially liable persons (PLPs) on the AO, Shell Oil Products US (Shell) and Smith-Kem Ellensburg, Inc. (Smith-Kem). The Smith-Kem property (property) is located at 200 S. Railroad Avenue in Ellensburg, Washington (Figures 1 and 2). The Smith-Kem site (Site) has been listed in Ecology's Integrated Site Information System under Facility Site ID number 12832256 and Cleanup Site ID number 4257.

Starting in the mid-1920s, Shell operated a bulk fuel facility on the property and continued operations until the early 1970s. In 1948, Shell leased a portion of the property to Smith-Kem, a vendor of agricultural products. Shell sold the property to James R. and Jean Smith (Smiths) of Ellensburg, Washington, in 1972, and Smith-Kem continued to conduct operations on the property until March 31, 2015, when the McGregor Company (McGregor) acquired the business and assumed control of the property and several adjacent parcels as an operator. The Smiths sold the property to Ad Gro, LLC on August 5, 1996, but McGregor has had effective control of the day-to-day operations on the property since April 1, 2015.

An investigation in 2007 identified total petroleum hydrocarbons (TPH) in soil and groundwater, which led to subsequent investigations in soil and groundwater that documented elevated levels of pesticides, chlorinated herbicides, and ammonia. Based on those results, Shell and Smith-Kem were named PLPs and entered into the AO on February 29, 2016 (Ecology 2016). Remedial Investigation (RI) field activities were conducted per the AO and an Ecology-approved RI Work Plan (Work Plan; Floyd|Snider 2016) starting in 2016 and were completed in early 2020.

### 1.1 PURPOSE

A CAP is required as part of the site cleanup process per Washington Administrative Code (WAC) Chapter 173-340, which is promulgated under the Model Toxics Control Act (MTCA). The purpose of the draft CAP is to describe Ecology's Selected Cleanup Action (also referred to as preferred cleanup action) for a site and to provide an explanatory document for public review. In particular, this report meets the following objectives:

- Describes the Site;
- Summarizes current Site conditions;
- Summarizes the cleanup action alternatives considered in the Feasibility Study (FS) cleanup action selection process;
- Describes the Selected Cleanup Action for the Site and the rationale for selecting this alternative;
- Identifies Site-specific remediation levels (RELs), cleanup levels (CULs), and points of compliance (POC) for each hazardous substance and medium of concern for the Selected Cleanup Action;



- Identifies applicable state and federal laws for the Selected Cleanup Action;
- Identifies residual contamination remaining on the Site after cleanup and restrictions on future uses and activities at the Site to ensure continued protection of human health and the environment;
- Describes compliance monitoring requirements; and
- Presents a preliminary schedule for implementing the CAP.

Ecology has made a preliminary determination that the cleanup conducted in conformance with this CAP will comply with the requirements for selection of a cleanup action under WAC 173-340-360.

As established in WAC 173-340-200, the Site was defined in the RI report by the full vertical and lateral extent of the chemicals of concern (COCs) in soil and groundwater. The Site boundary is shown on Figure 3.

## 1.2 PREVIOUS STUDIES

Several investigations were conducted between 2007 and 2020 by Smith-Kem, Shell, and McGregor to assess whether TPH contamination and pesticides were present on the property. Results indicated that elevated levels of TPH, chlorinated pesticides, chlorinated herbicides, nitrate, and ammonia are present in soil and groundwater. Sampling locations from investigations between 2007 and 2020 are shown on Figure 3. The following is a list of previous investigations, which are summarized in the RI.

- In 2007, Sage Earth Sciences (Sage), on behalf of Belsaas & Smith Construction and Smith-Kem, performed a site characterization to assess TPH in soil and groundwater adjacent to the aboveground storage tank (AST) area on the property as a result of an interested purchaser inquiry (Sage 2007).
- In 2013 and 2014, Conestoga-Rovers & Associates performed site investigations and groundwater monitoring on behalf of Shell for the purpose of further assessing soil and groundwater contamination reported by Sage in 2007 (CRA 2014).
- As reported in the AO in 2014, Smith-Kem consultants Fulcrum Environmental and Nth Degree collected groundwater samples from the existing network of eight monitoring wells to investigate the presence and distribution of pesticide contamination in groundwater. A report dated August 4, 2014, indicated that groundwater samples from five of the eight monitoring wells (MW-1, MW-4, MW-6, MW-7, and MW-8) showed detections of gamma-benzene hexachloride (BHC), chlordane, endrin, endosulfan II, endrin aldehyde, and/or dieldrin (Ecology 2016).
- In April 2015, groundwater sampling was performed by Landau & Associates on behalf of McGregor to compare conditions with results of previous investigations and to establish a baseline at the start of McGregor operations at the property (Landau 2015).

- Floyd|Snider, on behalf of Smith-Kem, performed RI sampling in three phases between August 2016 and June 2018: Phase 1, Phase 2A, and Phase 2B with additional follow-up sampling completed as required by Ecology in 2019 and 2020. RI sampling was completed in accordance with the AO and WAC 173-340-350(7), which describes procedures for conducting an RI. All RI sample locations are shown on Figure 3.

Following the completion of the above investigation activities at the Site, the chemicals of concern (COCs) are adequately characterized and the conceptual site model (CSM) well-defined for the purpose of development and evaluation of remedial alternatives. The Site COCs are nitrate, nitrite, pesticides and herbicides (beta-BHC,<sup>1</sup> aldrin, chlordane, alpha-chlordane, total dichlorodiphenyltrichloroethane [DDT], dieldrin, toxaphene, 2,4-dichlorophenoxyacetic acid [2,4-D], 2-methyl-4-chlorophenoxyacetic acid [MCPA], atrazine, and simazine), diesel-range TPH, oil-range TPH, dioxins/furans, and lead. An RI/FS, which describes the nature and extent of the contamination and was submitted in 2021, provides the technical basis for the cleanup actions to be conducted at the Site.

### **1.3 REGULATORY FRAMEWORK**

The Site is being managed under AO No. DE 12908, which requires the PLPs to prepare a draft CAP for the Site. The cleanup activities will be performed in accordance with all applicable or relevant and appropriate requirements (ARARs), and all appropriate permits will be obtained.

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<sup>1</sup> In the RI/FS report, this chemical is also referred to as HCH-beta, which is a synonym for beta-BHC.

## 2.0 Site Description

In this document, “property” is used to refer to tax parcel 226833 (Figure 4), is located at 200 S. Railroad Avenue, and is zoned as “heavy industrial” by the City of Ellensburg (City of Ellensburg 2017; Figures 1 and 2). The property is approximately 2 acres and is bounded to the north by vacant properties and to the south by various light-industrial or commercial businesses. To the east is the BNSF Railway Company (BNSF) rail yard and the rail spur that comes onto the eastern portion of the property. To the west of S. Railroad Avenue is a rural residential property that is zoned as “Residential Suburban.”

The boundary of the “Site” under MTCA is defined by where contamination has come to lie (WAC 173-340-200). The Site is defined in Section 6.0 of the RI/FS, per MTCA, and includes the property and the area surrounding the property where contamination has been confirmed, which includes a portion of the BNSF rail yard to the east and likely a small portion of the commercial property to the south (owned by Ryan Wales and referred to as the Wales property).

The property surface is covered with compacted imported gravel and is relatively flat with an approximate elevation of 1,500 feet above mean sea level. The general topography of the area slopes slightly toward the south. The nearest bodies of surface water include Mercer Creek, approximately 225 feet west of the property, and Wilson Creek, approximately 125 feet east. The surrounding City of Ellensburg, as well as most of Kittitas County, is agricultural land. A detailed description of the study area and Site setting is included in the RI/FS (Floyd|Snider 2021).

### 2.1 SITE HISTORY, PROJECT BACKGROUND, AND REGULATORY OVERVIEW

Upon discovery of TPH contamination during an investigation, Sage notified Ecology on July 2, 2007, that there had been a release of petroleum at the Site (Ecology 2016). Ecology subsequently reviewed the *Limited Site Characterization Report* (Sage 2007), and on May 29, 2008, Ecology site manager Richard Bassett conducted a site visit and met with the current property owner.

Following the site visit, Ecology sent a letter dated June 2, 2008, to Smith-Kem and Ad Gro recommending that the site be entered into Ecology’s Voluntary Cleanup Program (VCP) or be placed under AO to characterize soil and groundwater contamination for TPH and other hazardous substances. On August 13, 2008, Ecology assigned the site a Site Hazard Assessment ranking of “3” (Ecology 2008).

The site was entered into Ecology’s VCP on June 20, 2012, but was subsequently removed in October 2012 by Smith-Kem (CRA 2014). On November 15, 2012, Ecology received notification from Shell acknowledging its PLP status based on its former operation of the bulk terminal (Ecology 2016).

On March 1, 2013, Ecology notified Smith-Kem and Ad Gro of a determination of their proposed PLP status for the site (Ecology 2013). On October 31, 2014, letters were sent to Smith-Kem, Ad Gro, and Shell, notifying them all that they are PLPs under MTCA. On February 29, 2016,

Shell and Smith-Kem entered into AO DE 12908 with Ecology. Although Ad Gro was notified as having potential liability under MTCA, it is not party to the AO.

The AO scope of work required the PLPs to prepare an RI Work Plan, conduct an RI, and prepare an RI report and FS report in a manner that complies with the requirements of MTCA. The RI Work Plan was completed in July 2016, and the first of three phases of the RI began in August 2016. Following the RI work, an RI/FS was prepared and submitted to Ecology in 2021 (Floyd|Snider 2021).

## 2.2 HISTORICAL PROPERTY OWNERSHIP, DEVELOPMENT, OPERATIONS, AND LAND USE

The following paragraphs summarize the history of ownership, development, and operations conducted on the property. A more detailed history of property operations is included in the RI/FS (Floyd|Snider 2021). Figure 5 shows the approximate locations of notable historical site features identified from Sanborn Fire Insurance maps, historical aerial photos, and previous site investigations. Additional site features, summarized below, may not be shown on Figure 5 due to limited information about precise locations of activities or structures.

Shell operated on the property as a bulk fuel distributor from approximately 1923 to 1972. According to historical property records, general operations consisted of receiving, storing, and distributing bulk fuel products, although exact details concerning unloading, storage, and operational activities are not known. Shell had at least four primary ASTs that ranged in volume from approximately 6,000 gallons to 25,000 gallons and one 600-gallon underground storage tank (UST). The ASTs were used for the storage of gasoline and diesel fuels that would come on railcars via the rail spur. A former pump house, located south of the office building, pumped fuel from the railcars into the ASTs. According to the property owner, fuel was also pumped through the aboveground product lines into holes through the roof of the office building and out to trucks for filling. Trucks would also fill their tanks by pulling up to the ASTs for direct filling. The UST was used for the storage of white gas and, later, zinc chelates.

From 1948 until 1972, Shell leased a portion of the property to the Smiths to conduct their agricultural products business. The Smiths operated under the Shell Chemical Company brand during that time and provided fertilizers, pesticides, and herbicides.

Shell's operations ceased in the early 1970s, and Smith-Kem repurposed some of the ASTs for the storage of fertilizer products. In the late 1980s, all remaining steel ASTs were replaced with ASTs made of fiberglass. The fertilizer operation expanded in the late 1970s to early 1980s, and to comply with Washington State Department of Agriculture and insurance requirements, a 70-foot-by-90-foot concrete secondary containment was constructed around the fertilizer tank farm located north of the current bulk fertilizer building (the AST containment area). During Smith-Kem operations on the property, up to six ASTs containing fertilizer products (of varying volumes), an 8,000-gallon diesel AST, and a 2,000-gallon gasoline AST were also located within the AST containment area. The diesel and gasoline ASTs were used for refueling equipment (Erickson 2016). These were installed after or concurrent with the AST containment area installation.

In 1988, the fertilizer business shifted from mostly “wet” application (i.e., anhydrous ammonia) to more “dry” application (i.e., pelletized/granular products). To accommodate the storage and mixing of fertilizers, a 5,000-square-foot building (bulk fertilizer building) was built in 1988 south of the AST containment area (Kittitas County 2015). Additionally, a designated paved wash area was constructed on the north side of the bulk fertilizer building to collect rinse water, which was stored in a polyethylene tank.

In February 1995, Smith-Kem installed a 21,000-gallon anhydrous ammonia AST, which was used until approximately 2010 when it was removed and sold.

The Smiths’ historical pesticide operations did not involve converting raw pesticide products into finished products ready for application, nor did it involve reformulating products. There are no known adjuvants, solvents, or carriers that were added to pesticides or fertilizer formulations during historical operations. Historically, pesticides were loaded onto trucks to the north of the office and storage building and to the south of the storage area, which is north of the AST containment area. In general, it is impossible to recreate an accurate product list of all herbicides and pesticides that could have been used and sold on the property given the duration and nature of the operations.

Land use at the property is currently industrial and will remain industrial based on City of Ellensburg zoning and growth plans.

## **2.3 GEOLOGIC AND HYDROGEOLOGIC SETTING**

The geology and hydrogeology of the Site and surrounding area are particularly pertinent to the development of the CSM, the prediction of contaminant migration, and the design of the cleanup action. Therefore, the following sections provide an overview of the geology and hydrogeology, with additional detail provided in the RI/FS (Floyd | Snider 2021).

### **2.3.1 Site Geology**

Soil borings on the property and in its vicinity identified shallow soils consisting of unconsolidated gravel and cobbles with varying amounts of sand and silt. These soils were observed from the surface to at least 20 feet below ground surface (bgs), which is the maximum depth that soils were sampled during RI activities. Silt content generally increases on the northern half of the property with layers of dark brown silt and some organic matter in shallow soils (i.e., between 0 and 5 feet bgs), which is consistent with this area being part of a floodway or wetland prior to development. This silt unit is not continuous across the property; however, varying amounts of silt in sandy and gravelly soils were observed in the top 5 feet of soils. All Site soils are considered to have been deposited as recent alluvium in the floodplain of the Yakima River.

### **2.3.2 Site Hydrogeology**

A shallow unconfined aquifer is typically encountered on the property at depths ranging from 3 to 6 feet bgs. The annual average groundwater table is at 3.5 feet bgs, with greater depths to

water (ranging between 4 and 5 feet bgs) on the BNSF property near the rail spur. This is consistent with the higher surface elevation of the BNSF property, which is approximately 1 to 1.5 feet higher than the property. The groundwater table has a shallow horizontal gradient of about 0.002 feet per foot and fluctuates throughout the year, with highs observed during early spring (March) and lows observed during late summer (August) and winter (January).

The Site is located within the Kittitas sub-basin. A 2011 report prepared by Golder Associates on behalf of the US Bureau of Reclamation on the Yakima River Basin determined that the regional groundwater flow direction within this sub-basin is generally to the south-southwest on the east side of the Yakima River (Golder 2011). The groundwater flow direction is generally south-southwest (Figure 3), and a review of other Ecology sites in the Ellensburg area (e.g., Circle K Stores 2701136, Devere & Sons Distributing, and A1 Petroleum & Propane) shows the same southwesterly regional groundwater flow direction.

Nearby surface water bodies include Mercer Creek to the west and Wilson Creek to the southeast. These creeks are approximately 225 and 125 feet away from the Site, respectively, and eventually discharge into the Yakima River, which is about 0.9 miles southwest of the Site.

## 2.4 CONCEPTUAL SITE MODEL

A CSM of contaminant sources and migration pathways at the Site is included as Figure 6.

Current and former Site uses, including pesticide and fertilizer handling and storage, and the historical transfer and storage of bulk petroleum fuels, resulted in contamination at the Site. Historical site features are shown on Figure 5. Potential sources of contamination include the following:

- Direct releases from equipment washing operations
- Generation of by-products during burning operations
- Direct releases from material storage, use, and handling
- Leaks and spills from equipment, tanks, and machinery
- Leaks and spills during fueling and fuel transfer operations at the rail spur or between ASTs and trucks
- Grading of the ground surface to maintain gravel surfaces
- Infiltration of precipitation and overland flow through contaminated soil, causing leaching into groundwater

As a result of these releases, the COCs are nitrate, nitrite, pesticides and herbicides (beta-BHC, aldrin, chlordane, alpha-chlordane, total DDT, dieldrin, toxaphene, 2,4-D, MCPA, atrazine, and simazine), diesel-range TPH, oil-range TPH, dioxins/furans, and lead. These releases have migrated downward from the surface through the soil to groundwater. Most contaminated soil is close to the surface, typically between 0 and 5 feet bgs, with limited areas of contamination

observed down to 10 feet bgs. COCs have spread laterally in groundwater and the groundwater plumes have been largely defined.

The following sections identify COCs in both soil and groundwater and summarize the human health and environmental concerns.

A total of 11 groundwater COCs were identified based on an evaluation of data with respect to the proposed CULs defined in the RI/FS, and 12 chemicals were identified as soil COCs based on evaluation of data with respect to the proposed CULs. Therefore, soil and groundwater are the two media of concern at the Site.

Proposed groundwater CULs were developed to be protective of human health via drinking water exposure. Proposed groundwater CULs must be met at the standard POC; that is, at all wells throughout the Site to the maximum depth where contamination is present. However, per MTCA (WAC 173-340-720(8)), where it can be demonstrated that it is not practicable to meet the CULs throughout the Site within a reasonable restoration time frame using all practicable methods of treatment, Ecology may approve a conditional point of compliance (CPOC) that is as close as practicable to the source area, and typically not extending past the property boundary. The use of a CPOC is proposed as part of the Selected Cleanup Action.

Twelve chemicals were identified as soil COCs: seven legacy pesticides (aldrin, dieldrin, chlordane, alpha-chlordane, total DDT, beta-BHC, and toxaphene); two active-use pesticides (atrazine and simazine); total diesel- and oil-range TPH; dioxins/furans; and lead. The impacted soil presents the following pathways of exposure: direct contact, leaching to groundwater, and soil vapor.

The POC for ambient and indoor air is Site-wide; however, vapor intrusion (VI) from subsurface contaminants will occur only in enclosed spaces and structures. An initial VI assessment was completed in 2019 to assess whether VI posed an immediate risk to occupants of the office building onsite. The vapor sampling data obtained in 2019 indicate that TPH soil concentrations under the Office and Storage Building do not pose a significant risk to building occupants and the VI pathway is not active. Thus, soil vapor does not require active mitigation.

Under MTCA, exposure of terrestrial organisms to impacted soils must be evaluated by performing a Terrestrial Ecological Evaluation (TEE) as described in WAC 173-340-7491. For ecological risk assessment, MTCA allows the use of a site-specific POC depth per WAC 173-340-7490(4)(a). The site-specific POC developed in the RI/FS is equivalent to a depth of 0 to 6 feet bgs for the direct contact pathway protective of ecological receptors. This corresponds to the depth of the soil biologically active zone, which is assumed to extend to a depth of 6 feet bgs per WAC 173-340-7490(4)(a).

## 2.5 AREAS OF CONCERN

Based on the nature and extent of COCs, six areas of concern (AOCs) were defined in the RI and are summarized on Figure 7. The Site boundary is shown on Figure 3. This Site boundary includes

all areas where contamination associated with Site activities has been identified at concentrations greater than the CULs, as summarized in Section 3.0.

AOCs were developed based on the nature and extent of soil COCs. A brief summary of the COCs in soil and groundwater and the depth of contamination for each AOC is presented in this section along with a description of physical features that will affect the cleanup action or design and additional pre-design data needs that may affect the boundary extent in certain AOCs. Additional data needed for each AOC is also summarized below and will be addressed in a pre-design investigation (PDI) work plan. COCs in groundwater exist outside the described AOCs. In addition, dieldrin and nitrate in groundwater extend past the property boundary at the southwest corner of the Site. Exceedances of groundwater and long-term monitoring will be addressed as part of the cleanup action. The AOCs and relevant site features are shown on Figure 7. The AOCs are summarized below, and further details are included in the RI.

**AOC 1:** AOC 1 contains multiple pesticides, TPH, and dioxins/furans in soil at concentrations greater than CULs to a maximum known depth of 8 feet bgs and multiple pesticides, TPH, and nitrate/nitrite in groundwater at concentrations greater than CULs. AOC 1 is along the eastern property edge and extends onto the BNSF property. Remedial actions in this AOC will need to include a buffer from the active BNSF rail spur. Elevated concentrations of pesticides are present along the northern edge of AOC 1, and additional data collection is needed to better define the northern boundary prior to design of the cleanup action.

**AOC 2:** AOC 2 contains multiple pesticides in soil at concentrations greater than CULs to a maximum known depth of 7 feet bgs and dieldrin and nitrate in groundwater at concentrations greater than CULs. High concentrations of dieldrin are not fully bounded in soil within AOC 2, and additional data will be collected to define the northern and southern boundaries during PDI activities. The containment area (west) and bulk fertilizer building (south) near AOC 2 define these boundaries. AOC 2 is also along the eastern property edge and extends onto the BNSF property. Remedial actions in this AOC would need to include a buffer from the active BNSF rail spur. The containment area and bulk fertilizer building constrains the southwestern boundary of AOC 2.

**AOC 3:** Multiple pesticides and dioxins/furans are present in AOC 3 in soil to a maximum known depth of 5 feet bgs. There are no groundwater impacts in AOC 3. Additional data collection is needed to better define the lateral extent of off-site dioxin/furan contamination along the southwestern boundary of AOC 3 prior to design of the cleanup action. AOC 3 is along the southeastern edge of the property, and remedial actions in this AOC would need to include a buffer from the active BNSF rail spur and access to the adjoining property for data collection and cleanup.

**AOC 4:** AOC 4 contains multiple pesticides and TPH in soil at concentrations greater than CULs to a maximum known depth of 5 feet bgs for pesticides and 9 feet bgs for TPH. Dieldrin and nitrate/nitrite in groundwater are greater than CULs in AOC 4. Elevated concentrations of dieldrin are present along the western edge of AOC 4, and additional data collection is needed to better



define this boundary of AOC 4 prior to design of the cleanup action. The containment area and bulk fertilizer building constrain the eastern boundary of AOC 4.

**AOC 5:** AOC 5 contains multiple pesticides and TPH in soil at concentrations greater than CULs to a maximum known depth of 7 feet bgs for pesticides and TPH (TPH may extend as deep as 12 feet bgs). In groundwater, multiple pesticides, TPH, and nitrates/nitrites are present at concentrations greater than their respective CULs. Elevated concentrations of dieldrin are present in the northwest corner of AOC 5, and additional data collection is needed to better define the extent of COCs prior to design of the cleanup action. AOC 5 contains part of the office and storage building, a concrete pad for truck loading and unloading, and the northern edge of the containment area. The office and storage building is an older structure that has underlying contamination, which was considered during the evaluation of cleanup action alternatives. The containment area constrains the southern boundary of AOC 5.

**AOC 6:** AOC 6 is characterized by shallow dieldrin and toxaphene in soil at concentrations greater than the CULs to a maximum depth of 2.5 feet bgs. Groundwater contamination is not present in this AOC. The eastern portion of AOC 6 extends beneath the machine shop, and underlying shallow soil contamination was considered during the evaluation of cleanup action alternatives.

Additional data to refine the AOC boundaries will be collected as part of a PDI prior to submittal of the Engineering Design Report (EDR), which will detail the actions and extent of cleanup activities.

### 3.0 Chemicals of Concern and Cleanup Standards

This section provides a summary of the COCs and cleanup standards established for the Site.

#### 3.1 CHEMICALS OF CONCERN

Chemicals of potential concern (COPCs) for the Site were initially identified by comparing Site data to preliminary CULs developed with direction from Ecology in 2020. The CUL development process is described in the *Development of PCULs and Identification of COPCs for Evaluation in the Remedial Investigation Report* Memorandum (PCUL and COPC Memo), which is provided as Attachment C.4 to the RI/FS (Floyd|Snider 2020). In brief, preliminary CULs are protective of all active or potentially active exposure pathways at the Site using conservative assumptions about land use and potential exposure. Any chemical that exceeded its preliminary CUL in either soil or groundwater was retained as a COPC for further evaluation in the RI/FS.

In the RI/FS, groundwater data were compared to these preliminary CULs to identify COCs. Eleven chemicals became groundwater COCs: nitrate, nitrite, eight pesticides and herbicides (beta-BHC, aldrin, chlordane, dieldrin, toxaphene, 2,4-D, MCPA, and atrazine), and diesel- and oil-range TPH.<sup>2</sup>

Soil data were also evaluated relative to direct contact preliminary CULs described in the RI/FS to identify COCs. Additionally, soil data for any chemical that became a COC in groundwater were compared to preliminary CULs protective of the groundwater to identify soil COCs for the leaching pathway. Twelve chemicals became soil COCs: seven legacy pesticides (aldrin, dieldrin, chlordane, alpha-chlordane, total DDT, beta-BHC, and toxaphene); two active-use pesticides (atrazine and simazine); total diesel- and oil-range TPH; dioxins/furans; and lead. Lead exceeds the proposed CUL by a factor greater than 2 times the CUL at only one location (MW-12).

#### 3.2 CLEANUP STANDARDS

As per the cleanup standards defined under MTCA, the CUL must be attained at the POC and must consider any additional regulatory requirements that may apply (WAC 173-340-200). Proposed CULs were developed in the RI/FS for each chemical that was identified as a COC and are summarized below for soil and groundwater where the COC is present with respect to each AOC. POCs for groundwater and soil were established in accordance with MTCA (WAC 173-340-720, WAC 173-340-740, and WAC 173-340-7490(4)(a)) and are described below.

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<sup>2</sup> In the RI, the CUL of 500 micrograms per liter ( $\mu\text{g/L}$ ) was compared to separate fractions of diesel-range and oil-range TPH. Ecology has since required that diesel-range and oil-range TPH results be summed and compared to a CUL of 500  $\mu\text{g/L}$ . The final groundwater CUL will be applied to combined diesel-range and oil-range TPH results for future assessments of groundwater quality.

### 3.2.1 Groundwater

Groundwater CULs were developed for each chemical that was identified as a COC in the RI/FS and are presented in Table 1. Proposed groundwater CULs are numerically equivalent to the preliminary CULs developed in the PCUL and COPC Memo (RI/FS Attachment C.4). However, the planned cleanup action will not result in groundwater meeting CULs within a reasonable restoration time frame at a standard POC. Because it has been demonstrated under WAC 173-340-350 through WAC 173-340-380 that it is not practicable to meet the CUL throughout the Site within a reasonable restoration time frame, a CPOC is appropriate and must be set as close as practicable to the source of contamination.

**Table 1**  
**Groundwater Chemicals of Concern, Proposed Cleanup Level, and AOCs**

Chemical	Proposed CUL (µg/L)	AOCs Where Contamination is Present
<b>Miscellaneous Substances</b>		
Nitrate	10,000	Site wide
Nitrite	1,000	AOC 1, AOC 5
<b>Legacy Pesticides</b>		
Aldrin	0.0026	AOC 1
beta-BHC	0.049	AOC 1, AOC 5
Chlordane	2.0	AOC 1
Dieldrin	0.0055	Site wide
Toxaphene	0.80	AOC 1, AOC 5
<b>Active Use Pesticides and Herbicides</b>		
2,4-D	70	AOC 1
Atrazine	3.0	Site wide
MCPA	8.0	AOC 1, AOC 5
<b>Total Petroleum Hydrocarbons</b>		
Diesel- and Oil-range TPH	500 <sup>(1)</sup>	AOC 1, AOC 5

Note:

- Ecology has required that diesel-range and oil-range TPH results be summed and compared to a CUL of 500 µg/L for any future assessments of TPH in groundwater. In the draft CAP, the nature and extent of TPH contamination is described separately for diesel-range and oil-range TPH across the Site.

### 3.2.2 Soil

Soil cleanup standards were developed to be protective of both the highest beneficial use of groundwater (as drinking water) and of human and ecological exposure via the direct contact pathway. The proposed CUL protective of the leaching pathway is referred to as the “leaching CUL.” The standard POC for the leaching pathway is 0 feet bgs to the maximum depth where

contamination is present. The proposed CUL protective of the direct contact pathway is referred to as the “direct contact CUL.” For protection of human health, the standard MTCA POC for the direct contact pathway of 0 to 15 feet bgs is applied across the Site. For protection of ecological receptors, a site-specific POC of 0 to 6 feet bgs for the direct contact pathway is applied across the Site. The proposed CUL for each chemical considers each of these pathways along with the location and depth of contamination present at the Site, such that proposed CULs are protective of all pathways for each chemical.

Soil COCs and proposed cleanup standards are summarized in Table 2. Because legacy pesticides are generally of concern in soil relative to the leaching pathway, data for each of the legacy pesticides are used to delineate specific areas that could either be an ongoing source leaching to groundwater or risk to human health via the direct contact pathway, using empirical demonstrations of groundwater quality as appropriate for each chemical and AOC.

**Table 2**  
**Soil Chemicals of Concern, Proposed Cleanup Levels, POCs, and AOCs**

<b>Chemical</b>	<b>Proposed CUL (mg/kg)</b>	<b>Pathway/Basis of Proposed CUL</b>	<b>Depth of Soil that Exceeds Proposed CULs within the Point of Compliance <sup>(1)</sup></b>
<b>Metals</b>			
Lead	250	Direct Contact/MTCA Method A	AOC 4: 0–2 feet bgs <sup>(2)</sup>
<b>Legacy Pesticides</b>			
Aldrin	0.0067	Leaching/WAC Eq. 747-1	AOC 1: 0–7 feet bgs <sup>(3)</sup>
	0.059	Direct Contact/ MTCA Method B	AOC 2: 0–4 feet bgs AOC 5: 0–2 feet bgs
beta-BHC	0.0067	Leaching/WAC Eq. 747-1	AOC 1: 0–6 feet bgs AOC 2: 0–5 feet bgs
Chlordane	1.1	Leaching/WAC Eq. 747-1	AOC 1: 0–7 feet bgs
	2.9	Direct Contact/MTCA Method B	AOC 2: 0–4 feet bgs AOC 4: 0–1 feet bgs
alpha-Chlordane	2.9	Direct Contact/MTCA Method B	AOC 1: 0–2 feet bgs
Dieldrin	0.0067	Leaching/WAC Eq. 747-1	AOC 1, 2, 5: 0–7 feet bgs <sup>(3)</sup> AOC 4: 0–5 feet bgs
	0.063	Direct Contact/MTCA Method B	AOC 3: 0–6 feet bgs AOC 6: 0–2.5 feet bgs
Total DDT	2.9	Direct Contact/MTCA Method B	AOC 3: 0–4 feet bgs
Toxaphene	0.84	Leaching/WAC Eq. 747-1	AOC 1 and 2: 0–6 feet bgs AOC 5: 0–4 feet bgs <sup>(3)</sup>
	0.91	Direct Contact/MTCA Method B	AOC 3: 0–2 feet bgs AOC 4: 0–4 feet bgs

Chemical	Proposed CUL (mg/kg)	Pathway/Basis of Proposed CUL	Depth of Soil that Exceeds Proposed CULs within the Point of Compliance <sup>(1)</sup>
<b>Active-Use Pesticides</b>			
Atrazine	4.3	Direct Contact/MTCA Method B	AOC 2: 0–4 feet bgs
Simazine	8.3	Direct Contact/MTCA Method B	AOC 2: 0–4 feet bgs
<b>Total Petroleum Hydrocarbons <sup>(4)</sup></b>			
Total Diesel-and Oil-Range TPH	460	Direct Contact/TEE	AOC 2: 0–6 feet bgs AOC 4: 0–6 feet bgs AOC 5: 0–6 feet bgs FS-01: 0–1 feet bgs
	2,000	MTCA Method A	AOC 4: 6–9 feet bgs <sup>(5)</sup> AOC 5: 6–12 feet bgs <sup>(5)</sup>
<b>Dioxins/Furans</b>			
Dioxins/Furans	0.000013	Direct Contact/MTCA Method B	AOC 3: 0–2 feet bgs

## Notes:

- 1 This table lists the maximum depth of contamination requiring remediation for each chemical. The standard POC for the direct contact pathway is 0–15 feet bgs; the standard POC for the leaching pathway is throughout the soil column. If deeper contamination is encountered during remedial activities, the POC depth will be expanded as appropriate.
- 2 Lead exceeds the soil proposed CUL in two samples from two locations (FS-08 and MW-12) at a maximum depth of 2 feet bgs. Deeper samples at each location bound the depth of contamination. The Ecology-approved data gaps memorandum concludes that lead contamination is bounded at a depth of 2 feet bgs based on detected results collected site wide.
- 3 Maximum depth of contamination will be confirmed as necessary during remedial design.
- 4 The proposed CULs for TPH are protective of the direct contact and leaching pathways. The POC for the TEE criterion of 460 mg/kg is 0 to 6 feet bgs. The POC for the MTCA Method A criterion of 2,000 mg/kg is 0 to 15 feet bgs.
- 5 TPH contamination exceeding the MTCA Method A criterion (direct contact criterion for protection of human health) by a factor greater than 2 is present in soil deeper than 6 feet bgs. The depth of contamination in this AOC reflects the standard MTCA POC for protection of human health.

## Abbreviation:

mg/kg Milligrams per kilogram

### 3.3 REMEDIATION LEVELS

In accordance with WAC 173-340-200, a REL “means a concentration of a hazardous substance in soil, air, water, or sediment above which a particular cleanup action component will be required as part of a cleanup action at a site.” RELs are, by definition, concentrations that exceed cleanup standards and can be used when a combination of cleanup action components are necessary to achieve CULs at a POC. RELs may also be used where soil containment (i.e., under a cap) is part of the cleanup action alternative; therefore, components of the Selected Cleanup Action will use RELs to meet the cleanup standards at a POC. A cleanup action that uses RELs must meet the requirements of MTCA, including a cleanup action that uses permanent solutions to the maximum extent practicable and provides for a reasonable restoration time frame. Soil RELs were established for some COCs in the FS for the Selected Cleanup Action. Groundwater RELs are not proposed at the Site.

Soil RELs for select Site COCs are presented in Table 3.

**Table 3**  
**Soil Chemicals of Concern and Proposed Remediation Levels**

<b>Chemical</b>	<b>Proposed REL (Leaching) mg/kg</b>	<b>Proposed REL (Direct Contact) mg/kg</b>
<b>Legacy Pesticides</b>		
Aldrin	0.13	0.43
beta-BHC	0.13	--
Chlordane	22	21
alpha-Chlordane	--	21
Dieldrin	0.13	0.46
Total DDT	--	22
Toxaphene	17	6.7
<b>Active-Use Pesticides</b>		
Atrazine	--	32
Simazine	--	61
<b>Total Petroleum Hydrocarbons</b>		
Diesel-range TPH	3,800	--
Oil-range TPH	8,700	--
<b>Dioxins/Furans</b>		
Dioxins/furans	--	0.000094

Note:

-- Not applicable

The proposed RELs, in combination with institutional controls (ICs), will achieve the long-term goal of compliance with the groundwater CULs at the CPOC.

During engineering design, a Long-Term Compliance Monitoring Plan (LTCMP) will be developed that meets the requirements of WAC 173-340-410. In this plan, cleanup action and monitoring requirements will be evaluated where soil RELs are used. Performance and confirmation monitoring will be developed during engineering design and reported in the EDR.

## 4.0 Cleanup Action Alternatives Analysis and Selection

Remedial technologies were reviewed and considered to address both soil and groundwater contamination at the Site and to meet the Remedial Action Objectives (RAOs). A preliminary technology screening was completed in the RI/FS to eliminate technologies that do not meet RAOs applicable to the Site, are not technically feasible, or do not address the types of contamination present.

This section identifies the RAOs and summarizes the retained remedial technologies for cleanup of the site-specific COCs for soil (lead, aldrin, beta-BHC, chlordane, dieldrin, total DDT, toxaphene, atrazine, alpha-chlordane, simazine, diesel-range TPH, oil-range TPH, and dioxins/furans) and groundwater (nitrate, nitrite, aldrin, beta-BHC, chlordane, dieldrin, toxaphene, 2,4-D, atrazine, MCPA, diesel-range TPH, and oil-range TPH).

### 4.1 REMEDIAL ACTION OBJECTIVES

RAOs for the Site were developed in the RI/FS to specifically identify goals that should be accomplished to meet the minimum requirements of the MTCA cleanup regulations (WAC 173-340). RAOs define the objectives that must also be met by the cleanup action to ensure substantive compliance with ARARs. RAOs for the Site include the following:

- Remediate soil and groundwater to protect human and ecological receptors from exposure to Site contamination that exceeds applicable CULs.
  - Remove unacceptable human health risk resulting from direct contact with contaminated soil or groundwater.
  - Remove unacceptable potential human health risk from consumption of drinking water.
  - Remove unacceptable future potential human health risk from indoor VI of TPH contamination.
- Comply with local, state, and federal laws (ARARs; WAC 173-340-710) and site-specific cleanup standards.
- Provide compliance monitoring to evaluate the effectiveness of the Selected Cleanup Action and to determine that the cleanup standards are met.
- Remediate contaminants in a method that does not interfere with or restrict proposed future use of the Site as an industrial parcel.

### 4.2 INITIAL SCREENING OF ALTERNATIVES

A preliminary screening of the remedial technologies was completed in the FS in accordance with WAC 173-340-350(8)(b). The objective of the screening was to remove technologies from further evaluation if they clearly did not meet the minimum requirements of the RAOs or had a disproportionate cost based on the Site conditions. Based on this preliminary screening step

completed in the FS, the following technologies were retained for further consideration as part of the proposed alternatives in the FS:

- ICs
- Monitored natural attenuation (MNA)
- Engineering controls
- Surface capping
- Source removal by excavation and landfill disposal
- In situ groundwater treatment

The above retained technologies were evaluated for each AOC and then aggregated into four Site-wide alternatives (Alternatives 1 through 4) in the FS. Additional details on all the technologies evaluated are in the FS.

### 4.3 EVALUATION OF ALTERNATIVES

The retained technologies were aggregated into four cleanup action alternatives for soil and groundwater contamination at the Site and compiled into Site-wide alternatives. Each alternative was evaluated to determine a preferred alternative (Selected Cleanup Action) and the details of the evaluation process and components are included in Sections 9.0 through 12.0 of the RI/FS. The alternatives are summarized in Table 4 and include the following elements:

#### Elements Common to All Alternatives

- MNA of groundwater and establishment of a long-term Groundwater Monitoring Plan (GMP).
- ICs for contamination remaining in place beneath permanent site features.
- Establishment of a CPOC along the downgradient (southwest) property boundary.
- Excavation to CULs in AOC 6 and around FS-01.

#### Alternative 1

- Excavate a minimum of 1 foot of soil everywhere onsite south of AOC 6 and replace with an asphalt cap including installation of a stormwater conveyance and treatment system.
- Maintain the office and storage building as a cap to underlying contaminated soil.

#### Alternative 2

- Remove soil with COC concentrations greater than commercial worker direct contact RELs for pesticides and dioxins/furans<sup>3</sup>, RELs for TPH, and CULs for other COCs (lead and pesticides without established RELs).

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<sup>3</sup> If pre-design data show that contamination in AOC 3 extends off-property, then excavation off-property will be designed to meet CULs



- Cap contaminated soil with pesticide concentrations greater than leaching RELs (portions of AOC 1 and AOC 2 and throughout AOC 4) with a geosynthetic clay liner (GCL) that will include stormwater conveyance features to direct infiltrated precipitation to respective drainage trenches, which will drain to a single collection manhole.
- In situ groundwater treatment of liquid activated carbon matrix along the downgradient edge of AOC 5.
- Maintain the office and storage building as a cap to underlying contaminated soil.

### Alternative 3

- Remove soil with COC concentrations greater than leaching RELs for pesticides, RELs for TPH and dioxins/furans and CULs for other COCs (lead and pesticides without established RELs).
- Cap contaminated soil with pesticide concentrations greater than leaching CULs in areas with exceedances of groundwater CULs (portions of AOC 1 and AOC 2) with a GCL that will include stormwater conveyance features to direct infiltrated precipitation to respective drainage trenches, which will drain to a single collection manhole.
- In situ groundwater treatment of liquid activated carbon matrix along the downgradient edge of AOC 5.
- Maintain the office and storage building as a cap to underlying contaminated soil.

### Alternative 4

- Remove soil with COC concentrations greater than CULs to the maximum extent practicable for all COCs. The office and storage building would be demolished to access contaminated soil beneath the building.

## 4.4 SELECTED CLEANUP ACTION ALTERNATIVE AND RATIONALE FOR SELECTION

Each of the four alternatives were screened using mandatory MTCA threshold requirements provided in WAC 173-340-360(2)(a) and other MTCA requirements for evaluation described in WAC 173-340-360(2)(b). These four alternatives were also evaluated according to the MTCA Disproportionate Cost Analysis (DCA) procedures (WAC 173-340-360(3)(e)) to compare the costs and benefits of the cleanup alternatives and identify the alternative that is permanent to the maximum extent practicable.

Following consideration of the FS and technical consultations, Ecology has determined that Alternative 3 is the Selected Cleanup Action for the Site. Alternative 3 provides the greatest environmental benefit for the associated cost based on the DCA presented in the FS. The Selected Cleanup Action for the remediation of soil and groundwater at the Site meets Site RAOs (summarized in Section 4.1) and provides the greatest level of environmental benefit

per dollar spent, making it the most permanent cleanup action to the maximum extent practicable. The Selected Cleanup Action also meets the MTCA threshold requirements described in Section 4.5.

The Selected Cleanup Action includes the following activities that will be applied to AOCs at the Site, as shown on Figure 8. The key cleanup elements are:

- Excavation and off-site disposal of soil in AOCs 1 through 5 with COC concentrations greater than the following:
  - Leaching-based RELs for pesticides
  - RELs for TPH and dioxins/furans<sup>4</sup>
  - CULs for lead and pesticides without an established REL
- Excavation and off-site disposal of soil in AOC 6 and the area around FS-01 to CULs
- Installation of a GCL and drainage in portions of AOC 1 and AOC 2 where soil remains in place at depth with concentrations greater than the leaching CUL
- In situ groundwater treatment by injecting liquid-activated carbon along the downgradient edge of AOC 5 to immobilize contaminants (pesticides and TPH) in groundwater migrating from beneath the office and storage building
- Capping contaminated soil with COC concentrations greater than the RELs to protect worker direct contact exposure, including pesticide and TPH contamination beneath the office and storage building in AOC 5 and deeper TPH contamination beneath the gravel cap in AOC 4
- ICs prohibiting use of Site groundwater as drinking water or for domestic use, irrigation, or industrial use and maintaining the cap
- MNA for groundwater recovery and implementation of a GMP

#### 4.5 MINIMUM REQUIREMENTS AND COMPLIANCE WITH MTCA

The FS included an evaluation of compliance with the minimum requirements set forth in WAC 173-340-360(2)(a) through WAC 173-340-360(2)(f). The Selected Cleanup Action, Alternative 3, is a comprehensive final remedy that complies with all the applicable cleanup action selection requirements under MTCA. Specifically, the Selected Cleanup Action meets the minimum requirements under WAC 173-340-360(2)(a) as follows:

- **Protects Human Health and the Environment.** The Selected Cleanup Action will protect human health and the environment in both the short and long term. The cleanup action will permanently reduce the identified risks presently posed to human health and the environment through a combination of source area removal, in situ groundwater treatment, capping, ICs, and natural attenuation.

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<sup>4</sup> If pre-design data show that contamination in AOC 3 extends off-property, then excavation off-property will be designed to meet CULs.

- **Complies with Cleanup Standards.** The Selected Cleanup Action is expected to comply with the cleanup standards for soil at the POCs and for groundwater at the CPOCs within a reasonable time frame.
- **Complies with Applicable State and Federal Laws.** The Selected Cleanup Action is expected to comply with all state and federal laws and regulations.
- **Provides Compliance Monitoring.** The Selected Cleanup Action will include compliance monitoring for soil and groundwater to assess the effectiveness and permanence of each element of the cleanup action.

The Selected Cleanup Action also meets the other requirements under WAC 173-340-360(2)(b), as follows:

- **Uses Permanent Solutions to the Maximum Extent Practicable.** The Selected Cleanup Action uses excavation, capping, installation of a GCL, and in situ groundwater treatment, which will remove, treat, or immobilize a large portion of the existing contaminant mass in the subsurface and effectively protect groundwater and prevent contaminant migration off-property.
- **Provides for Reasonable Restoration Time Frame.** The restoration time frame for groundwater at the CPOC is expected to be 10 years from completion of construction.
  - RELs, and to an extent CULs, for soil COCs are expected to be met following completion of soil excavation, which is expected to take approximately 2 months from the start of construction.
- **Considers Public Concerns.** This draft document is being presented to the public and stakeholders for public review and comment. The RI/FS report is also available to the public. Any comments received during the public comment period will be reviewed by Ecology prior to issuance of a final CAP and addressed in a responsiveness summary. The final CAP will incorporate modifications, as needed, based on public comment.

Because this cleanup action relies on a CPOC due to the impracticality of attaining CULs throughout the Site, it is not considered a permanent groundwater cleanup action under WAC 173-340-360(2)(c)(i). However, the Selected Cleanup Action does meet the following requirements for nonpermanent groundwater cleanup actions under WAC 173-340-360(2)(c)(ii):

- **Treatment or Removal of the Source.** Source area soil will be treated and removed in all AOCs, and the installation of a GCL and drainage in portions of AOC 1 and AOC 2 will help protect groundwater from any remaining soil sources.

## 5.0 Description of Selected Cleanup Action

The cleanup action proposed by Ecology for implementation at the Site is shown on Figure 8 and is a combination of multiple components, which are described in detail below. More specific plans will be developed in the EDR, which will be prepared after conducting a PDI and prior to implementation of the cleanup action.

### 5.1 CLEANUP ACTION COMPONENTS

The cleanup action is comprised of soil excavation with off-site disposal, installation of a GCL, in situ groundwater treatment, MNA for groundwater, and ICs, as described below.

#### 5.1.1 Soil Excavation with Off-Site Disposal

Contaminated soil will be removed from all of the AOCs and an area around FS-01 (Figure 8), using standard excavation methods. Excavated soil will be transported to a Subtitle C or a permitted Subtitle D landfill for disposal, as appropriate, based on the soil data and the criteria in WAC 173-303. Excavated areas will be backfilled with clean imported fill and restored with a gravel surface. Prior to final surfacing, a GCL will be installed beneath AOC 1 and AOC 2 (see Section 5.1.2). Removal of contaminated soil to proposed CULs or RELs is anticipated to bring groundwater into compliance with proposed CULs at the proposed CPOC within a 10 year restoration time frame. Prior to initiating excavation, monitoring wells located within the excavation/shoring footprint will be decommissioned per WAC 173-160-460 (Figure 8). Wells to decommission may include MW-4, MW-5, MW-7, MW-8, MW-11, MW-12, and MW-13. The specific wells to be abandoned and potentially replaced will be finalized in consultation with Ecology after the PDI activities and detailed in the EDR.

Specific details regarding excavation is described below. Actual excavation limits may differ from the depths or lateral dimensions specified to remove soils with COC concentrations greater than applicable CULs or RELs, as determined by future compliance sampling. The current scope of the Selected Cleanup Action is based on the data presented in the RI/FS report (Floyd|Snider 2021). Several areas will include additional data collection as part of the PDI, as indicated in the text italicized below.

- **AOC 1:** Soil will be excavated in three zones to remove pesticides, TPH, and dioxins/furans to the applicable RELs or CULs. The western zone will be excavated to 5 feet bgs, the center zone will be excavated to 8 feet bgs, and the eastern zone will be excavated to 4 feet bgs. Dewatering and shoring or lay back of side slopes may be necessary to complete the excavation. The total estimated volume of soil removal from AOC 1 is 850 cubic yards (CY). *Additional pre-design data collection will likely be required to define the northern AOC 1 boundary between AOC 1 and the machine shop.*
- **AOC 2:** Soil from this area will be excavated from two zones to remove pesticides at concentrations greater than the applicable RELs or CULs. A small footprint in the southern portion of AOC 2 will be excavated to 6 feet bgs, and the remaining area will

be excavated to 4 feet bgs. Approximately 530 CY of soil will be removed in total. Dewatering and shoring are not anticipated to be necessary to complete the excavation. *Additional pre-design data collection will likely be required to define the northern and southern edges of AOC 2.*

- **AOC 3:** Soil will be excavated to remove pesticides and dioxins/furans at concentrations greater than the applicable RELs or CULs to a depth of 2 feet bgs. The total estimated volume of soil removal from AOC 3 is 220 CY. Dewatering and shoring are not anticipated to be necessary to complete the excavation. *Additional pre-design data collection will likely be required to define the southwestern edge of AOC 3 where shallow dioxins/furans have not been fully delineated.*
- **AOC 4:** Excavation in AOC 4 will remove soil with pesticides, TPH, and lead at concentrations greater than the applicable RELs and CULs to a depth of 5 feet bgs corresponding to a total estimated volume of 860 CY of soil removed. Dewatering and shoring are not anticipated to be necessary to complete the excavation. *Additional pre-design data collection will likely be required to define the western AOC 4 boundary.*
- **AOC 5:** Excavation in AOC 5 will remove TPH and pesticides at concentrations greater than the applicable RELs and CULs to a depth of 5 feet bgs. The total estimated volume of soil removal from AOC 5 is 60 CY. Dewatering and shoring are not anticipated to be necessary to complete the excavation.
- **AOC 6:** Surface exceedances of pesticide CULs will be removed from AOC 6 to a depth of 2.5 feet bgs. The total estimated volume of soil removal from AOC 6 is 50 CY. Dewatering and shoring are not anticipated to be necessary to complete the excavation.
- **FS-01:** Approximately 10 CY of surface soil will be excavated around the boring location FS-01 to remove TPH at concentrations greater than the CUL.

### 5.1.2 Geosynthetic Clay Liner

A GCL would be installed in portions of and around AOC 1 and AOC 2 (15,650 square feet) to provide additional protection of groundwater in this area with the greatest concentrations of COCs in groundwater. The intent of the GCL is to minimize infiltration into groundwater, which will control plume migration and provide an added source control in high-traffic, ongoing bulk fertilizer operational areas. The GCL would be extended beyond the area of known contamination as an added protective measure. The surface layer will be excavated in areas where the GCL will be placed outside excavation footprints to an approximate depth of 1.5 feet bgs. The GCL will be installed with multiple layers of gravel and geosynthetic material to provide structure and security against accidental breaches. A cross-section of the GCL installation is shown on Figure 8. Composite gravel and liner recommendations were developed based on experience with similar projects and conversations with GCL manufacturers.

Prior to installing the GCL, a 4-inch layer of sand would be placed and compacted to provide a level base. The GCL would be installed over the sand in the footprint shown on Figure 8. The GCL

can be purchased as premade rolled mats, which can be efficiently unrolled over the area and hydrated to expand in place. The GCL will be covered with 4 inches of crushed surfacing base course (CSBC), a 10-ounce high-visibility (orange-colored) geosynthetic fabric, and a second 4-inch layer of CSBC to provide structural integrity to the GCL. A 6-ounce high-visibility indicator layer will be placed over the CSBC and is intended as a visual cue to warn operators before more critical underlying fabrics are damaged. The final and top/surface layer will consist of a minimum of 4 inches of CSBC to restore the surface grade elevation. Periodic repairs to the gravel surface will be necessary as part of the long-term operations, maintenance, and monitoring. Specific inspection and maintenance requirements will be included in a Soil Management Plan (SMP), which will be included in the LTCMP.

The GCL will be constructed with a gentle slope to direct infiltrated water to a drainage trench along the eastern property boundary. This trench would have a perforated underdrain within the GCL footprint and would be filled with gravel to convey surface runoff and shallow subsurface flow from above the GCL. Outside of the GCL footprint, the conveyance lines would be solid conveyance pipe to prevent exfiltration of collected surface water to other areas of the Site.

Collected infiltrated water would be conveyed to a single collection manhole in the southeastern corner of the facility to provide pretreatment of water by encouraging sedimentation. Following pre-treatment, water will infiltrate into a swale that will be created at the existing culvert and surrounding riprap area in the southeastern corner of the Site, shown on Figure 7. Final location will be determined as a part of the final design. Overflow water may go toward an existing culvert at the adjacent property line.

### **5.1.3 In Situ Groundwater Treatment**

In situ groundwater treatment will be conducted along the downgradient western edge of AOC 5 to address TPH and pesticides at concentrations greater than respective CULs in groundwater migrating from beneath the office and storage building. A proprietary mixture of liquid activated carbon, such as PlumeStop, will be injected under low pressure into the subsurface using a direct push drill rig to provide even distribution within the target groundwater treatment zone (which is expected to be 5 to 15 feet bgs). The colloidal matrix will coat soil particles to increase the adsorption of groundwater contaminants and act as a passive treatment zone to immobilize contaminants and passively treat groundwater as it flows downgradient.

### **5.1.4 Groundwater Monitoring and Proposed Conditional Point of Compliance**

MNA for groundwater is a component of the Selected Cleanup Action after the removal of the soil source contamination. As part of MNA, groundwater monitoring will be required after cleanup action implementation throughout the groundwater plume to document that natural attenuation is occurring and to evaluate groundwater concentration trends. The GMP will describe long-term post-construction groundwater monitoring and adaptive management to ensure the long-term protectiveness of the Selected Cleanup Action, and the GMP will detail the process for the MNA evaluation. In addition, a monitoring well network will be established as part of the GMP that will include locations for performance monitoring for the components of

the cleanup action (e.g., excavation, in situ groundwater treatment, and MNA). Selected monitoring wells located in source areas (e.g., MW-4) may be replaced post-cleanup to evaluate performance of the cleanup action. Additional wells may be installed for performance and compliance monitoring, as warranted based on post-cleanup conditions and in consultation with Ecology. Groundwater compliance will be determined based on a comparison of groundwater data to proposed CULs at the proposed CPOC.

A CPOC is recommended for this Site because of widespread pesticide and nitrate/nitrite contamination; multiple COCs in groundwater exceed their respective CULs by an order of magnitude or more and are not technically feasible to naturally attenuate within a reasonable restoration time frame. The maximum compliance result of dieldrin in groundwater was 0.88 µg/L at MW-04, which is 160 times the proposed groundwater CUL of 0.0055 µg/L. Nitrate, which is a COC only in groundwater had a maximum compliance result of 220,000 µg/L at MW-06, which is more than 20 times the proposed CUL of 10,000 µg/L. These CULs are based on protection of groundwater as drinking water; the use of groundwater as drinking water will be prohibited on the property by the proposed ICs.

Consistent with WAC 173-340-720(8)(c), the proposed CPOC for groundwater is as close as practicable to the source of contamination, along the western edge of the property (refer to Figure 8). Compliance at the CPOC would be measured by direct sampling of groundwater in monitoring wells that are along this boundary. Existing monitoring wells MW-2, MW-3, MW-10, MW-12, and MW-14 provide the basis for the proposed CPOC. Additional monitoring wells may be added to the monitoring well network, as needed and in consultation with Ecology, to demonstrate compliance. The post-cleanup action monitoring well network will be defined in the GMP, which will be prepared as part of the LTCMP. Well decommissioning and replacement activities will be proposed in the EDR after the PDI activities.

### **5.1.5 Institutional Controls**

ICs, in the form of an environmental covenant, will be required for the property and will require a deed restriction that restricts future uses of the property. ICs will prohibit the use of groundwater as drinking water at the property. ICs will also prohibit the use of groundwater for domestic use, irrigation, or industrial use. ICs will also require implementation of an Ecology-approved SMP specifying soil management procedures for future subsurface work in areas where contamination at concentrations greater than CULs is present. The SMP, which will be prepared as part of the LTCMP, will define specific source areas and depths where soil contamination that remains in place at concentrations greater than proposed CULs would limit land use. Any activities that would be proposed within these restricted areas will require compliance with the SMP, which will outline health and safety protocols along with soil handling, management procedures, and notification requirements. The SMP will include measures for routine inspection and maintenance of remedial elements such as the GCL and monitoring wells. These procedures will be applicable to any future development or maintenance that involves ground-disturbing activities. The SMP will also outline procedures if existing structures are removed in the future that may have potential subsurface contamination at concentrations greater than CULs (refer to

Section 5.7 for potential contingency actions). Where an environmental covenant is required, Ecology will, in consultation with the property owner, prepare the environmental covenant consistent with WAC 173-340-440, RCW 64.70, and Attachment A of Toxics Cleanup Program Procedure 440A.

## 5.2 APPLICABLE OR RELEVANT AND APPROPRIATE REQUIREMENTS

In the RI/FS, an evaluation of the ARARs was completed for each cleanup alternative. Compliance with ARARs is a minimum requirement for cleanup actions. ARARs are often categorized as location-specific, action-specific, or chemical-specific, as described below. The ARARs for the Selected Cleanup Action are summarized in Table 5.

- **Location-Specific ARARs** are requirements that are applicable to the specific area where the Site is located and can restrict the performance of activities, including cleanup actions, solely because they occur in specific locations.
- **Action-Specific ARARs** are requirements that are applicable to certain types of activities that occur, or technologies that are used during the implementation of cleanup actions. Waste disposal regulations are an example of an action-specific ARAR.
- **Chemical-Specific ARARs** are applicable to the types of contaminants present at the Site. The cleanup of contaminated media at the Site must meet the proposed CULs developed under MTCA; these CULs are considered chemical-specific ARARs.

The Selected Cleanup Action complies with all applicable ARARs. Location-specific ARARs will be met through compliance with all applicable state and federal regulations based on the physical location of the Site. Action-specific ARARs will be met through implementation of construction activities in compliance with all applicable construction-related requirements such as disposal for excavated soil. Chemical-specific ARARs will be met through compliance with proposed CULs and RELs.

The cleanup actions will be conducted under a Consent Decree (CD) or AO with Ecology and is exempt from the state and local ARAR procedural requirements, such as permitting and approval requirements. However, all applicable permits required to conduct the cleanup actions will be determined and obtained following the PDI activities and submittal of the EDR.

## 5.3 RESTORATION TIME FRAME

RELs, and to an extent CULs, for soil COCs are expected to be met following completion of soil excavation, which is expected to take approximately 2 months from the start of construction. ICs and an SMP will be implemented to manage future exposures. The restoration time frame for groundwater at the CPOC is expected to be 10 years from completion of construction.

Performance monitoring will consist of semiannual groundwater monitoring. This monitoring will assess COC concentrations for up to 10 years after remedial activities have been completed. The final confirmation monitoring will be performed on a quarterly basis for one year or four quarters. The trigger to initiate quarterly compliance sampling will begin when



the trends in groundwater contaminant concentrations are stable or decreasing and the contaminant concentrations reach the applicable cleanup levels for the COCs at the points of compliance. Specific details for long-term groundwater monitoring will be included in a GMP. The GMP will describe post-construction groundwater monitoring and adaptive management to ensure the long-term protectiveness of the remedy and will be part of a LTCMP for the Site, which will be prepared as part of engineering design.

#### **5.4 PROPERTY OWNERSHIP AND ACCESS**

The property is currently owned by Ad Gro and has been leased to McGregor since 2015. McGregor uses the property to conduct its agricultural product distribution business and they are responsible for all current operations at the facility. Cleanup action implementation will need to be closely coordinated with McGregor (or with the current tenant if McGregor terminates their lease) to minimize disruption to their operations.

The Selected Cleanup Action would involve pre-design sample collection to define the southern boundary of AOC 3 and, depending on the results, potential excavation on the southern adjacent Wales property currently occupied by Habitat for Humanity. An access agreement would need to be obtained from the property owner prior to any work on that property.

In addition, there is a BNSF rail spur located along the eastern property boundary. Cleanup along the rail spur will either require offset to accommodate a standard buffer from the rail for protection, or a permit will need to be obtained from BNSF to conduct cleanup actions immediately adjacent to the rail.

#### **5.5 HAZARDOUS SUBSTANCES REMAINING FOLLOWING THE CLEANUP ACTION**

The majority of soil containing COCs will be excavated except for areas beneath the cap, which include the office and storage building in AOC 5, which covers TPH- and pesticide-contaminated soil, and the new gravel surface in AOC 4, which covers deeper TPH-contaminated soil. The SMP will document the areas where soil COCs remain in place above CUL and will be part of a LTCMP for the Site.

The proposed technologies will serve to remove source material and block infiltration of stormwater in areas with the greatest concentrations of these COCs in groundwater; however, these substances will remain in groundwater until natural attenuation occurs.

#### **5.6 COMPLIANCE MONITORING**

Compliance monitoring to ensure the protectiveness of the Selected Cleanup Action will be implemented in accordance with WAC 173-340-410, Compliance Monitoring Requirements. Detailed monitoring elements for construction will be described in a Construction Compliance Monitoring Plan (CCMP), which will be prepared as part of remedial design. The CCMP will include a Health and Safety Plan (HASP), Sampling and Analysis Plan, and Quality Assurance Project Plan for monitoring and sample collection during remedy implementation. The CCMP will be included as an appendix to the EDR, which will describe the

approach and criteria for the engineering design of soil and groundwater cleanup actions at the Site. A post-cleanup LTCMP will describe required long-term operations, maintenance, and monitoring after implementation of the cleanup action to ensure the long-term protectiveness of the cleanup action, and it will include a GMP, SMP, and an updated HASP.

The objectives of compliance monitoring, as stated in WAC 173-340-410, are as follows:

- **Protection Monitoring** is used to evaluate whether human health and the environment are adequately protected during construction of the Selected Cleanup Action and post-construction monitoring. Protection monitoring requirements will be described in Site-specific HASPs that address worker activities during remedy construction and post-construction monitoring.
- **Performance Monitoring** is used to confirm that the Selected Cleanup Action has attained cleanup standards and other performance standards. Performance monitoring will be conducted throughout each phase of construction to document that cleanup goals are being achieved. For example, selected monitoring wells located in source areas (e.g., MW-4) may be replaced post-remedy to evaluate remedy performance.
- **Confirmational Monitoring** is used to confirm the long-term effectiveness of the cleanup action. Confirmation monitoring will include long-term monitoring to document that CULs continue to be attained.

## 5.7 CONTINGENCY ACTIONS

Contingency actions may be required if additional risk reduction measures are needed after cleanup action implementation. Specific details regarding contingency actions will be outlined in the EDR, and contingency action triggers will be updated, as needed, after cleanup action implementation in the LTCMP. The contingency measures for the Site are anticipated to include the following:

- Source control efforts to control potential ongoing nitrate and nitrite contributions to groundwater associated with current fertilizer handling operations. There are no data that quantify the ongoing contribution from current operations; therefore, it will be important to assess the potential for ongoing contributions post-cleanup. Following installation of the GCL, surface water that infiltrates to the GCL will be conveyed to a collection manhole at the southeastern property line. Water that is conveyed to this manhole can be sampled to determine if an ongoing nitrate/nitrite source exists. If it is determined that fertilizer handling onsite is an ongoing source of nitrate/nitrite in groundwater and post-cleanup groundwater concentrations of nitrate/nitrite are not adequately improving, as measured at the proposed CPOC, then a contingency source control evaluation will be done to propose additional best management practices for the Site.

- Pesticide and TPH contamination are present in soil beneath the office and storage building. If future property development includes removal of this building, then excavation may be necessary to remove contaminated soil beneath this structure. Specific details regarding this contingency will be included in the SMP.
- The southern boundary of AOC 5 and the western boundary of AOC 2 have not been fully delineated due to the presence of the AST containment area. If future property development includes removal of the AST containment area, then additional investigation may be necessary to determine if contamination is present beneath this structure, which could warrant excavation. Investigation and evaluation details regarding this contingency will be included in the SMP.

## 5.8 INSTITUTIONAL/ENGINEERING CONTROLS

Institutional or engineering controls are a necessary component of the remedial design. Specific ICs for the Site would include restrictions on land use, resource use (i.e., prohibit the use of groundwater within Site boundaries as drinking water, domestic water, irrigation, or industrial uses), and provisions for maintaining the GCL as a barrier to subsurface soil contamination, if warranted. In addition, as stated in Section 5.1.5, an SMP would be prepared as part of the ICs to identify where contaminated soil remains onsite. Any activities that would be proposed within these restricted areas would require compliance with the SMP, which would outline health and safety protocols along with soil handling and management procedures. The SMP will also provide details for routine inspection and maintenance of remedial elements (such as the cap, the drainage system, and monitoring wells) and will be part of the LTCMP for the Site.

## 5.9 SCHEDULE FOR IMPLEMENTATION

Table 6 below presents the anticipated schedule for the remaining project design milestones, project implementation, completion reporting, and long-term groundwater monitoring. Cleanup actions conducted under a CD or AO with Ecology are exempt from the state and local ARAR procedural requirements; however, a SEPA checklist will be developed and submitted for public comments after the public comment period and finalization of the CAP. Any additional permits that may be required, such as Site Development Permit or Critical Area Determination Waiver, will be developed and submitted during the preparation of the EDR. The following estimated durations are provided for discussion and planning purposes only:

**Table 6**  
**Cleanup Action Implementation Schedule**

<b>Implementation Step</b>	<b>Estimated Duration</b>
Submit Public Review Draft CAP to Ecology	Within 45 calendar days of receipt of Ecology's Comments on the Agency Review Draft CAP
Public Comment Period for Draft CAP	30 days

<b>Implementation Step</b>	<b>Estimated Duration</b>
Finalize and Submit Final CAP	Within 45 calendar days of receipt of Ecology's comments on the Public Review Draft CAP
Draft PDI Work Plan	Within 90 Days of effective date of CD or AO
Finalize PDI Work Plan	30 days after receipt of Ecology's final comments
Implement PDI	Initiate within 45 days of Ecology approval of final PDI Work Plan
Preparation of a Draft EDR and PDI Results	Within 180 days of effective date of CD or AO
Finalize EDR and preparation of all applicable permits	90 days after receipt of Ecology final comments
Remedial Action Construction; assume duration of 3 to 4 months, summer months only	Initiate within 120 days of Ecology approval of the EDR or after permit acquisition and contractor notice to proceed
Submit Draft Remedial Action Completion Report (RACR) and LTCMP	180 days following construction completion
Submit Final RACR and LTCMP	45 days after receipt of Ecology's final comments
Implement Final LTCMP	In accordance with schedules established in the Final LTCMP; groundwater compliance monitoring to begin no later than 1 year after construction completion

## 6.0 References

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- City of Ellensburg. 2017. *Comprehensive Plan*. Ordinance Number 4785. 18 December.
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- Kittitas County Tax Assessor (Kittitas County). 2015. Historical Property Record Cards. File No. 7880. Files accessed December.
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- Washington State Department of Ecology (Ecology). 2008. *Site Hazard Assessment for Smith-Kem Facility, 200 Railroad Avenue, Ellensburg, WA*. Site visit conducted by Richard Bassett, Ecology. 13 August.
- \_\_\_\_\_. 2013. *RE: Determination of Potentially Liable Person Status*. Letter from Valerie Bound, Ecology Toxics Cleanup Program, to Andy Erickson, Smith-Kem Ellensburg, Inc. & Ad Gro, LLC. 10 May.
- \_\_\_\_\_. 2016. Agreed Order No. DE 12908. In the Matter of Remedial Action by: Shell Oil Products US, Smith-Kem Ellensburg, Inc. 29 February.

**Smith-Kem Site**  
**Cleanup Action Plan**

**Tables**

**Table 4  
Cleanup Action Alternatives Summary**

Cleanup Action Area	Alternative 1	Alternative 2	Alternative 3	Alternative 4
<b>AOC 1</b>	<b>Surface Soil Excavation and Asphalt Cap</b> (210 CY soil; 5,060 SF asphalt)	<b>Excavate to Direct Contact RELs</b> (690 CY, 5–8 ft bgs) <b>Install GCL</b> (90 CY soil; 4,550 SF GCL)	<b>Excavate to Leaching RELs</b> (850 CY, 4–8 ft bgs) <b>Install GCL</b> (50 CY soil; 4,550 SF GCL)	<b>Excavate to CULs</b> (1,500 CY, 8 ft bgs)
<b>AOC 2</b>	<b>Surface Soil Excavation and Asphalt Cap</b> (170 CY soil; 4,150 SF asphalt)	<b>Excavate to Direct Contact RELs</b> (500 CY, 4 ft bgs) <b>Install GCL</b> (50 CY soil; 4,150 SF GCL)	<b>Excavate to Leaching RELs</b> (530 CY, 4–6 ft bgs) <b>Install GCL</b> (50 CY soil; 4,150 SF GCL)	<b>Excavate to CULs</b> (930 CY, 6 ft bgs)
<b>AOC 3</b>	<b>Surface Soil Excavation and Asphalt Cap</b> (120 CY soil; 2,920 SF asphalt)	<b>Excavate to Direct Contact RELs</b> (220 CY, 2 ft bgs)	<b>Excavate to Leaching RELs</b> (220 CY, 2 ft bgs)	<b>Excavate to CULs</b> (540 CY, 4–6 ft bgs)
<b>AOC 4</b>	<b>Surface Soil Excavation and Asphalt Cap</b> (190 CY soil; 4,600 SF asphalt)	<b>Excavate to Direct Contact RELs</b> (250 CY, 5 ft bgs) <b>Install GCL Cap</b> (190 CY soil; 4,600 SF GCL)	<b>Excavate to Leaching RELs</b> (860 CY, 5 ft bgs) <b>Gravel Cap</b> (4,600 SF)	<b>Excavate to CULs</b> (1,070 CY, 5–9 ft bgs)
<b>AOC 5</b>	<b>Surface Soil Excavation and Asphalt Cap</b> (70 CY soil; 1,620 SF asphalt)	<b>Excavate to Direct Contact RELs</b> (60 CY, 5 ft bgs) <b>In Situ Groundwater Treatment</b>	<b>Excavate to Leaching RELs</b> (60 CY, 5 ft bgs) <b>In Situ Groundwater Treatment</b>	<b>Excavate to CULs</b> (1,270 CY, 7–12 ft bgs)
<b>AOC 6</b>	<b>Excavate to CULs</b> (50 CY, 2 ft bgs)	<b>Excavate to CULs</b> (50 CY, 2 ft bgs)	<b>Excavate to CULs</b> (50 CY, 2 ft bgs)	<b>Excavate to CULs</b> (50 CY, 2 ft bgs)
<b>FS-01</b>	<b>Excavate to CULs</b> (10 CY, 1 ft bgs)	<b>Excavate to CULs</b> (10 CY, 1 ft bgs)	<b>Excavate to CULs</b> (10 CY, 1 ft bgs)	<b>Excavate to CULs</b> (10 CY, 1 ft bgs)
<b>Outside AOCs</b>	<b>Install Asphalt Cap</b> (990 CY soil; 29,300 SF asphalt)	<b>Install GCL</b> (500 CY soil; 9,000 SF GCL)	<b>Install GCL</b> (390 CY soil; 6,950 SF GCL)	<b>None</b>
<b>Restoration Time Frame</b>	<i>20–25 years</i>	<i>15 years</i>	<i>10 years</i>	<i>5 years</i>
<b>Cost</b>	<b>\$2,508,000</b>	<b>\$2,087,000</b>	<b>\$2,107,000</b>	<b>\$3,173,000</b>
<b>Total Soil Excavation (CY)</b>	1,810	2,610	3,070	5,370

Abbreviations:

AOC Area of concern  
bgs Below ground surface  
CUL Cleanup level  
CY Cubic yard

ft Feet  
GCL Geosynthetic Clay Liner  
REL Remediation level  
SF Square feet

**Table 5**  
**Applicable or Relevant and Appropriate Requirements for the Selected Cleanup Action**

Standard, Requirement, or Limitation <sup>(1)</sup>	Description
<b>Location-Specific ARARs <sup>(2)</sup></b>	
City of Ellensburg Critical Areas Regulations (EMC Chapter 15.620 [Wetlands] and EMC Chapter 15.650 [Fish and Wildlife Habitat Conservation Areas])	These chapters establish regulations pertaining to development within or adjacent to designated critical areas. The subject property is located approximately 125 feet west of Wilson Creek, 220 feet east of Mercer Creek, and 125 feet north of a freshwater forested/shrub wetland. The City of Ellensburg regulates all development activities within 300 feet of stream and wetland resources.
National Historic Preservation Act (16 USC 470 et seq.; 36 CFR parts 60, 63, and 800)	This program sets forth a national policy of historic preservation and provides a process that must be followed to ensure that impacts of actions on archaeological, historic, and other cultural resources are protected.
<b>Action-Specific ARARs <sup>(3)</sup></b>	
State Environmental Policy Act (RCW 43.21C, WAC 197-11)	Establishes the state's policy for protection and preservation of the natural environment. Applies to cleanup actions conducted under MTCA; Ecology will be the lead agency for this effort.
Resource Conservation and Recovery Act (42 USC 6921-6949a; 40 CFR Part 268, Subtitles C and D)	Establishes requirements for the identification, handling, and disposal of hazardous and non-hazardous waste.
Dangerous Waste Regulations (RCW 70.105; WAC 173-303)	Establishes regulations that are the state equivalent of RCRA requirements for determining whether a solid waste is a state dangerous waste. This regulation also provides requirements for the management of dangerous wastes.
Solid Waste Disposal Act (42 USC Sec. 6901-6992; 40 CFR 257-258) Federal Land Disposal Requirements (40 CFR 268)	Protects health and the environment and promotes conservation of valuable material and energy resources. The Solid Waste Disposal Act establishes a framework for regulation of solid waste disposal. Federal land disposal requirements promulgated under the authority of the Solid Waste Disposal Act set minimum safety requirements for landfills including limitations on storage and land disposal for hazardous substances.
Department of Transportation Hazardous Materials Regulations (49 CFR 172)	Regulates the safe and secure transportation of hazardous materials, including documentation and handling requirements for shipping.
Washington Minimum Functional Standards for Solid Waste Handling (WAC 173-304)	Sets minimum functional standards for the proper handling of all solid waste materials originating from residences, commercial, agricultural, and industrial operations, as well as other sources.
Washington Solid Waste Handling Standards (RCW 70.95 and WAC 173-350)	Establishes minimum standards for handling and disposal of solid waste. Solid waste includes wastes that are likely to be generated as a result of site remediation, including contaminated soils, construction and demolition wastes, and garbage.
Washington Water Pollution Control Law (RCW 90.48; WAC 173-216, WAC 173-220) National Pollution Discharge Elimination System (CWA Part 402)	Washington has been delegated authority to issue NPDES permits. CWA Section 301, 302, and 303 require states to adopt water quality standards and implement a NPDES permitting process. The Washington Water Pollution Control Law and regulations address this requirement.
City of Ellensburg Noise Ordinance (EMC Chapter 5.60)	Project construction shall comply with the noise limitations set forth in City of Ellensburg's noise ordinance.
Noise Control Act of 1974 (RCW 70.107, WAC 173-60)	Establishes maximum noise levels on a state level; the local noise ordinance regulations prevail given that they are more restrictive than the regulations set forth for the state.
Washington State Underground Injection Control Program (WAC 173-218)	Washington is authorized under CWA Sections 144 through 147 to administer a statewide Underground Injection Control program to protect groundwater by regulating the discharge of fluid from injection wells including temporary injection points.
Washington Minimum Standards for Construction and Maintenance of Wells (RCW 18.104, WAC 173-160 and 173-162)	Requirements are applicable to construction of monitoring wells and soil borings, and establishes training standards for well contractors and operators
City of Ellensburg Site Development Permit (EMC 15.250.020)	City of Ellensburg Site Development Permits authorize the following activities: paving, grading, clearing, filling, tree removal, on-site utility installation, stormwater facility installation [...]. All excavation, paving, and utility and stormwater facility installation work will require substantive compliance with the Site Development Permit requirements and any supporting technical memorandums (e.g., City of Ellensburg Storm Standards for design and installation of stormwater facilities).
Federal, State, and Local Air Quality Protection Programs State Implementation of Ambient Air Quality Standards NWAPA Ambient and Emission Standards Regional Standards for Fugitive Dust Emissions Toxic Air Pollutants	Regulations promulgated under the federal Clean Air Act (42 USC 7401) and the Washington State Clean Air Act (RCW 70.94) govern the release of airborne contaminants from point and non-point sources. State and local air pollution control authorities such as the Ecology Central Regional Office and City of Ellensburg have also set forth regulations for implementing these air quality requirements. These requirements may be applicable to the Site for the purposes of demolition or dust control.



**Table 5**  
**Applicable or Relevant and Appropriate Requirements for the Selected Cleanup Action**

Standard, Requirement, or Limitation <sup>(1)</sup>	Description
<b>Chemical-Specific ARARs <sup>(4)</sup></b>	
Model Toxics Control Act (WAC 173-340)	Establishes Washington administrative processes and standards to identify, investigate, and clean up facilities where hazardous substances are located.
Drinking Water Standards—State MCLs (WAC 246-290-310)	Establishes standards for contaminant levels in drinking water for water system purveyors.
Water Quality Standards for Groundwaters of the State of Washington (WAC 173-200)	Implements the Water Pollution Control Act and the Water Resources Act of 1971 (90.54 RCW).

## Notes:

- 1 Projects conducted under an Agreed Order are exempt from the procedural requirements of most state and local permits (RCW 70.105D.090); however, the remedial actions must still comply with the substantive requirements of the exempt permits.
- 2 Location-specific ARARs are requirements that are applicable to the specific area where the Site is located, and can restrict the performance of activities, including cleanup actions, solely because they occur in specific locations.
- 3 Action-specific ARARs are requirements that are applicable to certain types of activities that occur or technologies that are used during the implementation of cleanup actions.
- 4 Chemical-specific ARARs are applicable to the types of contaminants present at the Site. The cleanup of contaminated media at the Site must meet the CULs developed under MTCA; these CULs are considered chemical-specific ARARs.

## Abbreviations:

ARAR Applicable or relevant and appropriate requirement  
 CFR Code of Federal Regulations  
 CUL Cleanup level  
 CWA Clean Water Act  
 Ecology Washington State Department of Ecology  
 EMC Ellensburg Municipal Code  
 MCL Maximum Contaminant Level  
 MTCA Model Toxics Control Act  
 NPDES National Pollutant Discharge Elimination System  
 NWAPA Northwest Air Pollution Authority  
 RCRA Resource Conservation and Recovery Act  
 RCW Revised Code of Washington  
 USC U.S. Code  
 WAC Washington Administrative Code

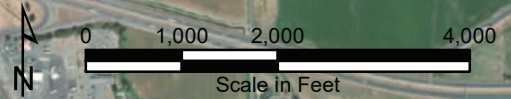
**Smith-Kem Site**  
**Cleanup Action Plan**

**Figures**



Notes:

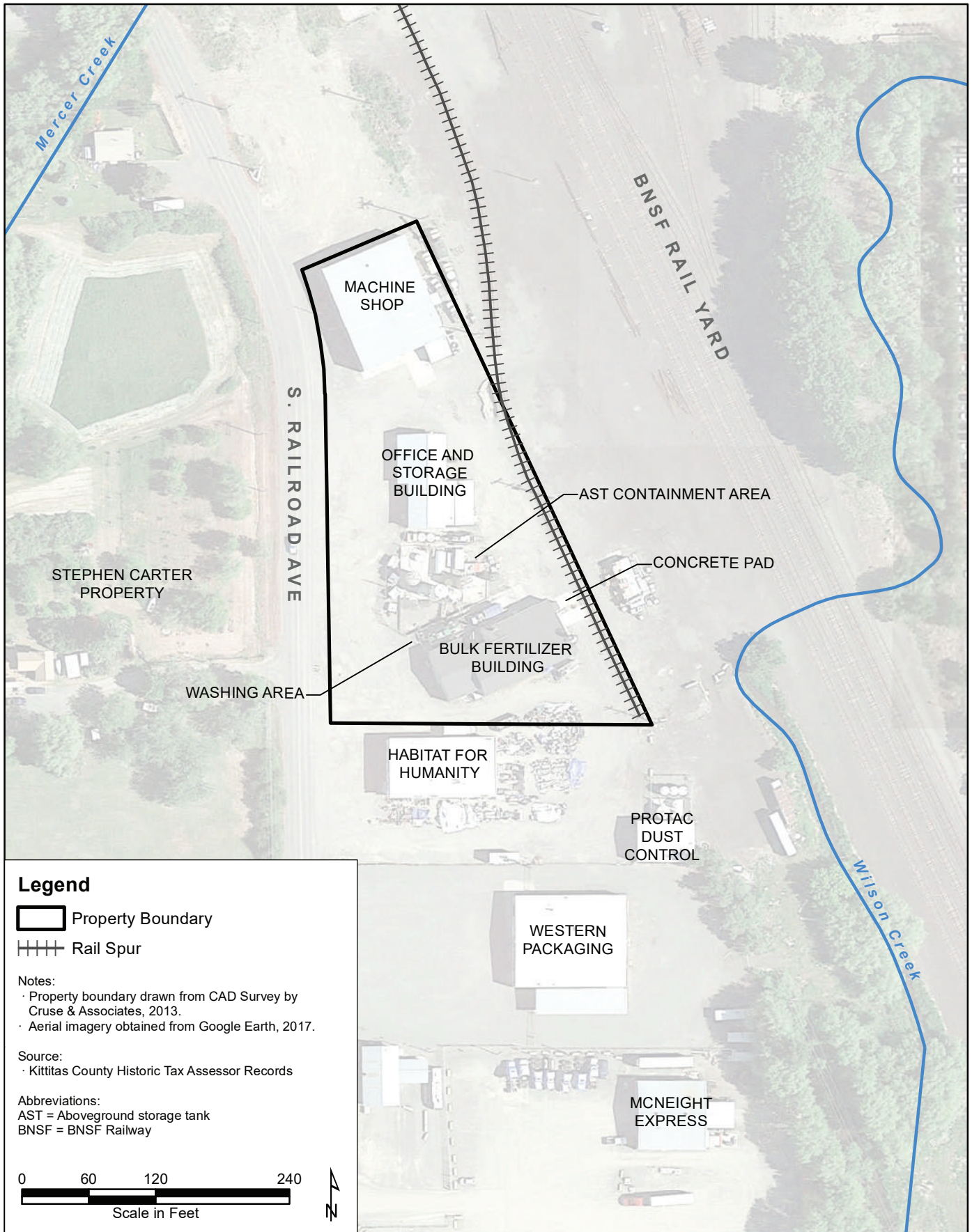
- Property boundary drawn from CAD Survey by Cruse & Associates, 2013.
- Aerial imagery obtained from ESRI, 2016.



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**Cleanup Action Plan  
Smith-Kem Site  
Ellensburg, Washington**

**Figure 1  
Site Vicinity Map**



**Legend**

Property Boundary

Rail Spur

**Notes:**

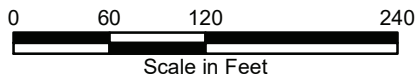
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- Aerial imagery obtained from Google Earth, 2017.

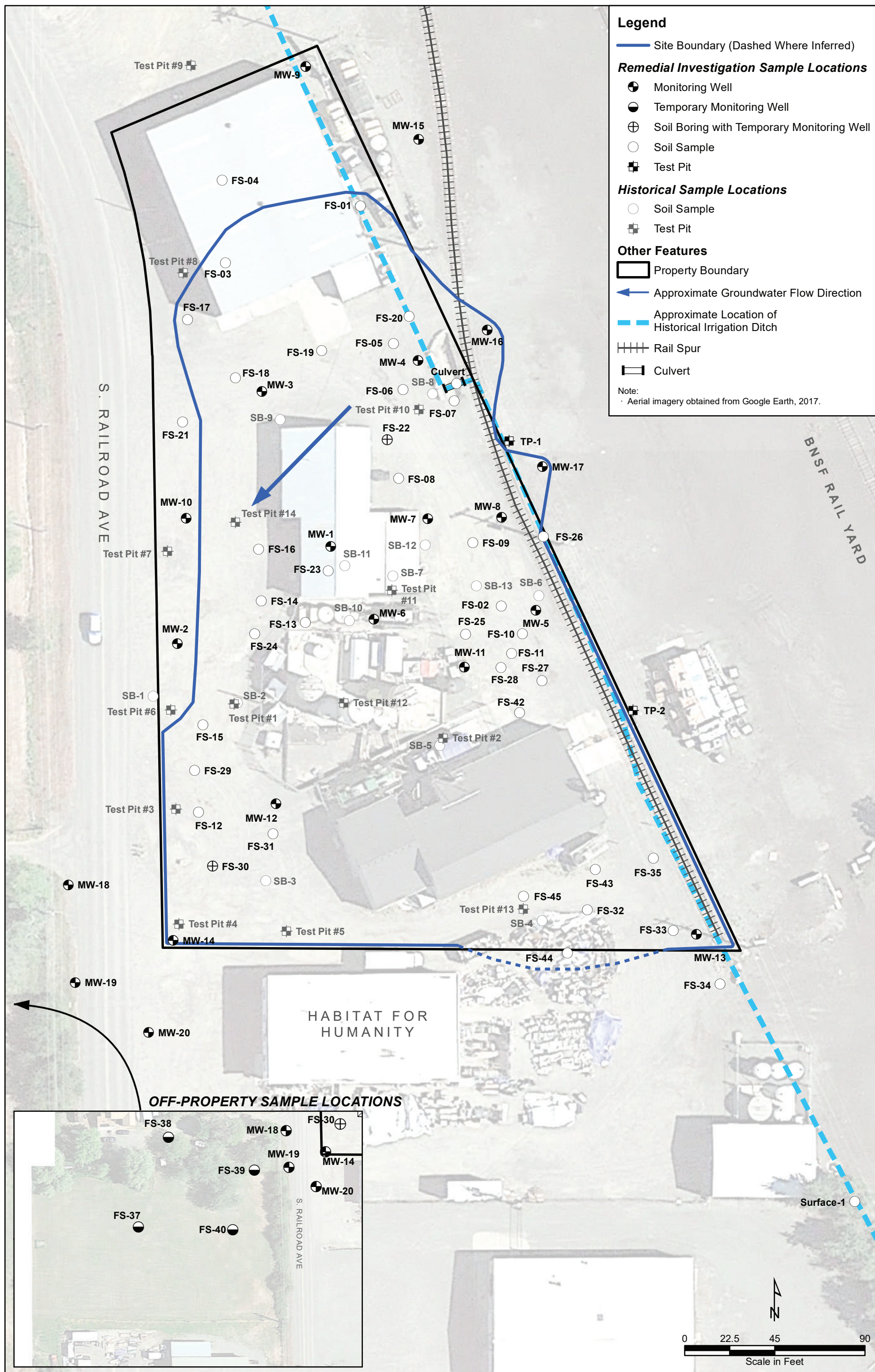
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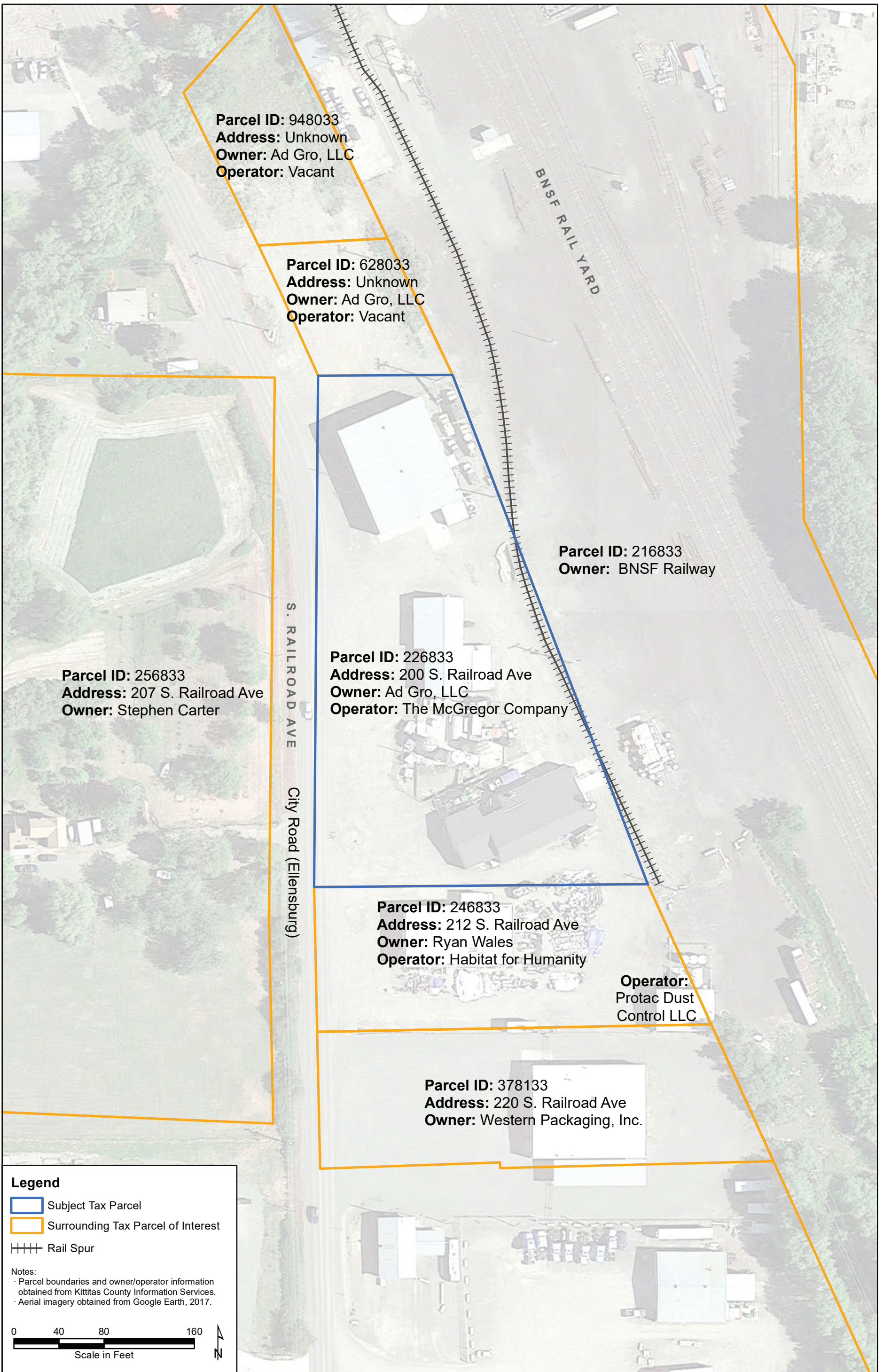
- Kittitas County Historic Tax Assessor Records

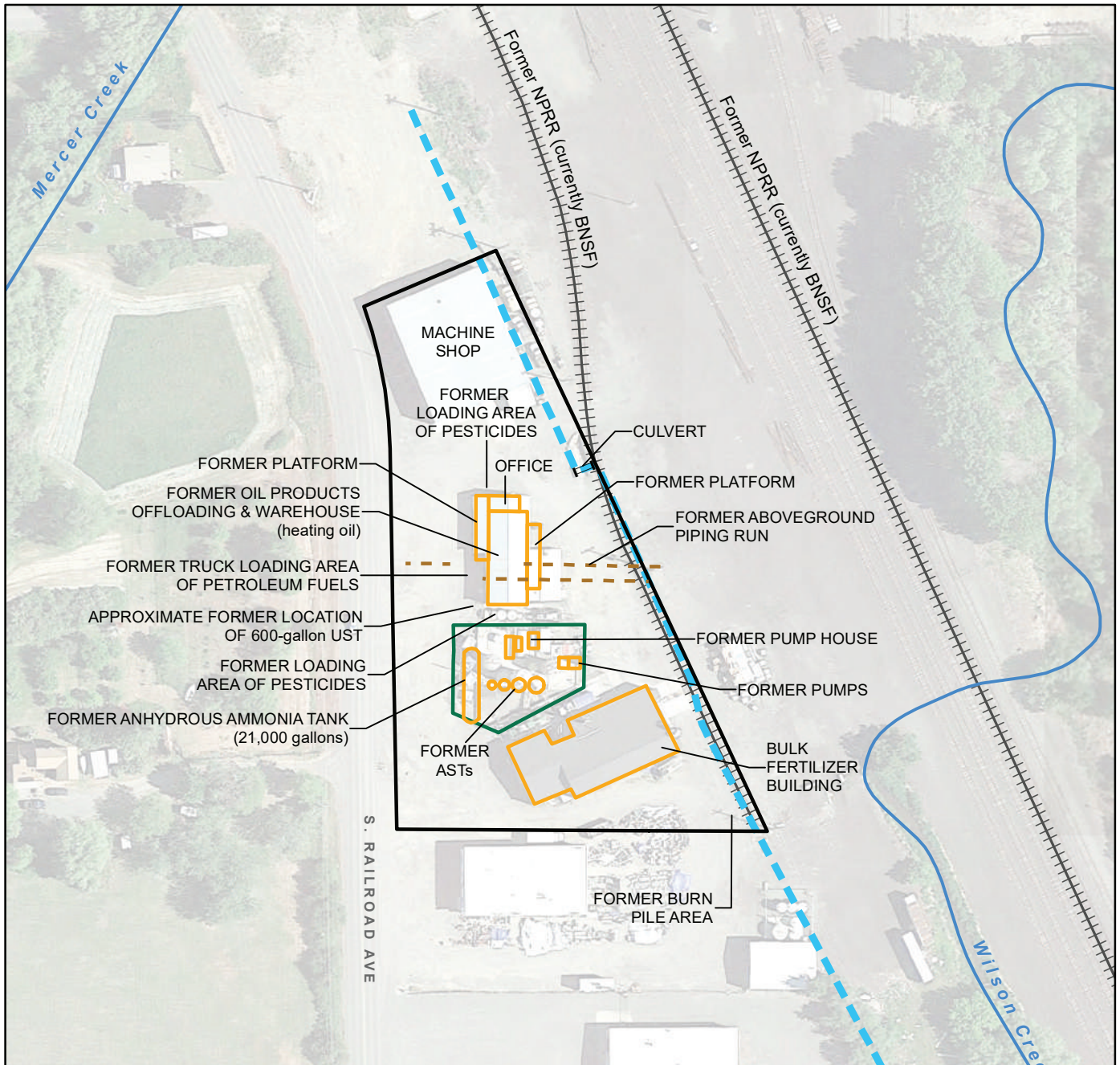
**Abbreviations:**

- AST = Aboveground storage tank
- BNSF = BNSF Railway









**Legend**

- AST Containment Area
- Approximate Structure Footprint
- Approximate Location of Historical Irrigation Ditch
- Property Boundary

**Notes:**

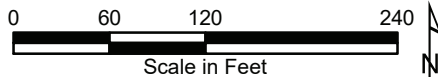
- Due to incomplete records, all historical features should be considered approximate.
- Property boundary drawn from CAD Survey by Cruse & Associates, 2013.
- Orthoimagery obtained from Google Earth, 2017.

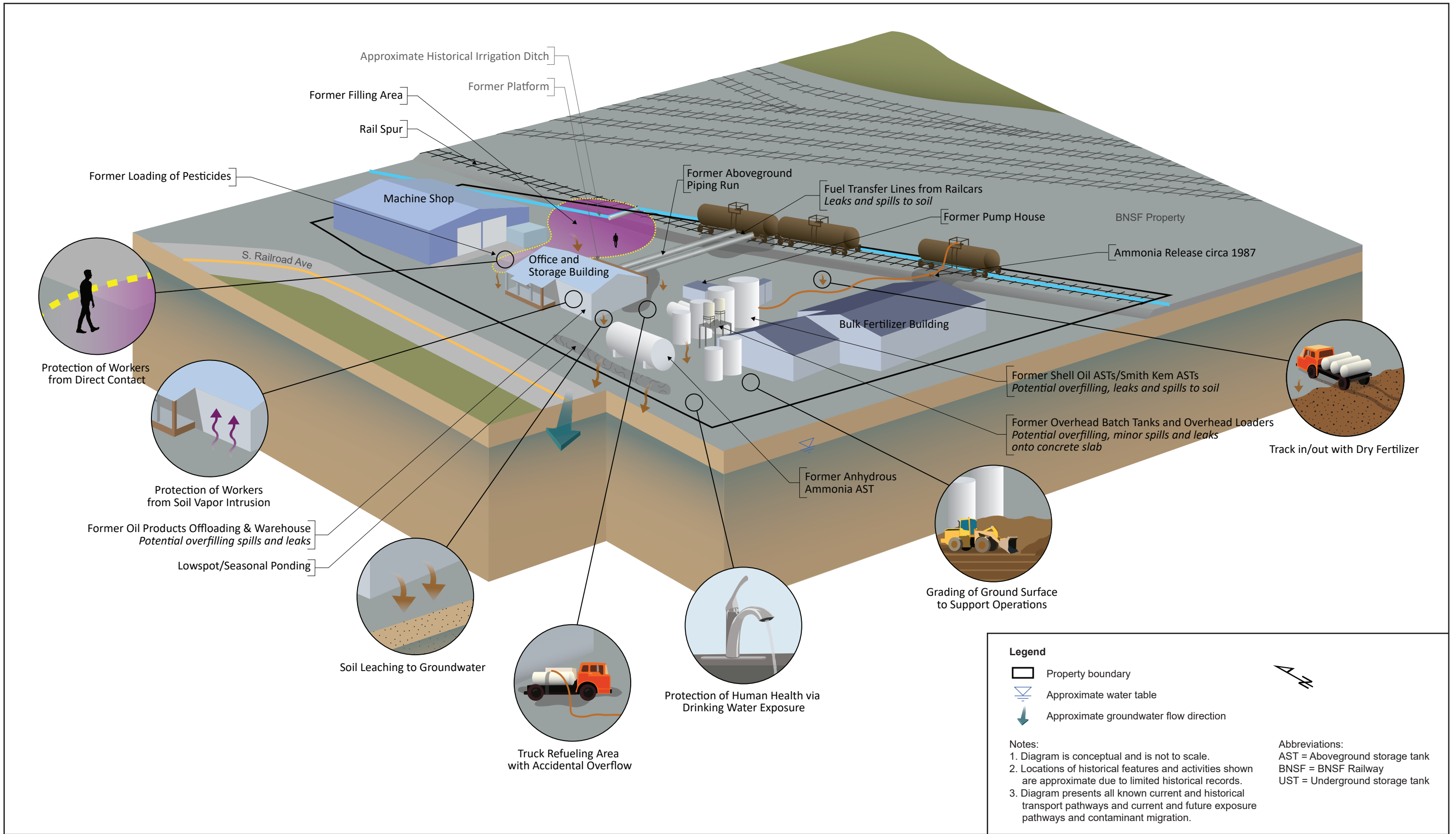
**Sources:**

- Kittitas County Historic Tax Assessor Records.
- Sanborn Maps 1928, 1948.
- Historical aerial photographs.

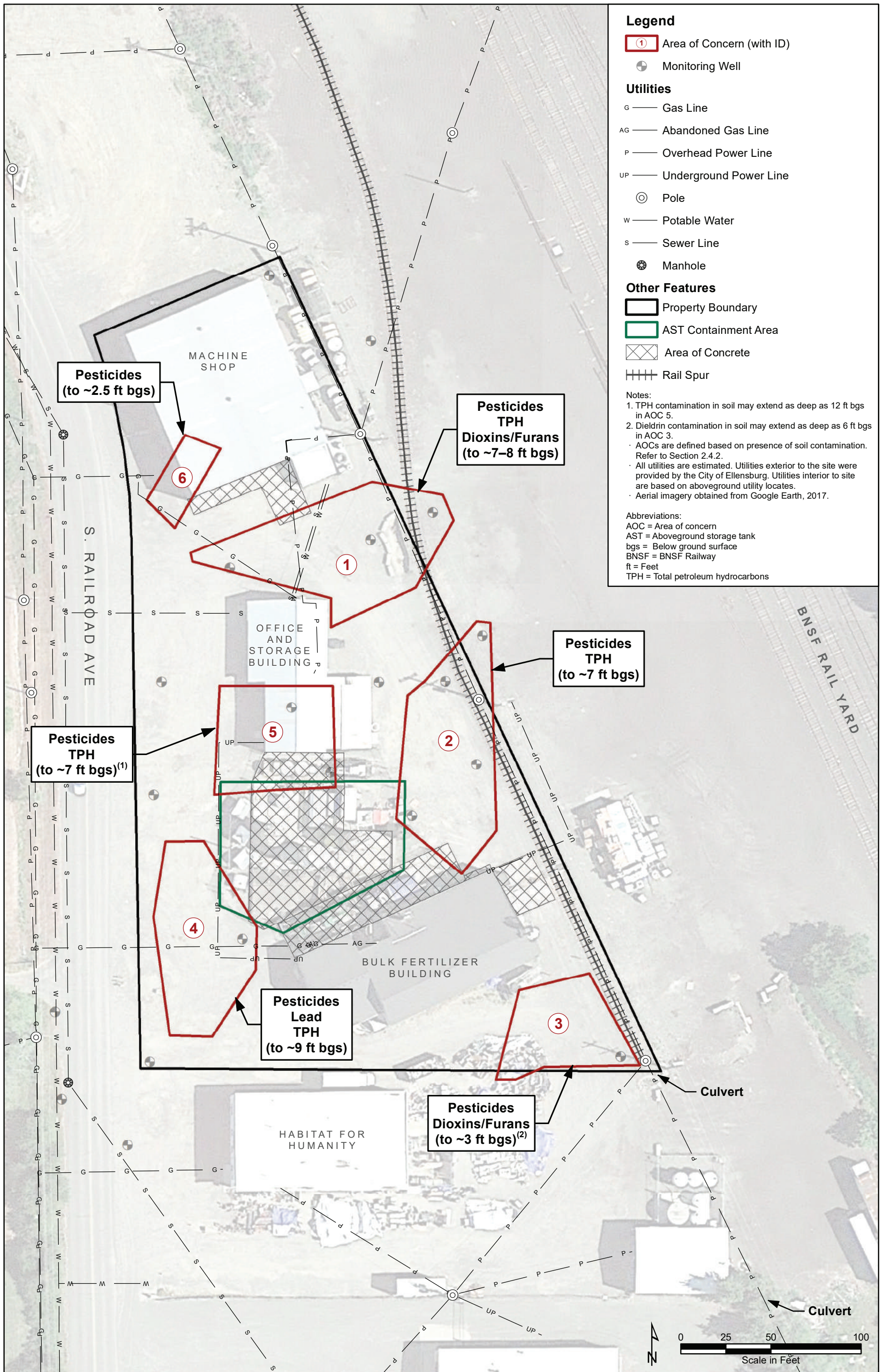
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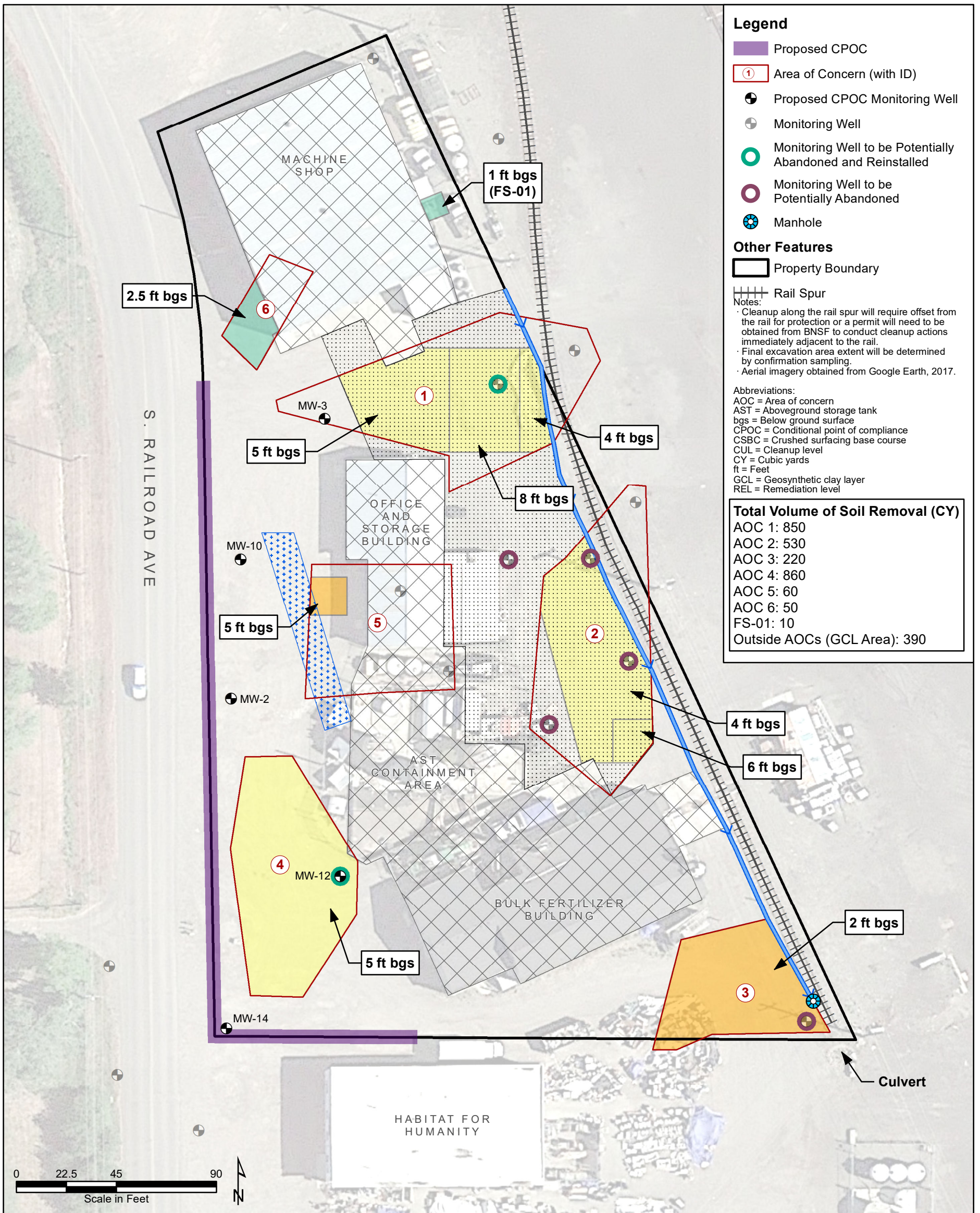
- AST = Aboveground storage tank
- BNSF = BNSF Railway
- NPRR = Northern Pacific Railroad
- UST = Underground storage tank











**Alternative 3 (Selected Cleanup Action)**

**Excavate to CULs**

Excavate and dispose of soil at off-site landfill. Backfill with clean fill and gravel surface.

· AOC 6 · FS-01

**Excavate to Direct Contact RELs**

Excavate and dispose of soil at off-site landfill. Backfill with clean fill and gravel surface.

Note: If pre-design data show that contamination in AOC 3 extends off-property, then excavation off-property will be designed to meet the CULs.

· AOC 3 · AOC 5

**Excavate to Leaching RELs**

Excavate and dispose of soil at off-site landfill. Backfill with clean fill and gravel surface.

· AOC 1 · AOC 2 · AOC 4

**Protect Existing Structures**

Existing buildings and concrete pavement to remain as cap.

**In Situ Groundwater Treatment**

Inject trademarked colloidal activated carbon matrix (PlumeStop™) to create a passive treatment zone.

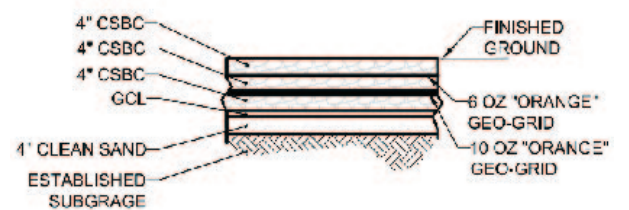
**Geosynthetic Clay Liner**

Install GCL as barrier for protection of groundwater from residual soil contamination.

**Drainage System**

Collect infiltrated precipitation drainage from the GCL and convey to a collection manhole at the southeast corner of the property.

**GCL Cross-Section**



Not to Scale.

Note: GCL cross-section provided by PBS Engineering and Environmental Inc.

## EXHIBIT C

### Scope of Work and Schedule

<b>Deliverable/Action</b>	<b>Schedule for Completion</b>
Draft Pre-Design Investigation (PDI) Work Plan	Within 90 Days of effective date of CD
Finalize PDI Work Plan	30 days following receipt of Ecology comments on the agency draft PDI Work Plan
Implement PDI	Initiate within 45 days of Ecology approval of final PDI Work Plan
Prepare agency draft EDR and PDI Results report	Within 180 days of effective date of CD
Finalize EDR and prepare all applicable permits	90 days after receipt of Ecology final comments on draft EDR and PDI Results report
Remedial Action Construction; assume duration of 3 to 4 months, summer months only	Initiate within 120 days of Ecology approval of the EDR or after permit acquisition and contractor notice to proceed
Submit agency draft Remedial Action Completion Report (RACR) and Long-Term Compliance Monitoring Report (LTCMP), including a Soil Management Plan (SMP) and a Groundwater Monitoring Plan (GMP)	180 days following construction completion
Submit Environmental Covenant (Ecology) to Kittitas County	Within 240 days following construction completion
Submit Final RACR and LTCMP	45 days after receipt of Ecology's final comments on draft RACR and LTCMP
Implement Final LTCMP	In accordance with schedules established in the Final LTCMP; groundwater compliance monitoring to begin no later than 1 year after construction completion

EXHIBIT D

**Attachment A – Option 1 (Preferred Option)**

**Ecology Drafts Covenant &  
Ecology Consults with Local Land Use Planning Authority**

See Procedure 440A for additional instructions for using this letter.

**[Print on Ecology letterhead]**

**[DATE]**

**[PLP / VCP CUSTOMER]**

**[ADDRESS]**

Re: **Proposed Activity and Use Restrictions at the following Cleanup Site:**

- **Site Name:** **[CLEANUP SITE NAME]**
- **Site Address:** **[CLEANUP SITE ADDRESS]**
- **Cleanup Site ID:** **[CSID NUMBER]**
- **Facility/Site ID:** **[FSID NUMBER]**
- **VCP Project ID:** **[VCP PROJECT NUMBER]** (Delete if not applicable)
- **Tax Parcels:** **[TAX PARCEL NUMBERS]**

Dear **[PLP/VCP CUSTOMER]**:

The Department of Ecology (Ecology) has completed a review of your cleanup for the above-referenced site. Because residual contamination will remain on the above-referenced property at the completion of the cleanup, Ecology has determined that certain future activities and uses of the property need to be restricted under WAC 173-340-440 to protect the integrity of the cleanup and protect human health and the environment.

**Draft Covenant**

Accordingly we have prepared the attached DRAFT environmental covenant (hereafter “Covenant”) to implement the following restrictions on the property:

**[SUMMARY LIST OF RESTRICTIONS]**

We have also preliminarily consulted with **[City/County]** to seek their review of the restrictions in accordance with RCW 70.105D.030(1)(f). Their initial feedback is that the restrictions are compatible with their land use plan and development regulations for this property.

## **Request for Review and Assistance**

Ecology is sending you this letter to request that you do the following by [DATE]:

1. Review the Covenant. If you have any concerns with any of the provisions, indicate what those concerns are and provide alternate language. Note that any changes to the template will require approval from the Attorney General's Office.
2. Complete the legal description in Exhibit A and prepare a property map for Exhibit B to the Covenant.
3. Conduct a title search to identify all persons holding an interest in, or encumbrance on, the real property subject to the Covenant.

Please submit your comments on the Covenant, your drafts of Exhibits A and B to the Covenant, and the results of your title search to Ecology for consideration.

## **Next Steps**

Once we come to agreement on a final Covenant, you will need to:

1. Obtain the signatures of each person holding a recorded interest in the property. Each of these persons will need to sign either the Covenant as a grantor or a subordination agreement.
2. Submit the Covenant to Ecology for our signature as the grantee.
3. Record the Covenant in every county where the real property subject to the Covenant is located. For detailed recording instructions, please refer to [Chapter 65.04 RCW](#).
4. Return the original signed and recorded Covenant to Ecology and provide a copy of the recorded Covenant to the following persons:
  - Each person who signed the Covenant.
  - Each person holding a recorded interest in the real property subject to the Covenant. This includes persons who signed subordination agreements.
  - Each person in possession of the real property subject to the Covenant at the time the Covenant is executed (i.e., renters).
  - The local government planning authority in which real property subject to the Covenant is located.
  - Any other person to whom the Covenant expressly grants the power to enforce the Covenant.
  - Any other persons Ecology requires.

The copy must be legible and the recording number must be evident.

**More Information**

For more information on environmental covenants, see:

- Ecology's environmental covenant template:  
<http://www.ecy.wa.gov/programs/tcp/policies/tcppoly.htm>
- Ecology's Toxics Cleanup Procedure 440A:  
<http://www.ecy.wa.gov/programs/tcp/policies/tcppoly.html>.
- The Uniform Environmental Covenants Act (UECA), Chapter 64.70 RCW  
(<http://apps.leg.wa.gov/RCW/default.aspx?cite=64.70>).
- [WAC 173-340-440](http://apps.leg.wa.gov/WAC/default.aspx?cite=173-340-440) of the Model Toxics Cleanup Act (MTCA) Cleanup Regulation  
(<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-340-440>)

If you have questions about how to complete the Covenant template or any of the directions provided above, please contact me at [PHONE] or [E-MAIL].

Sincerely,

[ECOLOGY CLEANUP PROJECT MANAGER]

Enclosure: Proposed Environmental Covenant