

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:  
  
City of Olympia  
Parks, Arts, and Recreation Department

AGREED ORDER  
  
No. DE-08-TCPSR-5415

TO: City of Olympia  
C/o Steven R. Hall, City Manager  
P.O. Box 1967  
Olympia, WA 98507-1967

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## **I. INTRODUCTION**

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the City of Olympia (City) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. Specifically, this Order requires that the City perform a Remedial Investigation and Feasibility Study (RI/FS), prepare a draft Cleanup Action Plan for the Solid Wood Inc. Site, and provides for an interim action consistent with WAC 173-340-430.

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

## **II. JURISDICTION**

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

## **III. PARTIES BOUND**

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

## **IV. DEFINITIONS**

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

A. Site: The Site is referred to as the Solid Wood Inc. Site (Site) and is generally located at 700 and 900 West Bay Drive in Olympia, Washington. The Site lies on the West Bay of Budd Inlet, east of West Bay Drive, north of the Fourth Avenue Bridge, and south of the Industrial Petroleum Distributors Site. The Site is defined by the extent of contamination caused

by the release of hazardous substances at the Site. Based upon factors currently known to Ecology, the Site is more particularly described in the Site Diagram (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(5).

B. Parties: Refers to the State of Washington, Department of Ecology and the City of Olympia (City).

C. Potentially Liable Person (PLP): Refers to the City of Olympia (City).

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

## V. FINDINGS OF FACT

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

A. The first developed use of the properties generally located at 700 and 900 West Bay Drive in Olympia, Washington, was as a railroad right-of-way as early as 1898. By at least 1924, two saw mills had been constructed on these properties. It is not known when the railway was vacated; however, aerial photographs show railcars on the properties as late as 1996. By at least 1924, a saw mill had been constructed on these properties. According to the available Sanborn Fire Insurance Maps, the properties were occupied by the Olympia Fir Lumber Co. in 1924. The 1946 map shows that the properties were occupied by the Olympia Harbor Lumber Co. In the 1947 map the facility is shown as the Tumwater Lumber Mills Co. The 1968 map shows the area where the Tumwater Lumber Mills Co. structures had been as vacant with no other structures present. Aerial photos from this period show that the properties were continued to be used for lumber operations and that new structures were constructed at the southern portions of the properties. A 2000 Aerial photo shows the same structures and lumber operations on the properties as a 1978 aerial photo. A 2002 aerial photo shows no observable structures on the properties. Therefore, the Solid Wood Inc. facility was removed in approximately in 2001.

B. The specific use of the properties for lumber operations may have also included the following activities: wood burning (hog-fuel) boiler and bag house; wood sawing, shaving,

and sanding; plywood and veneering operations; repair shop; welding shop; storage of petroleum products (including underground and aboveground storage tanks); and kiln drying ovens.

C. In 2006, the City of Olympia purchased the properties generally located at 700 and 900 West Bay Drive from the Port of Olympia, except for the railroad right-of-way. In 2007, the railroad right-of-way was purchased by the City from the Burlington Northern Santa Fe Railway.

D. Results of Phase I and Phase II Environmental Assessment Reports prepared for the City show that past operations resulted in the contamination of soil, groundwater, and possibly sediment, at levels that exceed MTCA Method A cleanup standards for one or more of the following constituents: total petroleum hydrocarbons (TPH), carcinogenic polycyclic aromatic hydrocarbons (cPAHs), and metals.

E. In November 2007, the City requested that Ecology enter into negotiations for an Agreed Order, under which the City would agree to investigate and clean up the Site, in preparation for the City's development of the property into a waterfront park. As part of its development plan, the City plans to remove the creosote pilings currently located along the beach and waterfront.

## **VI. ECOLOGY DETERMINATIONS**

A. The City is an "owner or operator" as defined in RCW 70.105D.020(17) of a "facility" as defined in RCW 70.105D.020(5). The facility is known as the Solid Wood Inc. Site (Site).

B. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(25) and RCW 70.105D.020(10), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to the City dated December 5, 2007, pursuant to RCW 70.105D.040, .020(21), and WAC 173-340-500. By letter dated December 17, 2007, the City voluntarily waived its rights to notice and comment and accepted Ecology's determination that the City is a PLP under RCW 70.105D.040.

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

E. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study or design of a cleanup action. The City is currently in the design and permitting stages of the Phase I Park Development at the Site. Performing the interim action as described in the work plan (Exhibit B) will result in a faster and more cost effective cleanup because the interim action will be performed in conjunction with the Phase I Site development. Therefore, performance of this interim action is consistent with WAC 173-340-430.

## **VII. WORK TO BE PERFORMED**

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

### **A. Interim Action**

Conduct an interim action to excavate contaminated soil, treat contaminated groundwater, and cap low-level soil contamination, according to the RI/FS and Interim Action Work Plan (“Work Plan”). The Work Plan is attached to this Order as Exhibit B, is incorporated by reference, and forms an integral and enforceable part of this Order.

### **B. Remedial Investigation**

Conduct a remedial investigation that meets the requirements contained in Chapters 173-340-350 and 173-340-360 WAC by implementing the Work Plan, Exhibit B. The remedial

investigation includes investigation of areas where creosote pilings are removed by the City as part of its development plan for the Site.

All sampling shall be done in accordance with the sampling and analysis plan (SAP) and the site-specific health and safety plan (HASp) included in the Work Plan, and with Section VIII.G (Sampling, Data Submittal, and Availability) of this Order. Sediment sample methods should be consistent with the Ecology guidance document Sediment Sampling and Analysis Plan Appendix (03-09-043, revised April 2003).

### **C. RI/FS Report**

By October 1, 2009, the City will prepare and submit to Ecology for review and approval a Draft RI/FS Report that provides information fully documenting the nature and extent of contamination at the Site and otherwise meets the requirements of WAC 173-340-350. The Draft RI/FS report shall report the results of the remedial investigations including the vertical and lateral distribution of contaminants in soil, surface water, groundwater, and sediments. Additionally, the report shall include an analysis of potential remedial alternatives and recommendations regarding a preferred remedial action to be implemented.

Within thirty (30) calendar days of receipt of Ecology's comments on the Draft RI/FS Report, the City will submit a Draft Final RI/FS Report to Ecology for review and approval. The Draft Final RI/FS Report will become the Final RI/FS Report following public comment and upon Ecology's approval as follows:

- Following public comment on the Draft Final RI/FS Report, Ecology will notify the City if any substantive changes are required as a result of public comment.
- Within thirty (30) days of receiving Ecology's non-substantive comments on the Draft Final RI/FS Report, the City will submit the Final RI/FS Report to Ecology for review and approval.
- In the event substantive changes to the Final RI and/or Final FS are necessary following public comment, the City and Ecology will agree on a schedule to complete those changes.
- The revised Final RI and FS will then become final upon Ecology's approval.

**D. Draft Cleanup Action Plan**

Upon Ecology approval of the Final RI/FS report, the City shall prepare a Draft Cleanup Action Plan (DCAP) in accordance with WAC 173-340-380 that details the proposed cleanup action for addressing the contamination present on the Site, and meets the requirements for developing a cleanup action in WAC 173-340-350 to -390, including Ecology’s expectations for cleanup alternatives in WAC 173-340-370. The DCAP shall include a general description of the proposed cleanup action, proposed cleanup standards from the RI/FS and a rationale regarding their selection, a proposed schedule for implementation, description of any institutional controls proposed, and a summary of federal, state, and local laws that are applicable to the proposed cleanup action.

**E. Schedule of Work/Deliverables**

The project schedule is provided below in Table 7-1.

<b>Table 7-1. Schedule</b>	
<b>Work Element</b>	<b>Completed or Submitted By</b>
Interim Action (Soil Excavation and Place Cap)	September 15, 2008
RI/FS Field Work	July 15, 2009
IA Memorandum	November 17, 2008
1 <sup>st</sup> Quarter Groundwater Sampling	October 15, 2008
1 <sup>st</sup> Quarter Groundwater Monitoring Report	December 1, 2008
2 <sup>nd</sup> Quarter Groundwater Sampling	January 15, 2009
2 <sup>nd</sup> Quarter Groundwater Monitoring Report	March 2, 2009
3 <sup>rd</sup> Quarter Groundwater Sampling	April 16, 2009
3 <sup>rd</sup> Quarter Groundwater Monitoring Report	June 1, 2009
4 <sup>th</sup> Quarter Groundwater Sampling	July 15, 2009
Draft RI/FS Report	October 1, 2009
Draft Final RI/FS Report	30 days after Ecology’s written comments on the Draft RI/FS report are received
Final RI/FS Report	30 days after Ecology’s written comments on the Draft Final RI/FS report are received, subsequent to public comment
Draft CAP (paper and electronic format)	30 days after the Final RI/FS Report is approved

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

### **VIII. TERMS AND CONDITIONS OF ORDER**

#### **A. Public Notice**

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

#### **B. Remedial Action Costs**

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

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



**C. Implementation of Remedial Action**

If Ecology determines that the City has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to the City, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of the City's failure to comply with its obligations under this Order, the City shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.B (Remedial Action Costs), provided that the City is not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

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

**D. Designated Project Coordinators**

The project coordinator for Ecology is:

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

The project coordinator for the City is:

Julie Anne McQuary, Parks Project Coordinator  
Olympia Parks, Arts and Recreation Department  
222 Columbia St. NW  
Olympia, WA 98501

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

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

**E. Performance**

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist licensed in the State of Washington or under the direct supervision of an engineer registered in the State of Washington, except as otherwise provided for by Chapters 18.220 and 18.43 RCW.

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

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

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

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

**F. Access**

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that the City either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the City's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the City. The City shall make all reasonable efforts to secure access rights for those

properties within the Site not owned or controlled by the City where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the City unless an emergency prevents such notice. All persons who access the Site pursuant to this Section shall comply with any applicable Health and Safety Plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

**G. Sampling, Data Submittal, and Availability**

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

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

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

## **H. Public Participation**

A Public Participation Plan has been prepared for the Site and is attached as Exhibit C. Ecology shall maintain the responsibility for public participation at the Site. However, the City shall cooperate with Ecology, and shall:

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

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

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

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

- a. Timberland Olympia Library  
313 8th Ave. SE  
Olympia, WA 98501  
(360) 352-0595
- b. The City of Olympia Parks, Arts and Recreation Department  
The Olympia Center, 222 Columbia Street NW  
Olympia, WA 98507-1967  
(360) 709-2700
- c. Ecology's Southwest Regional Office  
300 Desmond Drive  
Lacey, WA 98516

(360) 407-6045

- d. Ecology's web site: [http://www.ecy.wa.gov/programs/tcp/sites/solidwood/solid\\_wood\\_hp.htm](http://www.ecy.wa.gov/programs/tcp/sites/solidwood/solid_wood_hp.htm).

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

#### **I. Retention of Records**

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, the City shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, the City shall make all records available to Ecology and allow access for review within a reasonable time. Nothing in this Order is intended by the City to waive any right it may have under applicable law to limit disclosure of documents protected by the attorney work-product and/or attorney-client privilege. If the City withholds any requested records based on an assertion of privilege, it shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No actual data collected on Site pursuant to this Decree shall be considered privileged.

#### **J. Resolution of Disputes**

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

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

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

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

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

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

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

**K. Extension of Schedule**

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

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

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

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

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

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

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

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

**L. Amendment of Order**

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

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

**M. Endangerment**

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

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

If Ecology concurs with or orders a work stoppage pursuant to Section VIII.M (Endangerment), the City's obligations with respect to the ceased activities shall be suspended



until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.K (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

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

**N. Reservation of Rights**

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

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

**O. Transfer of Interest in Property**

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

Prior to the City's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the City shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, the City shall notify Ecology of said transfer. Upon transfer of any

interest, the City shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

**P. Compliance with Applicable Laws**

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

2. Pursuant to RCW 70.105D.090(1), the City is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, the City shall comply with the substantive requirements of such permits or approvals. The exempt permits or approvals and the applicable substantive requirements of those permits or approvals, as they are known at the time of entry of this Order, have been identified in Exhibit E.

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

begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

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

**Q. Indemnification**

The City agrees 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 the City, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the City shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

**IX. SATISFACTION OF ORDER**

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

**X. ENFORCEMENT**

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

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

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

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

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

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

D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: \_\_\_\_\_

The City of Olympia  
Parks, Arts, and Recreation Department

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY

\_\_\_\_\_  
Steven R. Hall  
City Manager  
City of Olympia

\_\_\_\_\_  
Rebecca S. Lawson, P.E.  
Section Manager  
Toxics Cleanup Program  
Southwest Regional Office

Approved as to form:

\_\_\_\_\_  
Tom Morrill  
City Attorney

**EXHIBIT A**  
**SITE DIAGRAM**



**EXHIBIT B**

**RI/FS and Interim Action Work Plan (Work Plan)**

Agreed Order No. DE-08-TCPSR-5415



**EXHIBIT C**

**PUBLIC PARTICIPATION PLAN**

Agreed Order No. DE-08-TCPSR-5415

**EXHIBIT D**

**Required Permits/Approvals**

Although the City may need to obtain permits or approvals to implement their development plan for the Site, at this time no regulatory permits or approvals have been identified as being required for the RI/FS or interim action work being required under this Order. The City must nevertheless meet all applicable, relevant and appropriate laws (ARARs) that apply to the RI/FS and interim action work being required under this Order, including but not limited to the well drilling requirements of Chapter 18.104 RCW.

**EXHIBIT E**

**List of Substantive Requirements**

1. Projects within the City of Olympia are to comply with the following standards and best management practices:

1. *Engineering Design and Development Standards*
2. *Drainage Design and Erosion Control Manual for Olympia Region*

2. The piling removal is to comply with the Washington Department of Natural Resources, Puget Sound Initiative – Derelict Creosote Piling Removal Program, *Best Management Practices For Pile Removal & Disposal* (Contact: Lisa Kaufman, 360-854-2808)

3. The management or disposal of dangerous or hazardous wastes shall comply with Chapter 173-303 WAC (Hazardous Waste Management Program Contact: Joe Cason, 360-407-6360)