

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

WHATCOM COUNTY

AGREED ORDER

No. DE 21650

TO: Whatcom County
311 Grand Avenue
Bellingham, WA 98225

TABLE OF CONTENTS

I.	INTRODUCTION	2
II.	JURISDICTION	2
III.	PARTIES BOUND	2
IV.	DEFINITIONS.....	3
V.	FINDINGS OF FACT.....	5
VI.	ECOLOGY DETERMINATIONS	9
VII.	WORK TO BE PERFORMED – CLOSURE.....	11
VIII.	WORK TO BE PERFORMED – CORRECTIVE ACTION.....	11
IX.	TERMS AND CONDITIONS	14
	A. Payment of Remedial Action Costs	14
	B. Designated Project Coordinators	15
	C. Performance	15
	D. Access	16
	E. Sampling, Data Submittal, and Availability	17
	F. Public Participation.....	17
	G. Retention of Records.....	19
	H. Resolution of Disputes	19
	I. Extension of Schedule.....	21
	J. Amendment of Order	22
	K. Endangerment	23
	L. Reservation of Rights.....	23
	M. Transfer of Interest in Property	24
	N. Compliance with Applicable Laws	25
	P. Indemnification	26
X.	SATISFACTION OF ORDER	27
XI.	ENFORCEMENT	27

- EXHIBIT A Facility Diagram
- EXHIBIT B Closure Plan
- EXHIBIT C Corrective Action Scope of Work
- EXHIBIT D Schedule of Deliverables

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Whatcom County (the County) under this Agreed Order (Order) is to conduct and complete closure at the Plantation Rifle Range Facility and provide for remedial action at the Facility where there has been a release or threatened release of hazardous substances. This Order requires the County to conduct closure of the Dangerous Waste Management Units (DWMUs) at the Facility, designated as DWMU-1 (an area encompassing the outdoor small-bore rifle and pistol range) and DWMU-2 (the area encompassing the outdoor high-power rifle range), per WAC 173-303-610, a Remedial Investigation (RI) and Feasibility Study (FS) per WAC 173-340-350, and to develop a draft Cleanup Action Plan (dCAP) per WAC 173-340-350 through 173-340-380 addressing contamination at the Facility located in the area of 5102 Samish Way, Bellingham, Washington. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the authority of the Model Toxics Control Act (MTCA), RCW 70A.305.050(1). This Order also satisfies the closure performance standards of WAC 173-303-610(2)(b). In addition, the Order satisfies the requirements of WAC 173-303-646 through -64630.

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 the Order. The County agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the County's responsibility under this Order. The County 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 RCW 70A.305, WAC 173-204, and WAC 173-340 shall control the meanings of the terms used in this Order.

A. 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.

B. Area of Concern (AOC): Refers to any area of the Facility where a release of dangerous constituents (including dangerous waste and hazardous substances) has occurred, is occurring, is suspected to have occurred, or threatens to occur.

C. Cleanup Action Plan (CAP): Refers to the document issued by Ecology under WAC 173-340-380 that selects Facility-specific corrective measures and specifies cleanup standards (cleanup levels, points of compliance, and other requirements for the corrective measures).

D. Cleanup Standards: Refers to the standards promulgated under RCW 70A.305.030(2)(e) and include (1) hazardous substance concentrations (cleanup levels) that protect human health and the environment, (2) the location at the Facility where those cleanup levels must be attained (points of compliance), and (3) additional regulatory requirements that apply to a cleanup because of the type of action and/or the location of the Facility.

E. Closure: Refers to the proper cleaning up and/or decontaminating of a dangerous waste management unit or a recycling unit and any areas affected by releases from the unit, undertaken in whole or in part to fulfill the requirements of WAC 173-303-610.

F. Corrective Action: Refers to any activities including investigations, studies, characterizations, and corrective measures, including actions taken pursuant to RCW 70A.305 and WAC 173-340, undertaken in whole or in part to fulfill the requirements of WAC 173-303-64620.

G. Corrective Measure: Refers to any measure or action to control, prevent, or mitigate release(s) and/or potential release(s) of dangerous constituents (including dangerous

waste and hazardous substances) reviewed and approved by Ecology for the Facility and set forth in a Facility-specific CAP prepared in compliance with the requirements of WAC 173-340, including WAC 173-340-360. Corrective measures may include interim actions as defined by WAC 173-340. Interim actions will not necessarily be set forth in a Facility-specific CAP.

H. Dangerous Constituent or Dangerous Waste Constituent: Refers to any constituent identified in WAC 173-303-9905 or 40 C.F.R. part 264, appendix IX; any constituent that caused a waste to be listed or designated as dangerous under the provisions of WAC 173-303; and any constituent defined as a hazardous substance under RCW 70A.305.020(13).

I. Dangerous Waste: Refers to any solid waste designated in WAC 173-303-070 through -100 as dangerous or extremely hazardous or mixed waste. Dangerous wastes are considered hazardous substances under RCW 70A.305.020(13).

J. Dangerous Waste Management Facility: Used interchangeably in this document with the term "Facility."

K. Dangerous Waste Management Unit (DWMU): Refers to a contiguous area of land on or in which dangerous waste is placed, or the largest area in which there is a significant likelihood of mixing dangerous waste constituents in the same area, as defined in WAC 173-303-040.

L. Facility: Refers to the Plantation Rifle Range DWMUs controlled by Whatcom County Parks located at 5102 Samish Way, Bellingham, Washington; all property contiguous to the DWMUs also controlled by Whatcom County Parks; and all property, regardless of control, affected by release(s) or threatened release(s) of hazardous substances, including dangerous wastes and dangerous constituents, at and from these areas. "Facility" also includes the definition found in RCW 70A.305.020(8).

M. Feasibility Study (FS): Refers to the investigation and evaluation of potential corrective measures performed in accordance with the FS requirements of WAC 173-340-350, which includes the substantive requirements for a Resource Conservation and Recovery Act

Corrective Measures Study, and which is undertaken in whole or in part to fulfill the corrective action requirements of WAC 173-303-64620.

N. Parties: Refers to the State of Washington, Department of Ecology, and Whatcom County.

O. Potentially Liable Persons (PLPs): Refers to Bertch Timberlands, LLC and Whatcom County.

P. Permit or Permitting Requirement: Unless otherwise specified, refers to the requirements of WAC 173-303 for applying for, obtaining, maintaining, modifying, and terminating Dangerous Waste Management Facility permits.

Q. RCRA: Refers to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901–6992k.

R. Release: Refers to any intentional or unintentional spilling, leaking, pouring, emitting, emptying, discharging, injecting, pumping, escaping, leaching, dumping, or disposing of dangerous waste or dangerous constituents into the environment. It also includes the abandonment or discarding of barrels, containers, and other receptacles containing dangerous waste or dangerous constituents, and includes the definition of “release” in RCW 70A.305.020(32).

S. Remedial Investigation (RI): Refers to a facility-wide investigation and characterization performed in accordance with the requirements of WAC 173-340, which includes the substantive requirements for a RCRA facility investigation, undertaken in whole or in part to fulfill the corrective action requirements of WAC 173-303-64620.

V. FINDINGS OF FACT

Ecology makes the following Findings of Fact, without any express or implied admissions of such facts by the County.

A. Whatcom County Parks & Recreation operates the Plantation Rifle Range Facility (Facility). The Plantation Rifle Range Facility opened in 1971, prior to the promulgation of RCRA

in 1978. The Facility is located on property owned by Bertch Timberlands, LLC. Whatcom County leases the property from Bertch Timberlands, LLC.

B. Plantation Rifle Range is one of two public shooting ranges in Washington. The Facility consists of an outdoor high power rifle range, indoor and outdoor small-bore rifle and pistol ranges, a trap field, and a classroom. The high-power rifle range has target lines at 50, 100, 200, and 300-yards. Earthen backstops (impact berms) exist behind the 50- and 300-yard target lines.

C. Ruby Creek flows along the eastern boundary of the Facility's high power rifle range. Where the creek meets the 300-yard back stop, it enters a pipe running underneath the backstop. The creek re-emerges from the pipe, to the southeast of the 300-yard targets. In addition to Ruby Creek, wetlands are located within and adjacent to the east side of the high-power rifle range. Ruby Creek is a major tributary to Finney Creek, which flows into Lake Samish. Lake Samish is a drinking water supply to area residents around the lake.

D. Whatcom County Parks and Recreation operated the Plantation Rifle Range as a Dangerous Waste Management Facility on or after November 19, 1980, which subjects this Facility to RCRA permitting requirements, including interim status requirements pursuant to RCRA, 42 U.S.C. § 6925, and implementing regulations thereunder, and including authorized state regulations promulgated in WAC 173-303. Washington's Dangerous Waste regulations require that generators must properly designate solid waste prior to disposal (i.e., abandonment), WAC 173-303-170(2)(a)(i)(A) and by reference -070(1)(b).

E. Pursuant to the June 1, 1998, notification, Whatcom County Parks and Trillium Corp (previous property owner) were issued identification number WAH000005306 by Ecology.

F. On June 1, 1998, Whatcom County Parks notified Ecology of Plantation Rifle Range's dangerous waste management activities. In the notification, Whatcom County Parks identified Plantation Rifle Range as medium quantity generator under Washington State's generator status. On January 15, 1999, Whatcom County Parks revised their notification to identify

Plantation Rifle Range as a small quantity generator in Washington State. Within the 2000 and 2001 notifications to Ecology, Whatcom County Parks stated no dangerous waste was generated at Plantation Rifle Range. The Facility withdrew the RCRA Site ID Number in 2001.

G. On November 13, 2017, Ecology compliance inspectors conducted a dangerous waste compliance evaluation inspection at the Plantation Rifle Range Facility. During that inspection, Ecology determined that the Whatcom County Parks and Recreation did not manage wastes from the indoor or outdoor ranges in a manner that was protective of human health and the environment. In a December 11, 2017 Notice to Comply, Ecology notified the Plantation Rifle Range of violations of the Dangerous Waste regulations that Ecology observed during their November 13 inspection and the actions the Rifle Range needed to undertake to come into compliance. Ecology issued a delinquent letter on March 6, 2018, as Plantation did not return to compliance within a specified timeframe.

H. On January 7, 2020, Ecology received an anonymous complaint through Ecology's online Environmental Reports Tracking system (ERTS #695524). The complaint described and demonstrated with photos how water from extremely heavy rains was flowing across the outdoor high power rifle range. Photos showed lead shot on the ground within standing water on the range and the wetland. The photos showed water flowing from the range into the wetlands and Ruby Creek. This anonymous complaint initiated a second inspection from Ecology.

I. On January 9, 2020, Ecology inspectors conducted a second compliance evaluation inspection at the Facility. During that inspection, Ecology inspectors observed abandoned projectiles (e.g., lead shot, projectile targets, and bullets) and other waste debris that had accumulated at the range and near Ruby Creek. Ecology confirmed the complaint and observed water had flooded the range, with threatened releases of lead and hazardous materials into Ruby Creek. Ecology inspectors collected two surface water samples from Ruby Creek. Lab analysis of the surface water samples indicated lead concentrations exceeding MTCA standards and acute and chronic Water Quality regulatory standards, calculated relative to measured

hardness values (WAC 173-201A-240). On April 29, 2020, Ecology mailed a Compliance Report, requiring Whatcom County Parks to meet specific items of non-compliance within the extended deadline. As Plantation Rifle Range did not return to compliance within the extended deadline, Ecology issued a delinquent letter on September 9, 2020.

J. Ecology inspectors conducted a follow-up inspection of the Facility on October 14, 2020. The inspectors observed the impact berms were failing due to lack of maintenance. Erosion of earth from the berms had exposed the rubber tires used to reinforce the banks.

K. On April 29, 2021, Ecology inspectors attended a Whatcom County Parks sampling event at the Facility. Ecology and Whatcom County Parks collected three split surface water samples along Ruby Creek. Additionally, Ecology collected six grab soil samples within the high-power range area. The TCLP analyses results for lead and arsenic in soil exceeded the regulatory toxicity characteristic levels. Soil sample results determined the material was designated as dangerous waste per the Dangerous Waste regulations (WAC 173-303).

L. Whatcom County Parks and Ecology entered into an Expedited Settlement Agreement on September 28, 2022. The settlement agreement outlines actions Whatcom County Parks must take to resolve the outstanding inspection findings at the Facility. Required actions include Whatcom County Parks entering into this agreed order with Ecology to address cleanup of waste material on the rifle range.

M. Pursuant to the sample results and other information, Ecology has identified the following DWMU and AOCs at the Facility:

1. DWMU 1: The unpermitted landfill made up of abandoned dangerous waste and other waste material on the outdoor ranges of Plantation Rifle Range.
2. AOC 1: Ruby Creek.
3. AOC 2: Wetlands at the Facility.
4. AOC 3: The creek culvert running underneath the 300-yard barrier.

N. Hazardous substances have been and might continue to be released from the Facility into the environment including surface water drainage areas; groundwater beneath and beyond the Dangerous Waste Management Facility; human work areas; and floral and faunal habitats.

VI. ECOLOGY DETERMINATIONS

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by the County.

- A. The County is a person within the meaning of RCW 70A.305.020(24).
- B. Bertch Timberlands, LLC is the property owner and Whatcom County Parks & Recreation is the operator of Plantation Rifle Range. Plantation Rifle Range is a Dangerous Waste Management Facility that has operated, is operating, or should have been operating under interim status or a final facility permit, subject to RCRA, 42 U.S.C. §§ 6924 and 6925, and regulations promulgated thereunder, including authorized state regulations in WAC 173-303. Bertch Timberlands, LLC and Whatcom County Parks are also known “owner or operators”, as defined by RCW 70A.305.020(22) of a “facility” as defined by RCW 70A.305.020(8).
- C. Certain waste and constituents found at the Facility are dangerous wastes and/or dangerous constituents as defined by WAC 173-303 and in Section IV (Definitions) of this Order.
- D. These dangerous wastes and dangerous constituents are considered hazardous substances within the meaning of RCW 70A.305.020(13).
- E. That due to the abandonment of lead waste and other waste material, Whatcom County is operating an unpermitted landfill at the Plantation Rifle Range and must conduct closure of that landfill.
- F. Based on the Findings of Fact and the administrative record, Ecology has determined that release(s) and potential release(s) of hazardous substances at and/or from the Facility present a threat to human health and the environment, as defined in RCW 70A.305.020(32) and (13).

G. Based on credible evidence, Ecology issued a PLP status letter to the County dated October 7, 2022, pursuant to RCW 70A.305.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that the County is a PLP under RCW 70A.305.040 and notified the County of this determination by letter dated December 12, 2022.

H. Pursuant to RCW 70A.305.030(l) and .050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

I. 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 plan. Initial site samples showed surface lead contamination at levels more than 100 times the dangerous waste level. Since stormwater from the site enters a creek that flows to Lake Samish, and Lake Samish is a drinking water source, expediting site characterization and hot spot removal is a high priority. An interim action will be required at the Facility. The purpose of the interim action is to reduce leaching of lead contamination into soil, sediment, and surface water from accumulated waste debris at the Facility. Based on these circumstances, Ecology has determined that an interim action is warranted under WAC 173-340-430. Either party may propose an additional interim action under this Order. If the Parties are in agreement concerning the additional interim action, the Parties will follow the process in Section VII.E. If the Parties are not in agreement, Ecology reserves its authority to

require additional interim action(s) under a separate order or other enforcement action under Chapter 70A.305 RCW, or to undertake the interim action(s) itself.

VII. WORK TO BE PERFORMED – CLOSURE

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the County conduct and complete closure pursuant to WAC 173-303-610 at the Facility's DWMUs. The County shall conduct the following remedial actions in accordance with the Closure Plan (Exhibit B).

VIII. WORK TO BE PERFORMED – CORRECTIVE ACTION

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that The County take the following remedial action(s) at the Facility. These remedial actions must be conducted in accordance with WAC 173-340 and 173-204 (where the Facility might include sediments):

A. The County shall conduct the following remedial actions in accordance with the Corrective Action Scope of Work (Exhibits C) and Schedule of Deliverables (Exhibit D):

1. Develop, execute, and complete a report for a Remedial Investigation/Feasibility Study (RI/FS) for the Facility in accordance with the Scope of Work and Schedule.
2. Develop a draft Cleanup Action Plan (dCAP) for the Facility.

B. If the County learns of a significant change in conditions at the Facility, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in soil, groundwater, surface water, and sediments, the County, 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.

C. The County shall submit to Ecology written monthly Progress Reports that describe the actions taken during the previous month to implement the requirements of this Order. The

County shall submit all Progress Reports by the tenth (10th) day of the month in which they are due after the effective date of this Order. The Progress Reports shall describe the following:

1. Summary of significant finding, list of activities conducted at the Facility, and changes in personnel during the last month period.
2. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests. Explain how deviation was rectified.
3. Description of all deviations from the Scope of Work and Schedule (Exhibits C and D) during the last month and any planned deviations in the upcoming month.
4. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.
5. All raw data (including laboratory analyses) received during the previous month (if not previously submitted to Ecology), together with a detailed description of the underlying samples collected.
6. Projected work to occur and list of deliverables for the upcoming month.

D. Financial Assurance

1. Financial assurance for corrective action is required by WAC 173-303-64620.

Ecology's Financial Assurance Officer shall determine when the County's actions and submissions meet the requirements of WAC 173-303-64620.

2. Ecology's Financial Assurance Officer is:

Joanna Richards
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
Phone: 360-407-7220
Fax: 360-407-6715
Email: joar461@ecy.wa.gov

E. All plans or other deliverables submitted by the County for Ecology's review and approval under the Scope of Work and Schedule (Exhibits C and D) shall, upon Ecology's approval, become integral and enforceable parts of this Order.

F. If the Parties agree on an interim action under Section VI.I, the County shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). The County shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and the County is required to conduct the interim action in accordance with the approved Interim Action Work Plan.

G. The County shall notify Ecology's project coordinator in writing of any newly-identified DWMU(s), newly-discovered release(s) from known DWMU(s), and newly-discovered AOCs at the Facility no later than seven (7) days after discovery, and shall investigate and report on these areas as directed by Ecology's project coordinator. If required, the investigation (assessment) and reporting shall be done in accordance with attached Exhibit C (RI/FS Scope of Work).

H. If Ecology determines that the County has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to the County, perform any or all portions of the remedial action or at Ecology's discretion allow the County an opportunity to correct. In an emergency, Ecology is not required to provide notice to the County, or give an opportunity for dispute resolution. The County shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

I. Except where necessary to abate an emergency situation or where required by law, the County shall not perform any remedial actions at the Facility outside those remedial actions

required by this Order to address the contamination that is the subject of this Order, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section VIII.J. (Amendment of Order). In the event of an emergency, or where actions are taken as required by law, the County 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.

J. Ecology hereby incorporates into this Order the previous remedial actions described in Section V, Findings of Fact. Reimbursement for specific project tasks under a grant agreement with Ecology is contingent upon a determination by Ecology's Hazardous Waste and Toxics Reduction Program that the retroactive costs are eligible under WAC 173-332A-320(6), the work performed complies with the substantive requirements of WAC 173-340, and the work is consistent with the remedial actions required under this Order. The costs associated with Ecology's determination on the past independent remedial actions described in Section V, Findings of Fact, are recoverable under this Order.

IX. TERMS AND CONDITIONS

A. Payment of Remedial Action Costs

The County 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 Facility under RCW 70A.305, 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). For all Ecology costs incurred, the County 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.

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.

B. Designated Project Coordinators

The project coordinator for Ecology is:

Val Cramer
15700 Dayton Avenue N
Shoreline, WA 98133
425-698-5539
vcra461@ecy.wa.gov

The project coordinator for the County is:

Christ Thomsen
3373 Mount Baker Highway
Bellingham, WA 98226
360-778-5850
cthomsen@co.whatcom.wa.us

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 Facility. To the maximum extent possible, communications between Ecology and the County, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

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

C. Performance

All geologic and hydrogeologic work performed pursuant to this Order 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, except as otherwise provided for by RCW 18.43 and 18.220.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered by 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 by 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 RCW 18.43 and 18.220.

The County 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 Facility.

D. Access

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Facility that the County 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 County'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 County. The County shall make all reasonable efforts to secure access rights for those properties within the Facility not owned or controlled by the County 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 Facility property owned or

controlled by the County unless an emergency prevents such notice. All persons who access the Facility 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 Facility property access.

E. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the County 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 County shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the County pursuant to implementation of this Order. The County shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Facility. Ecology shall, upon request, allow the County 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.E (Access), Ecology shall notify the County 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 WAC 173-50 for the specific analyses to be conducted, unless otherwise approved by Ecology.

F. Public Participation

Ecology shall maintain the responsibility for public participation at the Facility. However, the County 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 meetings related to remedial action work to be performed at the Facility with the interested public and/or local governments. Likewise, Ecology shall notify the County prior to the issuance of all press releases and fact sheets, and before and before meetings related to the Facility with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the County that do not receive prior Ecology approval, the County 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 Facility. 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) Ecology's Bellingham Field Office
913 Squalicum Way #101, Bellingham, WA 98225

(b) Ecology's Northwest Regional Office
15700 Dayton Avenue N, Shoreline, WA 98133

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 Facility shall be maintained in the repository at Ecology's Northwest Regional Office in Shoreline, Washington.

G. 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 County 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 County shall make all records available to Ecology and allow access for review within a reasonable time.

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

H. Resolution of Disputes

1. In the event that the County elects to invoke dispute resolution the County 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), the County has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its 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 County's position with regards to the dispute; Ecology's position with regard to the dispute; and the extent of resolution reached by informal discussion.

c. The County may then request regional management review of the dispute. The County must submit this request (Formal Dispute Notice) in writing to the Northwest Region Hazardous Waste and Toxics Reduction 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. The Decision on Dispute 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.

4. In case of a dispute, failure to either proceed with the work required by this Order 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 VII.E (Work to be Performed) or initiating enforcement under Section X (Enforcement).

I. Extension of Schedule

1. The County's 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; and
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on the County 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 County 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 County;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII.L (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 County.

3. Ecology shall act upon any the County's written request for extension in a timely fashion. Ecology shall give the County 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.K (Amendment of Order) when a schedule extension is granted.

4. At the County'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:

- 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.L (Endangerment).

J. 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.M (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 County. Ecology will provide its written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

When requesting a change to the Order, the County 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 Order must be formally amended. Reasons for the disapproval of a proposed change to this Order shall be stated in writing. If Ecology does not agree to a proposed change, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.H (Resolution of Disputes).

K. Endangerment

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

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

If Ecology concurs with or orders a work stoppage pursuant to this section, the County'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.I (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.

L. Reservation of Rights

This Order is not a settlement under RCW 70A.305. 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 County 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 County regarding remedial actions required by this Order, provided the County complies with this Order.

Ecology nevertheless reserves its rights under RCW 70A.305, including the right to require additional or different remedial actions at the Facility 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 Facility.

By entering into this Order, the County does not admit to any liability for the Facility. Although the County is committing to conducting the work required by this Order under the terms of this Order, the County expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

M. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Facility shall be consummated by the County 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 County's transfer of any interest in all or any portion of the Facility, and during the effective period of this Order, the County 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 County shall notify Ecology of said transfer. Upon transfer of any interest, the County shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

N. Compliance with Applicable Laws

1. *Applicable Laws.* All actions carried out by the County pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits or approvals, 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 Order. The County has a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or the County, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and the County must implement those requirements.

2. *Relevant and Appropriate Requirements.* All actions carried out the County pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. At this time, no relevant and appropriate requirements have been identified as being applicable to the actions required by this Order. If additional relevant and appropriate requirements are identified by Ecology or the County, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and the County must implement those requirements.

3. Pursuant to RCW 70A.305.090(1), the County 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, the County 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 Order 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. The County has 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 Order. In the event either Ecology or the County determines that additional permits or approvals addressed in RCW 70A.305.090(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 County shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the County 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 County and on how the County must meet those requirements. Ecology shall inform the County in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The County shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

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 the County 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.

P. Indemnification

To the extent allowed by law, the County 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 County, its officers, employees, agents, or contractors in

entering into and implementing this Order. However the County 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.

X. SATISFACTION OF ORDER

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

XI. ENFORCEMENT

Pursuant to RCW 70A.305.050, 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 Facility.

C. A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:

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

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

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

This Order may be reviewed only as provided under RCW 70A.305.070.

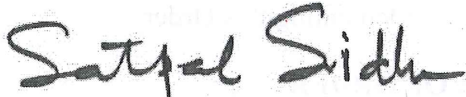
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Effective date of this Order: MAY 31st, 2023

WHATCOM COUNTY



SATPAL SINGH SIDHU
Whatcom County Executive
Bellingham, Washington
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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



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