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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Washington State
Department of Ecology

In the Matter of Remedial Action by:

AGREED ORDER

USG Interiors, Inc.

No. DE 5489

(Puyallup Site)

TO: Ms. Lanita Stevens
Manager, Environmental
USG Interiors, Inc.
550 W. Adams
Chicago, IL 60661

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and USG Interiors, Inc. (USG) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires USG to conduct a Remedial Investigation (RI) and Feasibility Study (FS) for the USG Puyallup Site, prepare RI and FS Reports, and a draft Cleanup Action Plan (CAP). Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

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

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to

comply with this Order. USG agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter USG's responsibility under this Order. USG 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 USG Puyallup Site (the Site) and is generally located at 925 River Road, in Puyallup, Washington. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. The Site is more particularly described in the Site Diagram (Exhibit A), and in the Legal Description (Exhibit B).
- B. Parties: Refers to the State of Washington, Department of Ecology and USG.
- C. Potentially Liable Person (PLP): Refers to USG.
- 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 USG:

- A. Prior to 1985 USG (formerly US Gypsum Company) disposed of several waste products in pits dug at the Site. The waste products buried at the Site included “bag house dust” and “shot” from their Tacoma rock wool manufacturing plant. Both bag house dust and shot contain elevated levels of arsenic.
- B. Ecology issued Order DE 84-506 on August 17, 1984 requiring USG to submit a post-cleanup monitoring plan. This plan, as approved by Ecology, included installation of 3 monitoring well clusters, with 3 wells in each cluster.
- C. From June 1985 through April 1986 USG voluntarily excavated shot and bag house dust from the Site, and disposed of this material at a hazardous waste landfill.
- D. Because groundwater was encountered at the bottom of the excavations, not all of the waste materials were removed. The excavations were backfilled with clean soil.
- E. On April 22, 1989 Ecology issued Consent Order No. 86-S130, which required, inter alia, that USG sample from the Site monitoring wells, and to submit reports to Ecology including the results of the groundwater monitoring well arsenic analyses. USG has submitted monitoring well sampling reports to Ecology quarterly or semi-annually since then. These reports have always indicated that the arsenic concentration in some or all of the wells exceeded 500 parts per billion.
- F. On April 17, 2006 USG provided to Ecology a proposal for testing of Site soil and groundwater. This proposal was accepted by Ecology.

- G. On February 2, 2007 Ecology received a report from USG entitled, "Soil and Groundwater Quality Assessment / Source Evaluation Report, USG – Puyallup Site, 925 River Road, Puyallup, Washington" (the report) dated January 31, 2007. The report provides the results of 15 push-probe borings taken from the Site. The report indicated that of the 15 soil borings sampled, all 15 exceeded the current 20 mg/kg MTCA Method A residential soil cleanup level for arsenic. The highest soil arsenic concentration discovered by this sampling was 2,100 mg/kg. Of the 15 groundwater samples extracted by the push-probes, all 15 exceeded the current 5 ug/l MTCA Method A groundwater cleanup level for arsenic. The highest groundwater arsenic concentration measured was 18,000 ug/l.
- H. The Site is located directly adjacent to, and on the banks of, the Puyallup River. Site groundwater is in direct hydrologic connection with the river, and likely discharges directly to the river. Therefore, the arsenic contained in the Site soils and groundwater, and likely also in the river bank sediments, is likely being continuously released into the river. The Site is located on the banks of the river close to the point of the river's discharge into Puget Sound. The arsenic presents a threat or potential threat to the environment of the Puyallup River and of Puget Sound.
- I. Based on this report Ecology issued to USG a letter proposing that USG is a Potentially Liable Person (PLP) for the USG Puyallup Site, as defined in MTCA.
- J. On May 2, 2007 USG provided Ecology with a letter which waived its right to a 30 day public comment period, and accepting its status as a PLP.

VI. ECOLOGY DETERMINATIONS

- A. USG is an "owner or operator" as defined in RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4), based on its ownership of the Site, and of the disposal of waste at the 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(20) and RCW 70.105D.020(7), respectively, has occurred at the Site.
- C. Based upon credible evidence, Ecology issued a PLP status letter to USG dated March 30, 2007, pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500. By letter dated May 2, 2007, USG voluntarily waived its rights to notice and comment and accepted Ecology's determination that USG is a PLP under RCW 70.105D.040.
- D. Pursuant to RCW 70.105D.030(1) and -.050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.
- E. Upon the effective date of this Order, Ecology terminates the requirements of Consent Order 86-5326.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that USG 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:

1. Remedial Investigation (RI)

USG shall prepare a work plan to perform remedial investigation necessary to determine the extent and nature of contamination present on the Site.

A. Scope of Work:

(1) Draft RI Work Plan: A draft RI Work Plan shall be submitted for Ecology review which describes all activities to be taken to characterize both soils and groundwater at the Site, in accordance with WAC 173-340-350 (7), taking into consideration the results of sampling previously conducted at the Site. The Draft RI Work Plan shall include a site specific Draft Health and Safety Plan (HASP) and a Draft Sampling and Analysis Plan (SAP), for Site soil, groundwater and bank sediments, in compliance with WAC 173-340-810 and 820, respectively. The sediment sampling and analysis shall follow methodologies described in the Draft Sediment Sampling and Analysis Plan Appendix (Ecology 1995) and, as appropriate, recommended Guidelines for Conducting Laboratory Bioassays on Puget Sound Sediments (PSEP 1995). The Draft RI Work Plan shall include a proposed schedule for implementation of the plan and for submission of a Draft RI Report to Ecology. The Draft RI Work Plan shall include plans for a Terrestrial Ecological Evaluation, as specified by WAC 173-340-7490.

(2) Investigation: Collect data necessary to adequately characterize the nature and extent of soil, groundwater and river bank sediment contamination, in accordance with WAC 173-340-350 (7), utilizing professionals qualified to perform the tasks required and, when applicable, in accordance with WAC 308-15-020. MTCA defines a facility or site as “..any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored disposed of, placed, or otherwise come to be located.” This definition of a site does not necessarily end at a property boundary, but continues beyond property boundaries to the extent that the hazardous substances found at the property may extend beyond the property boundary. A system of monitoring wells, including viable existing wells, shall be proposed which provide adequate coverage of the surface aquifer and also can detect any contamination of deeper aquifer(s).

B. Schedule:

The Draft RI Work Plan shall be submitted to Ecology within 60 days of the date of this order. A Final RI Work plan shall be submitted to Ecology within 30 days of the receipt of Ecology’s comments. USG shall confer with Ecology about its comments and USG shall incorporate all of Ecology’s final comments into the Final RI Work Plan. The investigation shall be performed according to the schedule set forth in the Ecology approved Final RI Work Plan as noted above.

2. Remedial Investigation/Feasibility Study (RI/FS)

Based on the results of the remedial investigation, prepare a Draft RI/FS Report in accordance with WAC 173-340-350 that provides information adequately documenting the nature and extent of soil and groundwater contamination and presents potential options and a preferred option for the remediation of the contamination located at the Site, in accordance with WAC 173-340-360.

A. Scope of Work:

(1) Draft RI/FS Report:

The Draft RI/FS Report shall report the results of remedial investigation at the Site including vertical and lateral distribution of contaminants in soil, groundwater, and sediments in the adjacent Puyallup River, and concentrations of contaminants of concern in all three media. The report shall include plan view maps of the Site indicating: groundwater flow contours, arsenic concentrations detected in soil, groundwater in shallow and deeper aquifers, and Puyallup River sediments. The outer boundaries of soil groundwater and sediment contamination shall be determined and mapped. Data shall be provided in tabular form in the report and also electronically, in conformance with WAC 173-340-540(5) as detailed in Section G below. The report shall include conclusions that can be reasonably drawn regarding potential migration of contamination beyond the boundaries of the Site and of known contamination. Additionally, the report shall include a Feasibility Study analysis, per WAC 173-340-350 and -360, of potential remedial alternatives and recommendations regarding a preferred remedial action to be implemented for soil, groundwater and sediments.

B. Schedule:

The Draft RI/FS report shall be submitted within 120 days of

the completion of remedial investigation activities performed in accordance with the approved work plan as noted above. The PLPs shall submit a Final RI/FS report, incorporating all of Ecology's final comments to the draft document, within 60 days of the receipt of Ecology's comments.

3. Draft Cleanup Action Plan

A. Scope of Work:

(1) USG shall prepare a Draft Cleanup Action Plan per WAC 173-340-380.

B. Schedule:

The Draft Cleanup Action Plan shall be submitted along with the Final RI/FS Report.

3. 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 draft 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

USG 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). USG 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 USG has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to USG, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of USG's failure to comply with its obligations under this Order, USG shall reimburse Ecology for the costs of doing such work in accordance with Section VIII (Remedial

Action Costs), provided that USG 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, USG 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:

Dom Reale, P.E., Site Manager
Washington State Dept. of Ecology
Southwest Regional Office
300 Desmond Drive
Lacey, WA 98503
Telephone: (360) 407-6266

The project coordinator for USG is:

Ms. Lanita Stevens
Environmental Manager
USG Corporation
550 West Adams Street
Chicago, IL 60661-3676
Telephone: (312) 436-4352

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 USG, 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.

USG 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 USG 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 USG'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 USG. USG shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by USG 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 USG 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, USG 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, USG shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by USG pursuant to implementation of this Order. USG shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow USG 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 Part F (Access), Ecology shall notify USG 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 is required for this Site. Ecology shall review any existing Public Participation Plan to determine its continued appropriateness and whether it requires amendment, or if no plan exists, Ecology shall develop a Public Participation Plan alone or in conjunction with USG.

Ecology shall maintain the responsibility for public participation at the Site. However, USG 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 USG 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 USG that do not receive prior Ecology approval, USG 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. Puyallup Public Library
324 S. Meridian
Puyallup, WA 98371
Tel: 253-841-5454
- b. Citizens for a Healthy Bay
917 Pacific Ave., Suite 100
Tacoma, WA 98402
Tel: 253-383-2429
- c. Ecology's Southwest Regional Office
300 Desmond Drive
Lacey, WA 98503
Tel: 360-407-6365

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

J. Resolution of Disputes

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII Part 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, USG 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. USG 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 USG'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 USG 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 USG 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 USG;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII Part 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 USG.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give USG 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 Part 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 Part 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 Part 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 USG. USG 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 Part 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 USG to cease such activities for such period of time as it deems necessary to abate the danger. USG shall immediately comply with such direction.

In the event USG 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, USG may cease such activities. USG 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 USG shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with USG's cessation of activities, it may direct USG to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to Section VIII Part M (Endangerment), USG'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 Part 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 USG to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against USG regarding remedial actions required by this Order, provided USG 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 USG 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 USG's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, USG 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, USG shall notify Ecology of said transfer. Upon transfer of any

interest, USG 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 USG pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. At this time, no federal, state or local requirements have been identified as being applicable to the actions required by this Order.

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

USG 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 USG 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 USG shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, USG 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

USG and on how USG must meet those requirements. Ecology shall inform USG in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. USG 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 USG 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. Land Use Restrictions

None required at this time.

R. Financial Assurances

None required at this time.

S. Periodic Review

None required at this time.

T. Indemnification

USG 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 for death or injuries to persons or for loss or damage to property to the extent arising from or on account of acts or omissions of USG,

its officers, employees, agents, or contractors in entering into and implementing this Order. However, USG 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 USG's receipt of written notification from Ecology that USG has completed the remedial activity required by this Order, as amended by any modifications, and that USG 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:

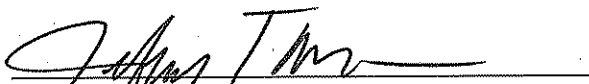
- A. The Attorney General may bring an action to enforce this Order in a state or federal court.
- B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
- C. In the event USG refuses, without sufficient cause, to comply with any term of this Order, USG 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: June 17, 2008

USG Corporation

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY


Jeffrey T. Russart
Vice President Manufacturing - Ceilings
USG Interiors Inc.
550 W. Adams Street
Chicago, IL 60661-3676

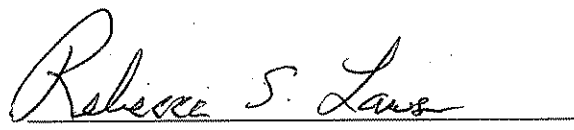
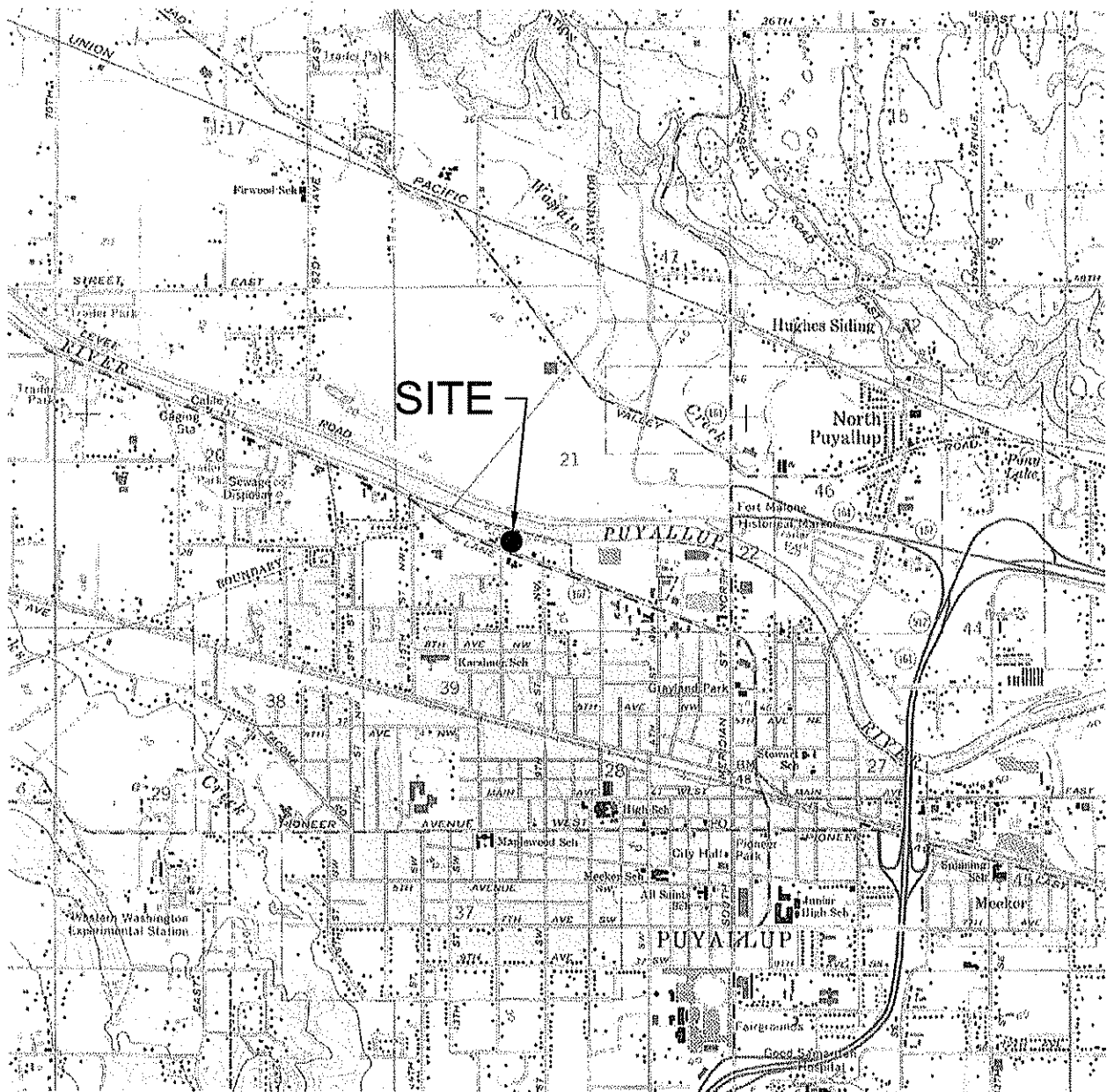
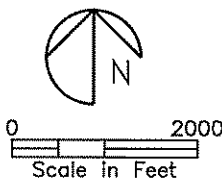

Rebecca S. Lawson, P.E.
Section Manager
Toxics Cleanup Program
Southwest Regional Office
Telephone: 360-407-6241

EXHIBIT A - SITE DIAGRAM P.1 OF 2



Source: USGS Puyallup, Wash. 7.5' Quadrangle, 1981

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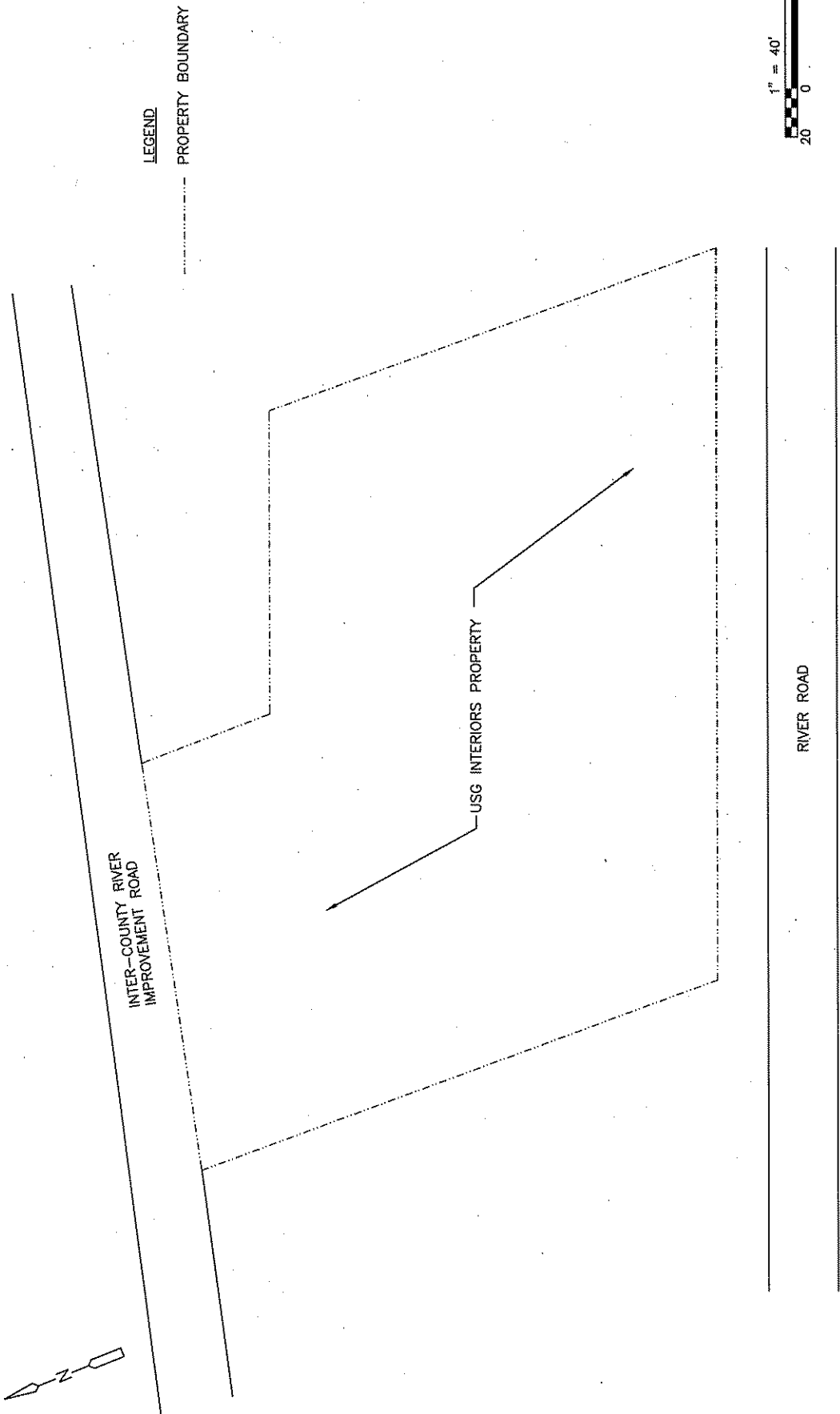


USG INTERIORS/SOIL QUALITY
ASSESSMENT
PUYALLUP, WASHINGTON

Figure No. 1
Vicinity Map



EXHIBIT A - SITE DIAGRAM P.2 OF 2



USG INTERIORS/PUYALLUP SITE
PUYALLUP, WASHINGTON

Figure No. 2
Site Plan

DESCRIPTION

COMMENCING AT THE NORTHEAST CORNER OF LOT 1 OF GEORGE O. KELLY'S SECOND SUBDIVISION AS RECORDED IN VOLUME 7 OF PLATS, PAGE 94, RECORDS OF PIERCE COUNTY, WASHINGTON; THENCE $S 1^{\circ}17'03'' E$ 83.27 FEET ALONG THE EAST LINE OF SAID LOT 1 TO THE NORTHERLY MARGIN OF STATE HIGHWAY (SR 410); THENCE $N 70^{\circ}09'00'' W$ 142.03 FEET ALONG SAID MARGIN TO A POINT WHICH BEARS $S 70^{\circ}09'00'' E$ 240.00 FEET AS MEASURED ALONG SAID MARGIN FROM THE WEST LINE OF THE EAST 356.33 FEET OF SAID LOT 1 AND TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID NORTHERLY MARGIN $N 70^{\circ}09'00'' W$ 300.00 FEET; THENCE $N 1^{\circ}17'03'' W$, PARALLEL WITH THE EAST LINE OF SAID LOT 1, 226.03 FEET TO A POINT 30 FEET SOUTHERLY FROM AND MEASURED AT RIGHT ANGLES TO THE SOUTH BANK OF THE INTER-COUNTY RIVER IMPROVEMENT LINE AS SHOWN ON MAP DATED DECEMBER 1916; THENCE $S 79^{\circ}23'33'' E$, PARALLEL TO SAID RIVER IMPROVEMENT LINE, 168.01 FEET TO THE MOST NORTHWESTERLY CORNER OF THAT CERTAIN QUIT CLAIM DEED AS RECORDED UNDER A.F.N. 8103050249, RECORDS OF SAID COUNTY; THENCE $S 1^{\circ}17'03'' E$ 56.89 FEET; AS RECORDED IN SAID QUIT CLAIM DEED; THENCE $S 69^{\circ}34'32'' E$ 124.23 FEET; AS RECORDED IN SAID QUIT CLAIM DEED; THENCE $S 1^{\circ}17'03'' E$, PARALLEL WITH SAID EAST LINE, 196.73 FEET TO THE TRUE POINT OF BEGINNING.

Reference:

"Topographic Survey for United States Gypsum Company
In the City of Puyallup, Washington, by Bennett
PS & E Inc., April 1982"