



Voluntary Cleanup Program: Expedited Process Agreement

Washington State Department of Ecology
Toxics Cleanup Program

Instructions

Submit an electronic Agreement as part of your Expedited VCP application materials. Send the signed agreement (original) with any other physical materials to:

Sarah Wollwage, Expedited VCP Planner
Department of Ecology
PO Box 47600
Lacey, WA 98504-7600

To request ADA accommodation including materials in a format for the visually impaired, call Ecology at 360-407-6831 or visit <https://ecology.wa.gov/accessibility>. People with impaired hearing may call Washington Relay Service at 711. People with speech disability may call TTY at 877-833-6341.

For Ecology Use Only

RESET FORM

Facility/Site Name: Dagmars Marina

Cleanup Site ID: 4698

VCP Project #: XN0039

Agreement

This document constitutes an Agreement between the State of Washington Department of Ecology (Ecology) and Guntower Capital LLC (Customer) to provide informal site-specific technical consultations under the Voluntary Cleanup Program (VCP) Expedited process. This Agreement applies to the Site identified above and associated with the following address: 1871 Ross Avenue, Everett, WA 98201.

The purpose of this Agreement is to facilitate independent remedial action at the Site. Ecology is entering into this Agreement under the authority of the Model Toxics Control Act (MTCA), chapter 70.105D Revised Code of Washington (RCW), and its implementing regulations, chapter 173-340 Washington Administrative Code (WAC). If a term in this Agreement is defined in MTCA or chapter 173-340 WAC, then that definition governs. Both parties agree to the terms of this Agreement and any interpretive guidance published by Ecology applicable to the administration of the Expedited VCP process.

Services Provided by Ecology

Upon request, Ecology agrees to provide the Customer informal site-specific technical consultations on the independent remedial actions proposed for or performed at the Site consistent with WAC 173-340-515(5). Those consultations may include assistance in identifying applicable regulatory requirements and opinions on whether the remedial actions proposed for or conducted at the Site meet those requirements.

Ecology may use any appropriate resource to provide the Customer with the requested consultative services. Those resources may include, but are not limited to, those of Ecology and the Office of the Attorney General. However, Ecology may not use independent contractors, unless the Customer provides Ecology with prior written authorization.

In accordance with RCW 70.105D.180, any opinions provided by Ecology under this Agreement are advisory only and not binding on Ecology. Ecology, the state, and officers and employees of the state are immune from all liability. Furthermore, no cause of action of any nature may arise from any act or omission in providing, or failing to provide, informal advice and assistance under the Expedited VCP process.

Payment for Services by Customer

The Customer agrees to pay all costs incurred by Ecology in providing the informal site-specific technical consultations requested by the Customer. Those costs may include the costs incurred by attorneys or independent contractors used by Ecology to provide the requested consultative services. Ecology must publish, and the Customer agrees to pay, all applicable fees, cost recovery rates, and pre-payment amounts.

Initial Pre-Payment

Upon signing this Agreement, Ecology must provide the Customer with a written invoice for the amount of the refundable, initial prepayment published by Ecology. The Customer must pay the required amount by the due date, which is thirty (30) calendar days after the invoice date. If Ecology has not received the initial prepayment by the due date, Ecology may terminate this Agreement and assign the debt, including cost-recovery charges and the Agreement Close Out Fee, to a collection agency under chapter 19.16 RCW. The Customer must pay all collection agency fees.

Monthly Cost Recovery Process & Subsequent Prepayments

Ecology must charge incurred costs against the Project's prepayment balance. Ecology must provide the Customer a monthly itemized statement of costs and the prepayment balance by the tenth day of each month. The invoice must include a summary of prepayments received, costs incurred, identity of staff involved, and amount of time staff spent on the Project.

If the Project's prepayment balance approaches or falls below the published prepayment threshold, Ecology may submit a written invoice to the Customer requesting submittal of a subsequent prepayment published by Ecology. The Customer must pay the required amount by the due date, which is thirty (30) calendar days after the invoice date. If Ecology has not received a subsequent prepayment by the due date, Ecology must issue a written notice of prepayment delinquency and stop work on the Project. If Ecology has not received a subsequent prepayment within seven (7) calendar days of the written notice, Ecology may terminate this Agreement.

Close Out Fee

The Customer agrees to pay the applicable close out fee published by Ecology upon termination of this Agreement. Ecology must charge the applicable close out fee against the Project's prepayment balance. If the prepayment balance is insufficient to cover the applicable close out fee, Ecology will invoice the Customer for the remaining amount. The payment of the invoiced amount is due immediately. Ecology may withhold any requested opinions until the applicable close out fee and any other costs incurred by Ecology are paid. If Ecology has not received payment within sixty (60) calendar days after the invoice date, Ecology may assign the debt to a collection agency under chapter 19.16 RCW. The Customer is responsible for paying all collection fees.

Refunds

Within forty-five (45) calendar days of Agreement termination, Ecology must charge all costs and the applicable close out fee, and then refund greater than ten dollars (\$10) to the Customer.

Reservation of Rights / No Settlement

This Agreement does not constitute a settlement of liability to the state under MTCA. This Agreement also does not protect a liable person from contribution claims by third parties for matters addressed by this Agreement.

The state does not have the authority to settle with any person potentially liable under MTCA, except in accordance with RCW 70.105D.040(4). Ecology's signature on this Agreement in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority.

Ecology reserves all rights under MTCA, including the right to require additional or different remedial actions at the Site, should Ecology deem such actions necessary to protect human health or 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.

Effective Date, Modifications, and Severability

The effective date of this Agreement is the date on which the Toxics Cleanup Program's Section Manager or delegated representative signs this Agreement. This Agreement may be amended by mutual agreement of Ecology and the Customer. Amendments must be in writing and are effective when the Toxics Cleanup Program's Section Manager or delegated representative signs them. If any provision of this Agreement proves to be void, that provision does not invalidate any other provision of this Agreement.

Termination of Agreement

Either party may terminate this Agreement without cause by sending written notice to the other party. The effective date of termination is the date Ecology sends notice to the Customer or the date Ecology receives notice from the Customer, whichever occurs first. Ecology's issuance of a No Further Action opinion for the Site constitutes written notice of termination of this Agreement.

Under this Agreement, the Customer is responsible only for costs incurred by Ecology before the effective date of termination and the applicable close out fee. However, termination of this Agreement does not affect any right Ecology may have to recover its costs under MTCA or any other provision of law.

Representations and Signatures

The Customer must have an ownership interest in or operate the facility or have a contractual right to purchase, redevelop, or reuse the facility. The undersigned hereby certifies that they are fully authorized to enter into this Agreement and to execute and legally bind the Customer to comply with this Agreement.

Customer

Gumbayer Capital LLC
Name of Customer

[Signature]
Signature

Jonathan Sladky
Printed Name of Signatory

Manager
Title of Signatory

5/29/24
Date

State of Washington Department of Ecology

Headquarters

Ecology Toxics Cleanup Program Section

[Signature]
Signature

Erik G. Snyder

Toxics Cleanup Program Section Manager Printed Name

06/07/2024

Date