

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

Mason County Fire District 5
PO Box 127
Allyn, WA 98524

MODEL AGREED ORDER
No. 1891

TO: Mr. Richard Knight, Fire Chief

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- Exhibit A-1: Location Map
- Exhibit A-2: Site Diagram
- Exhibit B: Draft Work Plan and Schedule
- Exhibit C: Applicable Regulations

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Mason County Fire District 5 (MCFD 5) under this Agreed Order (Order) is to provide for cleanup action at a facility where there has been a release or threatened release of hazardous substances. This Order requires MCFD 5 to install up to two groundwater monitoring wells and monitor the levels of petroleum hydrocarbons in groundwater until such time as levels of contaminants are below applicable cleanup levels. 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 70.105D.050(1) (MTCA).

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. MCFD 5 agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter MCFD 5's responsibility under this Order. MCFD 5 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 used in this Order.

1. Site: The Site is referred to as MCFD 5 Station 5 (Station 5) and is generally located at East 6011 Agate Road, Shelton, Mason County, Washington as shown in Exhibit A-1. The Site is defined by the

extent of contamination caused by the release of hazardous substances from a former underground storage tank (UST) at the Site. Based upon factors currently known to Ecology, the Site is more particularly described in Exhibit A-2 (attached) to this Order, which is a detailed Site diagram. The Site constitutes a Facility under RCW 70.105D.020(4).

2. Parties: Refers to Ecology and MCFD 5.
3. PLP: Refers to MCFD 5.
4. Agreed Order or Order: Refers to this Order and each of the exhibits to the Order. All exhibits are integral and enforceable parts of this Order. The terms “Agreed Order” or “Order” shall include all exhibits to the Order.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by MCFD 5:

- (1) MCFD 5 owns and operates the facility known as Station 5.
- (2) Station 5 is located at East 6011 Agate Road, Shelton, Mason County, Washington. The location and boundaries of Station 5 are depicted by the diagram attached as Exhibit A-2 to this Order.
- (3) On November 21, 1994, one five hundred and fifty (550) gallon capacity gasoline UST was removed from the site by Custom Backhoe and Dumptruck Services of Bellevue, Washington. Sampling of the UST area for petroleum contamination was conducted by AGRA Earth & Environmental consultants (AGRA) of Kirkland, Washington, at that time.
- (4) A release of petroleum hydrocarbons to soil above MTCA cleanup levels from an UST system at the site was reported to Ecology on March 1, 1995.
- (5) The release was discovered during removal of the UST system on November 21, 1994. Laboratory confirmation of petroleum hydrocarbon contamination in soil was obtained by the consultant on December 5, 1994.
- (6) Four (4) groundwater monitoring wells (MW-1, MW-2, MW-3, MW-4) were installed at the site in February 1995. Groundwater was found to be contaminated with petroleum hydrocarbons.

(7) Petroleum hydrocarbon contamination in groundwater was confirmed by AGRA and reported to Ecology on March 5, 1995

(8) In July 1995, approximately one thousand (1000) cubic yards of petroleum contaminated soil was excavated and stockpiled on site for treatment by bioremediation. Petroleum hydrocarbons in soil above MTCA cleanup levels remained at the limits of the excavation.

(9) Two additional groundwater monitoring wells (MW-5, MW-6) were installed in March 1997.

(10) The ground surface to groundwater depth range has been determined to vary up to twenty (20) feet during the year with depths of approximately 1.8 feet down to approximately 22 feet below ground surface.

(11) April 1997 sample results from the bioremediated contaminated stockpiled soil were below MTCA cleanup levels.

(12) During sampling of groundwater monitoring wells in July 1997 liquid phase petroleum hydrocarbons were found in one well. Depth to groundwater was approximately 4.80 feet to 7.36 feet below ground surface. Groundwater flow direction was to the southwest.

(13) September 1997 petroleum contaminated soils were excavated in the vicinity of monitoring well MW-2. Monitoring well MW-2 was removed during excavation activities. Approximately one hundred (100) cubic yards of petroleum contaminated soil was removed in the area of monitoring well MW-2 and stockpiled on site for remediation. This work was cited in the *Quarterly Groundwater Monitoring Report*, AGRA, dated December 8, 1997, however, no report giving specific details was issued.

(14) September 1999 excavation of approximately eight hundred (800) cubic yards of petroleum contaminated soil located southwest of the initial excavation was conducted. The contaminated soil was stockpiled on site for bioremediation. Soil sample analyses along the limits of the excavation did not detect petroleum hydrocarbons. The excavation extended approximately twenty two (22) feet below ground surface. Groundwater seeps were encountered at approximately sixteen (16) feet below ground surface. Approximately ten (10) pounds of oxygen releasing compound (ORC) was placed

in the northeastern corner of the excavation to expedite in situ bioremediation of groundwater. Monitoring wells MW-3 and MW-5 were removed during excavation. No report was issued at that time; the work was cited in *Additional Groundwater Monitoring Well Installation and Sampling Report*, AMEC Earth & Environmental, Inc. (AMEC, formerly AGRA), August 26, 2003.

(15) Groundwater sampling was conducted May 2000. Of the three (3) remaining monitoring wells, MW-4 was found to be damaged and inadequate for sampling and MW-1 could not be located. MW-6, the monitoring well located up-gradient from the former UST location, was the only well suitable for sampling.

(16) In May 2001 samples were collected from the contaminated soil stockpile that was being bioremediated on site. Analyses indicated no gasoline range petroleum hydrocarbons, benzene, toluene, ethylbenzene, or xylene contamination above MTCA cleanup levels.

(17) In April 2003, two (2) new groundwater monitoring wells were installed. The two new wells were sampled in May 2003. MW-1A was found to contain gasoline range petroleum hydrocarbons and benzene above MTCA cleanup levels. MW-4A analytical results were non detect for Total Petroleum Hydrocarbons-Gasoline and benzene, toluene, ethylbenzene, and xylenes. Monitoring well MW-6 could not be located.

(18) The extent and magnitude of groundwater contamination down gradient from the former UST location is unknown at this time.

(19) Groundwater flow direction at the site has historically been generally to the south southwest. However, the most recent flow direction determination was made in December 1998 by AGRA.

VI. ECOLOGY DETERMINATIONS

1. MCFD 5 is an "owner or operator" as defined in RCW 70.105D.020(12), of a "facility" as defined in RCW 70.105D.020(4).

2. The facility which MCFD 5 owns and operates is known as Station 5 and is located at East 6011 Agate Road, Shelton, Mason County, Washington.

3. Total petroleum hydrocarbons characterized as gasoline and benzene, toluene, ethylbenzene, and xylenes found at the facility as described above are "hazardous substances" as defined in RCW 70.105D.020(7)

4. 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.

5. Based upon credible evidence, Ecology issued a potentially liable person status letter to MCFD 5 dated October 2, 1995, pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500. By letter dated October 30, 1995, MCFD 5 voluntarily waived its rights to notice and comment and accepted Ecology's determination that MCFD 5 is a potentially liable person (PLP) under RCW 70.105D.040.

6. 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 action required by this Order is in the public interest.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that MCFD 5 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. The Work Plan and Schedule for Station 5 is set out in Exhibit B (attached), which is hereby incorporated by reference and is an integral and enforceable part of this Order. Work to be performed includes conducting a limited remedial investigation for groundwater contamination.

Remedial actions to be performed (as described in Exhibit B) at the site include:

- Review and analyze well records of wells within one half mile of Station 5 to determine potential contaminant migration;
- installation of one to two groundwater monitoring wells down gradient from the former UST location;
- sampling of soil for chemical analysis during well installation;

- sampling of four (4) to five (5) groundwater monitoring wells (three existing, one or two new) until such time as four consecutive quarters of clean results are obtained;
- installation of ORC in monitoring wells if needed; and
- report preparation for each activity performed at the site.

Exhibit B outlines the draft work plan for the work to be performed and the schedule of when events are to take place. These Exhibits are an integral and enforceable part of this Order.

2. Included in the schedule in Exhibit B is a schedule of deliverables to be submitted to Ecology.

3. Interim progress reports will be submitted to Ecology during these activities. These interim reports may be submitted by email, fax, or mail. Final reports for well installation and each round of groundwater monitoring will be sent to Ecology.

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

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notices

This Order has been the subject of public notice and comment pursuant to WAC 173-340-600.

B. Remedial Action Costs

MCFD 5 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 both prior to and subsequent to the issuance of this Order. MCFD 5 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 description statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Failure to pay

Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges pursuant to WAC 173-340-550(4).

C. Implementation of Remedial Action

Except where necessary to abate an emergency situation, MCFD 5 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:

Carol A. Johnston
Department of Ecology - Southwest Regional Office
PO Box 47775
Olympia, WA 98504-7775

The project coordinator for MCFD 5 is:

Timothy McKern
Mason County Fire Protection District #5
PO Box 127
Allyn, WA 98524-0127

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. The Ecology project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and MCFD 5, 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 coordinator(s).

Ecology and MCFD 5 may change their respective project coordinator, but must provide (10) calendar days advance written notification of the change to the other party.

E. Performance

All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or professional hydrogeologist as approved by Ecology, with experience and expertise in hazardous waste site investigation and cleanup. MCFD 5 shall notify Ecology in writing of the identity of such engineer(s), or hydrogeologist(s), or others, and of any contractors and

subcontractors 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 MCFD 5 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 MCFD 5'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 MCFD 5. MCFD 5 shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by MCFD 5 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 MCFD 5 unless an emergency prevents such notice. All persons who access the Site pursuant to this paragraph shall comply with any applicable health and safety plan.

G. Sampling, Data Reporting, and Availability

With respect to the implementation of this Order, MCFD 5 shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology and shall submit these results in accordance with Section VII of this Order.

Ground water sampling data shall be submitted to Ecology according to the requirements of the work plan and WAC 173-340-840(5). These submittals shall be provided to Ecology in accordance with Section VII of this Order.

If requested by Ecology, MCFD 5 shall allow split or duplicate samples to be taken by Ecology and/or its authorized representative of any samples collected by MCFD 5 pursuant to implementation of this Order. MCFD 5 shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, to be taken by MCFD 5 or its authorized

representative provided it does not interfere with Ecology's sampling. Without limitation on Ecology's rights under this section, Ecology shall notify MCFD 5 prior to any sample collection activity unless an emergency prevents such notice.

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 MCFD 5.

Ecology shall maintain the responsibility for public participation at the Site. However, MCFD 5 shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, Cleanup Action Plan reports 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 MCFD 5 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 MCFD 5 that do not receive prior Ecology approval, MCFD 5 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. 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. In cooperation with Ecology, arrange and/or continue information repositories to be located at William G. Reed Public Library, 7th and Alder, Shelton, Mason County, Washington 98584-2571 and Ecology's Southwest Regional Office at 300 Desmond Drive, Lacey, Washington. At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured ground water,

surface water, soil, sediment, and air monitoring data; remedial actions plans, 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, MCFD 5 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, MCFD 5 shall make all records available to Ecology and allow access for review within a reasonable time.

J. Dispute Resolution

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, the Parties shall utilize the dispute resolution procedure set forth below.

(a) Upon receipt of the Ecology project coordinator's decision, MCFD 5 has fourteen (14) days within which to notify Ecology's project coordinator of its objection to the decision.

(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) MCFD 5 may then request Ecology 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 decision.

(d) The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within sixty (60) days of MCFD 5'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 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 the reason(s) the extension is needed.

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; or
- (b) Other circumstances deemed exceptional or extraordinary by Ecology; or
- (c) Endangerment as described in Section VIII.M.

A requested extension shall not be effective until approved by Ecology. Ecology shall act upon any written request for extension in a timely fashion. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology shall give MCFD 5 written notification in a timely fashion of any extensions granted pursuant to this Order.

2. The burden shall be on MCFD 5 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 includes, but is not limited to:

- (a) Circumstances beyond the reasonable control and despite the due diligence of MCFD 5 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 MCFD 5; or
- (b) Acts of God, including fire, flood, blizzard, volcanic eruption, extreme temperatures, storm, or other unavoidable casualty; or
- (c) Endangerment as described in Section VIII.M. of this Order.

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 MCFD 5.

L. Amendment of Order

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

Except as provided in Section VIII. N. of this Order, 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 MCFD 5. MCFD 5 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 the Order represents a substantial change, Ecology shall provide additional public notice and opportunity to comment pursuant to WAC 173-340-600(11)(d). If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J. of this Order.

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 MCFD 5 to cease such activities for such period of time as it deems necessary to abate the danger. MCFD 5 shall immediately comply with such direction.

If for any reason MCFD 5 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, MCFD 5 may cease such activities. MCFD 5 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 MCFD 5 shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with MCFD 5's cessation of activities, it may direct MCFD 5 to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, MCFD 5'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 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/No Settlement

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 Ecology rights or authority. Ecology will not, however, bring an action against MCFD 5 to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against MCFD 5 regarding remedial actions required by this Order, provided MCFD 5 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. Transference of Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by MCFD 5 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 MCFD 5's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, MCFD 5 shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, MCFD 5 shall notify Ecology of said transfer. Upon transfer of any interest, MCFD 5 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 MCFD 5 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 paragraph 2 of this section.

2. Pursuant to RCW 70.105D.090(1), the substantive 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 for the remedial action under this Order and that are known to be applicable at the time this Order becomes effective, have been included in Exhibit C, and are binding and enforceable requirements of this Order.

MCFD 5 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 MCFD 5 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 MCFD 5 shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, MCFD 5 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 MCFD 5 and on how MCFD 5 must meet those requirements. Ecology shall inform MCFD 5 in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. MCFD 5 shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

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 which is necessary for the state to administer any federal law, the exemption shall not apply and MCFD 5 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. Five Year Review

As remedial action, including ground water monitoring, continues at the Site, the Parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of monitoring the Site as often as is necessary and appropriate under the circumstances. At least every five years the Parties shall meet to discuss the status of the Site and the need, if any, for further remedial action at the Site. Ecology reserves the right to require further remedial action at the Site under appropriate circumstances. This provision shall remain in effect for the duration of this Order.

R. Indemnification

MCFD 5 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 arising from or on account of acts or omissions of MCFD 5, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the MCFD 5 shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in implementing the activities pursuant to this Order.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon MCFD 5's receipt of written notification from Ecology that MCFD 5 has completed the remedial activity required by this Order, as amended by any modifications, and that the MCFD 5 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:

1. The Attorney General may bring an action to enforce this Order in a state or federal court.
2. 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.
3. In the event MCFD 5 refuses, without sufficient cause, to comply with any term of this Order, MCFD 5 will be liable for:
 - (a) Up to three 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 \$25,000 per day for each day it refuses to comply.
4. 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: _____

MASON COUNTY FIRE DISTRICT 5

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

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