

State of Washington
Department of Ecology

In the Matter of Remedial Action by:
Department of Social and Health Services
Agreed Order
No. DE 23299

To: Washington Department of Social and Health Services
c/o Larry Covey
P.O. Box 45848
Olympia, Washington
98504

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- Exhibit A Location Diagram
- Exhibit B Scope of Work
- Exhibit C Interim Action Summary

1. Introduction

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the Department of Social and Health Services (DSHS) 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 DSHS to complete an interim action to extinguish the fire at the site, conduct a remedial investigation and feasibility study, and conduct any additional interim remedial actions as required by Ecology. Ecology believes the actions required by this Order are in the public interest.

2. Jurisdiction

This Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70A.305.050(1).

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

4. 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 in this Order.

4.1 Site

The Site is referred to as Eastern State Hospital Landfill. The Site constitutes a facility under RCW 70A.305.020(8). The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or

placed, or otherwise come to be located. Based upon factors currently known to Ecology, the Site is generally located in the vicinity of the Department of Social and Health's Pine Lodge Campus, west of the Lakes Memorial Cemetery, as shown in the Location Diagram (Exhibit A).

4.2 Parties

Refers to the State of Washington, Department of Ecology and the State of Washington, Department of Social and Health Services.

4.3 Potentially Liable Person (PLP)

Refers to the State of Washington, Department of Social and Health Services.

4.4 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.

5. Findings of Fact

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

- a. The State of Washinton has operated state-funded hospital facilities at the Eastern State Hospital Pine Lodge location since approximately 1891. At some point prior to 1970 (likely in or around 1950's), buildings on the Pine Lodge property were demolished and landfilled on the Pine Lodge property by a predecessor agency to DSHS, approximately 100 feet from the shoreline of West Medical Lake. The landfilled material appears to primarily consist of tiles, concrete, insulation, and other building-related debris.
- b. In August 2023, the Gray Road Wildfire burned a large swath of property in and around the Medical Lake community, including portions of the Site that contain the landfill material. This wildfire likely ignited the landfill material. Once the Gray Road Wildfire was contained and extinguished, DSHS staff discovered that the landfill material was still burning underground.
- c. Spokane County Fire District 3 responded to the fire and attempted to put the fire out using water. After several months of failed attempts to extinguish the fire with water, Fire District 3 decided to leave the fire over the winter of 2023-2024 in the hopes that it would burn itself out in the cooler weather and snow. On January 9, 2024, Spokane County Fire District 3 reported the fire to Ecology, having exhausted their options for extinguishment, and requested assistance due to concerns over air quality impacts and proximity to West Medical Lake.

- d. As of April 2024, the fire in the landfill continued to burn despite continued efforts by the Spokane County Fire District 3 to extinguish it. The Fire District has continued to use water to extinguish flames at the surface of the landfill as ambient temperatures and wind speeds increase. Ecology's thermal imaging has identified surface temperatures in excess of 800 degrees Fahrenheit. In April 2024, DSHS placed approximately 350 cubic yards of clean fill soil over the smoldering area to control emissions and reduce the risks posed from open flames.
- e. The landfill is approximately one (1) acre in area and is roughly circular, with two distinct benches. The lower bench is defined by exposed building material at the surface and appears to contain the main area where materials are burning. Based on temperature readings, the area with elevated temperatures is approximately 3,000 square feet. The upper bench, which may or may not contain landfilled debris at depth, is flat with apparent soil cover and sparse vegetation. Prior to the wildfire and subsequent safety logging, both benches had evergreen trees up to 50 feet tall.
- f. DSHS notes that any obligation it assumes under this Order, to the extent that such obligation requires DSHS to expend funds on remediation, will require legislative appropriation to undertake the work. DSHS commits to request, and pursue in good faith, funding by the legislature to the extent necessary to fulfill its obligations under this Order. Should the legislature not provide funding, DSHS remains responsible for the full performance of all obligations under this Order, including that detailed in the Scope of Work and schedule contained herein.

5.1

Based upon factors currently known to Ecology, the Site is generally located in the vicinity of 850 Maple Street in Medical Lake at the Department of Social and Health Services Pine Lodge Campus, as shown in the Location Diagram (Exhibit A). It is located in a forested area to the west of the Lakes Memorial Cemetery and east of West Medical Lake, at approximate latitude 47.565278, longitude -117.700833.

5.2

Preliminary testing of the debris at the Site indicates that it includes asbestos-containing materials, which are considered hazardous substances under MTCA. Ecology suspects the site may contain metals, polycyclic aromatic hydrocarbons (PAHs), volatile organic compounds (VOCs) or dioxins, which are also considered hazardous substances under MTCA.

6. Ecology Determinations

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

6.1

DSHS is an “owner or operator” as defined in RCW 70A.305.020(22) of a “facility” as defined in RCW 70A.305.020(8).

6.2

Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70A.305.020(32), (13), respectively, has occurred at the Site.

6.3

Based upon credible evidence, Ecology issued a Potentially Liable Person (PLP) status letter to DSHS dated March 14, 2024, pursuant to RCW 70A.305.040, .020(26), and WAC 173-340-500. By letter dated April 12, 2024, DSHS voluntarily waived its rights to notice and comment and accepted Ecology’s determination that DSHS is a PLP under RCW 70A.305.040.

6.4

Pursuant to RCW 70A.305.030(1), .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.

6.5

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.

6.6

The presence of ignited or smoldering landfill debris presents an immediate threat to human health and the environment. Extinguishing the fire will reduce the amount of water released through the debris to groundwater; eliminate the threat posed by burning material to air quality, local wildlife, and forest health; and ensure that further investigative

and remedial steps can be taken without risk to worker safety. Initial investigation of the extent of contamination is required to allow for actions necessary to protect the public. Based on these circumstances, Ecology has determined that an interim action is warranted under WAC 173-340-430.

7. Work to be Performed

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that DSHS take the following remedial actions at the Site. These remedial actions must be conducted in accordance with WAC 173-340 and 173-204:

7.1

DSHS will prepare a detailed Interim Action Work Plan, and then implement the Interim Action in accordance with the Ecology-approved plan, in accordance with Task 1 of Exhibit B. DSHS will also conduct a Remedial Investigation and Feasibility Study. This work will be done in accordance with the schedule and terms of the Scope of Work and Schedule, Exhibit B, and all other requirements of this Order. The following naming conventions shall be used for documents: Ecology Review Draft (designation for the first time Ecology receives a document); Public Review Draft (designates a document ready for public comment); and Final (designation for a document after public comment and Ecology approval).

7.2

If DSHS learns of a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in any media, DSHS 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.

7.3

DSHS shall submit to Ecology written monthly Progress Reports that describe the actions taken during the previous month to implement the requirements of this Order. All Progress Reports shall be submitted by the tenth (10th) day of the month in which they are due after the effective date of this Order. Unless otherwise specified by Ecology, Progress Reports and any other documents submitted pursuant to this Order shall be sent by email to Ecology's project coordinator. At Ecology's request, some documents will be sent in hard copy via certified mail, return receipt requested, to Ecology's project coordinator. The Progress Reports shall include the following:

7.3.1

A list of on-site activities that have taken place during the month.

7.3.2

Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests.

7.3.3

Description of all deviations from the Scope of Work and Schedule (Exhibit B) during the current month and any planned deviations in the upcoming month.

7.3.4

For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.

7.3.5

All raw data (including laboratory analyses) received during the previous quarter (if not previously submitted to Ecology), together with a detailed description of the underlying samples collected.

7.3.6

A list of deliverables for the upcoming month.

7.4

All plans or other deliverables submitted by DSHS for Ecology's review and approval under the Scope of Work and Schedule (Exhibit B) shall, upon Ecology's approval, become integral and enforceable parts of this Order. DSHS shall take any action required by such deliverable.

7.5

Any Party may propose an additional interim action under this Order. If the Parties are in agreement concerning the additional interim action, DSHS 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). DSHS 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. DSHS is required to conduct the interim action in accordance with the approved Interim Action Work Plan. Ecology reserves its authority to require additional interim action(s) under a separate order or other enforcement action under RCW 70A.305, or to undertake the interim action(s) itself.

If Ecology determines that DSHS has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to DSHS,

perform any or all portions of the remedial action or at Ecology's discretion allow DSHS opportunity to correct. In an emergency, Ecology is not required to provide notice to DSHS, or an opportunity for dispute resolution. DSHS shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Payment of Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section 10 (Enforcement).

7.6

Except where necessary to abate an emergency situation or where required by law, DSHS shall not perform any remedial actions at the Site 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 8.11 (Amendment of Order). In the event of an emergency, or where actions are taken as required by law, DSHS 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. Initial notification of the event may be made verbally to Ecology's project coordinator or the Eastern Region section manager.

8. Terms and Conditions

8.1 Payment of Remedial Action Costs

DSHS 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 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, DSHS 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.

8.2 Designated Project Coordinators

The project coordinator for Ecology is:

Kristin Beck
Eastern Regional Office
4601 N. Monroe Street
509-514-6806
kristin.beck@ecy.wa.gov

The project coordinator for DSHS is:

Larry Covey
Office of Capital Programs
MS: 45848
P.O. Box 45848
360-628-6662
larry.covey@dshs.wa.gov

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 DSHS, 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.

8.3 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, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

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

8.4 Access

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that DSHS 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 DSHS'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 DSHS. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by DSHS 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.

DSHS shall make best efforts to secure access rights for those properties within the Site not owned or controlled by DSHS where remedial activities or investigations will be performed pursuant to this Order. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of DSHS would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If, within 30 days after the effective date of this Order, DSHS is unable to accomplish what is required through "best efforts," they shall notify Ecology, and include a description of the steps taken to comply with the requirements. If Ecology deems it appropriate, it may assist DSHS, or take independent action, in obtaining such access and/or use restrictions. Ecology reserves the right to seek payment from DSHS for all costs, including cost of attorneys' time, incurred by Ecology in obtaining such access or agreements to restrict land, water, or other resource use.

8.5 Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, DSHS 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 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, DSHS shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by DSHS pursuant to implementation of this Order. DSHS shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow DSHS 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 8.4 (Access), Ecology shall notify DSHS 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.

8.6 Public Participation

RCW 70A.305.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing this 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.

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

8.6.1

If agreed to by Ecology, develop appropriate mailing lists and 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.

8.6.2

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 Site with the interested public and/or local governments. Likewise, Ecology shall notify DSHS prior to the issuance of all press releases and fact sheets related to the Site, and before meetings related to the Site with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by DSHS that do not receive prior Ecology approval, DSHS shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

8.6.3

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.

8.6.4

A copy of all documents related to this Site, including copies of all public notices, fact sheets, and documents relating to public comment periods, shall be maintained in the repository at Ecology's Eastern Regional Office in Spokane, Washington located at 4601 North Monroe Street.

8.7 Access to Information

DSHS shall provide to Ecology, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within DSHS's possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the work. DSHS shall also make available to Ecology, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the work.

Nothing in this Order is intended to waive any right DSHS may have under applicable law to limit disclosure of Records protected by the attorney work-product privilege and/or the attorney-client privilege. If DSHS withholds any requested Records based on an assertion of privilege, DSHS shall provide Ecology with a privilege log specifying the Records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged, including: (1) any data regarding the Site,

including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, biological, or engineering data, or the portion of any other record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Order.

Notwithstanding any provision of this Order, Ecology retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under any other applicable statutes or regulations.

8.8 Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of the work performed pursuant to this Order, DSHS 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.

8.9 Resolution of Disputes

8.9.1

In the event that DSHS elects to invoke dispute resolution for technical matters subject to MTCA, DSHS must utilize the procedure set forth below.

8.9.1.1 Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), DSHS has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).

8.9.1.2 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 fourteen (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 [Subject PLP(s)'s] position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

8.9.1.3 DSHS may then request regional management review of the dispute. DSHS must submit this request (Formal Dispute Notice) in writing to the Eastern Region Toxics Cleanup 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; DSHS' position with respect to the dispute; and the information relied upon to support its position.

8.9.1.4 The Section Manager shall conduct a review of the dispute and shall endeavor to 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.

8.9.2

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.

8.9.3

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.

8.9.4

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 7.1 (Work to be Performed) or initiating enforcement under Section 10 (Enforcement).

8.10 Extension of Schedule

8.10.1

DSHS' 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:

8.10.1.1 The deadline that is sought to be extended.

8.10.1.2 The length of the extension sought.

8.10.1.3 The reason(s) for the extension.

8.10.1.4 Any related deadline or schedule that would be affected if the extension were granted.

8.10.2

The burden shall be on DSHS 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:

8.10.2.1 Circumstances beyond the reasonable control and despite the due diligence of DSHS 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 DSHS.

8.10.2.2 A shelter in place or work stoppage mandated by state or local government order due to public health and safety emergencies.

8.10.2.3 Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty.

8.10.2.4 Endangerment as described in Section 8.12 (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 DSHS.

8.10.3

Ecology shall act upon any DSHS written request for extension in a timely fashion. Ecology shall give DSHS 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 8.11 (Amendment of Order) when a schedule extension is granted.

8.10.4

At DSHS' 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 one of the following:

8.10.4.1 Delays in the issuance of a necessary permit which was applied for in a timely manner.

8.10.4.2 Other circumstances deemed exceptional or extraordinary by Ecology.

8.10.4.3 Endangerment as described in Section 8.12 (Endangerment).

8.11 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 8.13 (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 DSHS. 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, DSHS 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 8.9 (Resolution of Disputes).

8.12 Endangerment

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

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

If Ecology concurs with or orders a work stoppage pursuant to this section, DSHS' 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 8.10 (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.

8.13 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 DSHS to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against DSHS regarding remedial actions required by this Order, provided DSHS 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 Site should it 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.

By entering into this Order, DSHS does not admit to any liability for the Site. Although DSHS is committing to conducting the work required by this Order under the terms of this Order, DSHS 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.

8.14 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 DSHS 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 DSHS' transfer of any interest in all or any portion of the Site, and during the effective period of this Order, DSHS 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, DSHS shall notify Ecology of said transfer. Upon transfer of any interest, DSHS 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.

8.15 Compliance with Applicable Laws

Ecology makes the final determination on whether applicable permit or substantive requirements are “legally applicable” or “relevant and appropriate” under WAC 173-340-710(2).

8.15.1 Applicable Laws

All actions carried out by DSHS 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. DSHS 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 DSHS, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and DSHS must implement those requirements.

8.15.2 Relevant and Appropriate Requirements.

All actions carried out by DSHS 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 DSHS, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and DSHS must implement those requirements.

8.15.3

Pursuant to RCW 70A.305.090(1), DSHS 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, DSHS 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.

8.15.4

DSHS 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 DSHS 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 DSHS shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, DSHS 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 DSHS and on how DSHS must meet those requirements. Ecology shall inform DSHS in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. DSHS 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 DSHS 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.

8.16 Indemnification

To the extent permitted by state law, DSHS agrees to indemnify and save and hold the Ecology, 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 DSHS, its officers, employees, agents, or contractors in entering into and implementing this Order. However, DSHS shall not indemnify Ecology 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 Ecology, or the employees or agents of the State, in entering into or implementing this Order.

9. Satisfaction of Order

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

10. Enforcement

Pursuant to RCW 70A.305.050, this Order may be enforced as follows:

10.1

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

10.2

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.

10.3

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

10.3.1

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

10.3.2

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

10.4

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.

Effective date of this Order: November 25, 2024

State of Washington
Department of Social and Health Services



Larry Covey
Director, Office of Capital Program
Olympia, Washington
360-628-6662

State of Washington
Department of Ecology



Nicholas Acklam
Section Manager
Toxics Cleanup Program
Eastern Regional Office
509-818-7457



General Site Location



Approximate Location of Waste

Exhibit A
Site Location
Eastern State Hospital Landfill
Agreed Order No. 23299

Exhibit B — Scope of Work and Schedule

Scope of work

Purpose

The work under this Agreed Order (AO) involves conducting an interim action to extinguish the landfill fire at the Site; to conduct a Remedial Investigation (RI); to complete a Feasibility Study (FS) if determined to be necessary by Ecology; and to conduct any additional interim actions if determined to be necessary or agreed to by Ecology.

The purpose of the initial interim actions for the Site are to extinguish the fire at the unpermitted landfill and to undertake any additional actions as required to protect human health and the environment.

The purpose of the RI and FS for the Site is to provide sufficient data, analysis, and evaluations to enable Ecology to select a cleanup alternative for the Site in the draft Cleanup Action Plan (dCAP).

The Department of Social and Health Services (DSHS) shall coordinate with Ecology throughout the development of the Interim Actions and RI/FS and shall keep Ecology informed of changes to any Work Plan or other project plans, and of any issues or problems as they develop.

All submissions of reports or report drafts will include electronic copies in Word (.docx) and Adobe (.pdf) formats, and hard copies only if requested by Ecology.

The Scope of Work (SOW) is divided into six major tasks as follows:

- Task 1. Interim Action
- Task 2. RI Work Plan
- Task 3. Remedial Investigation and Reporting
- Task 4. Additional Interim Action(s) (if required)
- Task 5. Feasibility Study (if required)
- Task 6. SEPA Compliance
- Task 7. Public Participation

Task 1. Interim Action

The Potentially Liable Person (PLP) will prepare and submit for Ecology's approval an Ecology Review Detailed Draft Interim Action Work Plan (IAWP) for the site with detail commensurate with the work to be performed and a schedule, as described in Exhibit C, Interim Action Summary.

An interim action is remedial actions which:

- are 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;
- correct a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed; or
- are needed to provide for completion of the remedial investigation/feasibility study or design of the cleanup action.

These remedial actions will be implemented in accordance with WAC 173-340-430 and the Agreed Order (AO). Remedial actions will be designed in a manner that will not foreclose reasonable alternatives for any final cleanup action that may be required.

Based upon information available to Ecology, an interim action is needed at the Site to address the fire at the landfill and expedite control of potential releases to air or other environmental media pursuant to WAC 173-340-430.

The IAWP remedial actions may include, but not be limited to:

- Fire control and extinguishment
- Soil, sediment, or waste removal and permitted disposal
- Waste capping
- Groundwater remediation
- Creation, repair, slip lining, replacement, or closure of stormwater conveyances or other structures such as conduit, vaults, catch basins, etc.
- Removal of contaminated building or other structural material
- Installation of engineering controls to restrict access
- Shoreline stabilization such as bulkhead repair, erosion or seepage control, and grading or clearing.

The Ecology Review Draft IAWP shall include, as appropriate:

- Description of the interim action including its purpose, general requirements, and relationship to the (final) cleanup action (to the extent known);
- Schedule for implementing the interim action;
- Summary of relevant site information, including at a minimum existing site conditions and alternative interim actions considered;
- Information regarding design and construction requirements, including personnel roles and responsibilities;

- Sampling and Analysis Plan/Quality Assurance Project Plan in compliance with WAC 173-340-820 and WAC 173-204-600
- Any permits required
- Cultural resource consultation requirements
- A copy of the Health and Safety Plan for the project.

DSHS shall prepare an Ecology Review Draft Interim Action Work Plan and submit it to Ecology for review. DSHS shall incorporate Ecology's comments and then prepare the Draft Final Interim Action Work Plan and submit it to Ecology. Ecology will approve the IAWP and the document will be considered Final. Once approved by Ecology, DSHS will implement the interim action in accordance with the approved schedule.

Upon completion of the work, an Ecology Review Draft Interim Action Report will be prepared as a separate deliverable. After incorporating Ecology's comments on the Ecology Review Draft Interim Action Report DSHS shall prepare the Final Interim Action Report and submit it to Ecology for the agency's approval. The Final Interim Action Report will include, but not be limited to:

- A summary of the work completed and description of any deviations from the work plan;
- Summary of any laboratory analytical results;
- Assessment of the data collected;
- Ongoing monitoring or maintenance requirements for the interim action, if applicable
- Boring or monitoring well logs, if applicable;
- Engineering as-built reports, if applicable;
- Laboratory analytical reports, if applicable;
- Any other construction documentation required under Washington Administrative Code (WAC) 173-340-400(6)(b).

Task 2. Remedial Investigation (RI) Work Plan

DSHS shall prepare a Remedial Investigation Work Plan (Work Plan). The Work Plan shall include an overall description and schedule of all RI activities. The Work Plan shall clearly describe the project management strategy for implementing and reporting on RI activities. The responsibility and authority of all organizations and key personnel involved in conducting the RI will be outlined.

A Remedial Investigation Planning Meeting will be held prior to submittal of the RI Work Plan. The purpose of the Remedial Investigation Planning Meeting is to review requirements for the Work Plan and plan Remedial Investigation field work, discuss the preliminary Conceptual Site Model, and identify project data needs.

The Work Plan shall describe general facility information; site history and conditions; including previous operations; past field investigations, including any data collection and analysis of soils, air, groundwater, surface water, and/or sediments; a conceptual site model showing contaminants, migration pathways in all environmental media, and potential receptors; geology and groundwater system characteristics; past, current, and future land use; identification of natural resources and ecological receptors; hazardous substances and their sources, etc., in compliance with WAC 173-340-350 and WAC 173-204-550.

As part of the project background, existing environmental data on site soil, groundwater, surface water, and/or sediments will be compiled and evaluated for data gaps. The data gaps will be used as the basis for conducting additional site investigations, if necessary. The Work Plan will also identify specific data collection procedures in a Sampling and Analysis Plan (SAP) and Quality Assurance Project Plan (QAPP) as part of the Work Plan in compliance with WAC 173-340-820 and WAC 173-204-600 for defining the nature and extent of contamination, or refer to the interim action SAP/QAPP, as applicable, to reduce redundancy. DSHS will also submit a copy of the Health and Safety Plan (HASP) for the project if there are updates between the Interim Action HASP and the RI HASP.

The SAP identifies the proposed number and location of all environmental samples and methods, including soil borings, groundwater monitoring wells, soil, groundwater, stormwater, seep, catch basin and sediment samples, approximate depths, and includes a quality assurance project plan. The SAP will describe the sampling objectives, the rationale for the sampling approach (based upon the identified data gaps), and plans for data use, and shall provide a detailed description of sampling tasks. The SAP shall describe specifications for sample identifiers; sampling equipment; the type, number, and location of samples to be collected; the analyses to be performed; descriptions of sampling equipment and methods to be used; sample documentation; sample containers, collection and handling; data and records management; and schedule.

The Quality Assurance Project Plan (QAPP) will be prepared in accordance with the Guidance for Preparation of Quality Assurance Project Plans, EPA Region 10, Quality Data Management Program, QA/R-5 and requirements of the EPA Contract Laboratory Program. The QAPP will also follow Ecology's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies (July 2004) and Sediment Sampling and Analysis Plan Appendix (February 2008). Laboratories must meet the accreditation standards established in WAC 173-

50. Data quality objectives will reflect the criteria or threshold values used for the source control evaluation.

The SAP, including the QAPP, will be submitted to Ecology for review and approval. As with all environmental work at the site, work may not begin without written approval from Ecology. The plan shall provide seven (7) days notice to Ecology prior to beginning sampling. Ecology may obtain split samples.

DSHS or their contractors shall submit all new sampling data generated under this SAP and any other recently collected data to Ecology for entry into the Environmental Information Management System (EIM) in accordance with WAC 173-340-840(5) and Ecology's Toxics Cleanup Program Policy 840: Data Submittal Requirements. Only validated data will be entered into the EIM database within 30 days of submittal.

RI Work Plan will include tasks sufficient to support the following requirements of the RI report:

A. Site Characterization

The investigation should include representative sampling and testing to assess the nature and extent of contamination. This could include analytical tests on groundwater, soil, surface water, and sediment contamination in the vicinity of the Site. Data must be sufficient to delineate the sources, type, depth, concentration, mass, and areal extent of contaminants, along with information that addresses the rate and direction of contaminant movement. The remedial investigation may include the following:

1. Hydrogeology

- a. New groundwater monitoring wells, background wells, and soil borings where needed and comply with the resource protection well requirements of WAC 173-160;
- b. Generated well logs such that regional stratigraphy may be characterized;
- c. Characterized site-specific stratigraphy and lithology based on well logs, maps, and any other information available;
- d. Measured water levels in all wells and new borings;
- e. Quarterly groundwater samples at site monitoring wells so that seasonal fluctuations are captured;
- f. Groundwater chemical analysis for contaminants of concern based on historical property use;

- g. Maps and/or figures showing water levels and regional/site hydrogeology.

2. Soils

- a. Soil borings and/or test pits to collect representative soil samples for the characterization of lithology, subsurface conditions, and contaminant concentrations;
- b. Characterized soil samples using the Unified Soil Classification System (USCS);
- c. Generated logs for each boring and/or test pit; and
- d. Soil chemical analysis for contaminants of concern based on historical property use.

3. Sediments and Surface Water

- a. Assess transport pathways for contamination to West Medical Lake;
- b. Sediment borings or grab samples to collected representative sediment samples for the characterization of lithology, sediment conditions, and contaminant concentrations;
- c. Sediment and/or surface water chemical analysis for contaminants of concern based on historical property use.

B. Potential Receptor Information

Collect data on the surrounding human and ecological populations that may be in contact with contaminants and potential routes of exposure for those populations in support of the Feasibility Study.

- 1. Public Use/Site Access – Potential uses of the affected properties and the presence or absence of controls on Site access;
- 2. Potential Groundwater/Surface Water Uses – Any consumptive, recreational, or other use of groundwater and surface water in the area, and by which populations;
- 3. Environmental Receptors – Information on the presence of endangered or threatened species, potential habitats, and ecological environments.

C. Feasibility Study Applicability

Determine whether a feasibility study must be conducted under WAC 173-340-351. The steps for this process are outlined in WAC 173-340-350, and include:

1. Determine whether prior remedial actions at the site constitute a permanent cleanup action and meet the criteria in WAC 173-340-330(5)(a);
2. Determine whether a model remedy established by Ecology may be used as a cleanup action or a cleanup action component at the site under WAC 173-340-390;

If a feasibility study must be conducted under WAC 173-340-351, sufficient information must be collected during the remedial investigation to develop and evaluate cleanup action alternatives in the FS, such as treatability or pilot studies.

The applicability of each of these RI Work Plan requirements will be assessed by Ecology after the interim actions are completed and will be discussed with DSHS during the Remedial Investigation Planning Meeting prior to submittal of the RI Work Plan. Ecology encourages DSHS to craft a flexible approach to the investigation in accordance with WAC 173-340-350(5)(b)(ii) such that data gaps can be identified and addressed during the investigation to the extent practicable, rather than waiting until after the RI report is written.

DSHS will provide Ecology with an Ecology Review Draft Work Plan. Once Ecology reviews and approves the Work Plan, it will be considered the Final Work Plan. The Work Plan shall not be implemented until approved by Ecology. Once approved by Ecology, DSHS will implement the Final Work Plan according to the schedule contained in this Exhibit.

DSHS shall prepare an Ecology Review Draft RI Work Plan and submit it to Ecology for review and comment. After incorporating Ecology's comments on the Ecology Review Draft RI Work Plan and after Ecology approval, DSHS shall prepare the Final RI Work Plan and submit it to Ecology.

Task 3. Remedial Investigation and Reporting

DSHS shall conduct an RI that meets the requirements of WAC 173-340-350(7) and WAC 173-204-550 according to the Final RI Work Plan as approved by Ecology. The RI will determine the nature and extent of contamination exceeding preliminary Model Toxics Control Act (MTCA) cleanup levels, preliminary Sediment Management Standards (SMS) cleanup standards, and other regulatory requirements.

The RI will produce information that will then be incorporated into a RI Report. The RI must provide sufficient data and information to define the nature and extent of contamination, including the following elements:

A. General Site Information:

1. Site & Facility Operational History
 2. Site Use
 3. Physical Setting
 4. Previous Investigations & Studies
- B. Nature and Extent of Contamination:
1. Data Analysis – Analyze all data collected during the Remedial Investigation and prepare supporting maps and tables;
 2. Lab reports, previous investigations, well and boring logs, and any other documentation of characterization activities shall be included;
- C. Applicable, Relevant, and Appropriate Requirements (ARARs) Analysis: Identify Applicable State and Federal Laws for cleanup of the Site in accordance with WAC 173-340-710.
- D. Cleanup Levels/Risk Assessment Analysis: Perform a baseline Model Toxics Cleanup Act (MTCA) cleanup levels analysis/baseline risk assessment characterizing the current and potential threats to public health and the environment that may be posed by hazardous substances at the facility. The assessment will integrate cleanup standards and risk assessment as required by WAC 173-340-357 and WAC 173-340-708.
- E. Discussion and Recommendations:
1. Interpret and discuss data to determine an updated conceptual site model based on the nature and extent of the contamination, and to support final recommendations for the Site;
 2. A summary of all possible and suspected source areas of contamination based on the data collected will be included;
 3. Any known or potential risks to the public health, welfare, and the environment should be discussed;
 4. Recommendations should be provided identifying additional data requirements.

Field sampling and analysis will be completed in general accordance with the SAP and QAPP. Deviation(s) from the approved SAP and QAPP must be communicated to Ecology immediately and documented as required by Ecology. Any geologic, hydrogeologic, engineering geologic, surveying, or engineering work must be done by professionals licensed appropriately by the State of Washington.

DSHS shall provide interim data reports and updates to Ecology per Agreed Order section 7.3 as new site data and information become available. Laboratory analysis data shall also be

provided in electronic format when it has been validated. Raw laboratory data will be provided to Ecology upon request.

During the Remedial Investigation Pre-Report Check-In, Ecology and DSHS will review available data and an updated conceptual site model and discuss the content and organization of the Draft RI Report. Prior to submittal of the Draft RI Report, a RI Report Summary Meeting will be held.

DSHS shall compile the results of the Site investigation into an Ecology Review Draft RI Report. DSHS shall prepare the Ecology Review Draft RI Report and submit it to Ecology for review and comment.

After incorporating Ecology's comments on the Ecology Review Draft RI Report, DSHS shall prepare a Public Review Draft RI Report and submit it to Ecology for distribution and public comment. Electronic survey data for monitoring locations, electronic lab data, and GIS maps of contaminant distribution shall also be provided for both the Ecology Review Draft RI Report and Public Review Draft RI Reports either in the report or as attachments. The RI Report will not be considered Final until after a public review and comment period.

If the data collected during this investigation is insufficient to define the nature and extent of contamination, and/or to select a cleanup action plan an additional phase of investigation shall be conducted to define the extent of contamination.

Task 4. Feasibility study

If the Ecology-approved RI report analysis indicates that an FS is necessary, DSHS shall use the information obtained in the RI to prepare an Ecology Review Draft Feasibility Study (FS) that meets the applicable requirements of WAC 173-340-350(8) according to the Schedule in this exhibit. The Ecology Review Draft FS will evaluate remedial alternatives for site cleanup, consistent with MTCA and SMS requirements to ensure protection of human health and the environment by eliminating, reducing, or otherwise controlling risk posed through each exposure pathway and migration route and will include:

- A. Identification of contamination to be remediated;
- B. Identification and initial screening of remedial actions;
- C. Proposed remedial alternatives and evaluation with respect to MTCA criteria;
- D. Recommended alternative.

Prior to beginning the FS, a Feasibility Study Planning Meeting will be held to review ARARs, potential remedial alternatives and establish points of compliance.

The Ecology Review Draft FS must include a detailed analysis of each remedial alternative according to the applicable requirements of WAC 173-340-350 and 173-204-550. The remedial alternatives will be evaluated for compliance with the applicable requirements of WAC 173-340-360 and 173-204-570.

The remedial alternative that is judged to best satisfy the evaluation criteria will be identified. Justification for the selection will be provided, and the recommended remedial alternative further developed, in the FS Report. With Ecology approval, the feasibility study can be abbreviated if the remedy is readily apparent or has been implemented as an interim action.

DSHS shall prepare the Ecology Review Draft FS and submit it to Ecology for review. After addressing Ecology's comments on the Ecology Review Draft FS, DSHS shall produce a Public Review Draft FS and submit it to Ecology for distribution and public comment. The FS will not be considered Final until after a public review and comment period.

The RI report and FS report may be combined as a single RIFS report and undergo a single public review and comment period, with Ecology approval.

Task 5. SEPA compliance

DSHS shall be responsible for complying with the State Environmental Policy Act (SEPA) Rules that apply to preparing and submitting an environmental checklist. After submittal of the checklist, Ecology will assume duties under SEPA as lead agency. Ecology shall prepare and issue a threshold determination under SEPA based on the environmental checklist and any other information that Ecology requests from DSHS. Depending on the result of the threshold determination, Ecology will prepare and issue either a Determination of Significance, Determination of Non-Significance, or Mitigated Determination of Non-Significance. Ecology will be responsible for ensuring compliance with all SEPA requirements after becoming lead agency.

Task 6. Public participation

DSHS shall support Ecology in presenting the Public Review Draft RI Report and the Public Review Draft FS Reports and SEPA evaluations at any public meetings or hearings. DSHS will assist Ecology with presentations at any additional meetings or hearings that might be necessary for SEPA compliance or as part of the Public Participation Plan.

After the public comment periods are completed, Ecology prepares a Responsiveness Summary that addresses public comments. DSHS shall assist Ecology with the Draft Responsiveness Summary as necessary. Ecology will then distribute the Final Responsiveness Summary for public comment.

Schedule of deliverables

The schedule for deliverables described in the Agreed Order and the Scope of Work is presented below. If the date for submission of any item or notification required by this Schedule of Deliverables occurs on a weekend, state or federal holiday, the date for submission of that item or notification is extended to the next business day following the weekend or holiday. Where a deliverable due date is triggered by Ecology notification, comments or approval, the starting date for the period shown is the date DSHS received such notification, comments or approval by certified mail, return receipt requested, unless otherwise noted below. Where triggered by Ecology receipt of a deliverable, the starting date for the period shown is the date Ecology receives the deliverable by certified mail, return receipt requested, or the date of Ecology signature on a hand-delivery form. Ecology and DSHS will use the extension process outlined in Section 8.10 of the Agreed Order if State procurement processes require additional time.

Task Number	RI/FS Deliverables	Completion Times
1	Ecology Review Interim Action Work Plan	45 calendar days following the effective date of the Agreed Order
	Draft Final Interim Action Work Plan	15 calendar days following Ecology's submittal of comments on the IAWP
	Begin Interim Action Field Work	Within 14 calendar days of Ecology approving the Final IAWP
	Ecology Review Interim Action Report	60 calendar days following Ecology's determination that the Interim Actions are completed
	Final Interim Action Report	30 days following receipt of Ecology comments on the Ecology Review Interim Action Report
2	Ecology Review Draft RI Work Plan	150 calendar days following the effective date of the Agreed Order
3	Completion of RI Field Work	12 months following completion of the Final SAP, QAPP, and HASP
	Ecology Review Draft RI Report	90 days following receipt of laboratory data

	Public Review Draft RI Report	45 calendar days following receipt of Ecology comments on Ecology Review Draft RI Report
4	Ecology Review Draft FS	90 days following completion of Public Review Draft RI Report
	Public Review Draft FS	45 calendar days following receipt of Ecology's comments on the Ecology Review draft FS

Exhibit C – Interim Action Summary

Purpose

Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health and the environment by eliminating or substantially reducing one or more pathways for exposure to hazardous substances, 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 (RIFS), or design of a cleanup action plan.

The Potentially Liable Person (PLP) will complete the appropriate evaluation to design an interim action at the Eastern State Hospital Landfill Site to excavate and extinguish burning, smoldering, or high temperature material within the landfill. Conducting this interim action prior to completion of a Site-wide RIFS presents an opportunity to eliminate exposure to hazardous substances, reduce airborne emissions from the fire, and ensure that the fire does not spread further either within or outside of the landfill.

Scope

The Interim Action Work Plan (IAWP) remedial actions will include, but not be limited to:

- Removal of materials that are smoldering, combusting, or are of elevated temperature from the landfill (hot materials);
- Control of the spread of fire within the landfill and in the work area during materials handling;
- Containment of materials such that the lateral extent of hazardous substances at the Site does not expand;
- Quench materials with elevated temperatures and allow them to cool to ambient temperatures;
- Investigation of the full extent of any areas with elevated temperatures to ensure there are no pockets of hot material that could reignite;
- Placing quenched, cooled material back into the landfill;
- Controlling any potential erosion, overland or subsurface flows, or other subsurface impacts to the Site and West Medical Lake through grading, clearing, stabilizing, containerizing liquids, and/or utilizing impermeable barriers during work;
- Installation of engineering controls to restrict Site access;

- Soil, sediment, or waste removal with off-Site permitted disposal, as needed;
- Waste capping with soil or other materials, as needed;
- Groundwater, soil, sediment, air, or surface water sampling, as needed;
- Creation, repair, slip lining, replacement, or closure of stormwater conveyances or other structures such as conduit, vaults, catch basins, etc., if needed;

The Ecology Review Draft IAWP shall include, as appropriate:

- Description of the interim action including its purpose, general requirements, and relationship to the (final) cleanup action (to the extent known);
- Schedule for implementing the interim action;
- Summary of relevant site information, including at a minimum existing site conditions and alternative interim actions considered;
- Information regarding design and construction requirements, including personnel roles and responsibilities;
- If samples are to be collected, a Sampling and Analysis Plan/Quality Assurance Project Plan in compliance with WAC 173-340-820 and WAC 173-204-600;
- Any permits required;
- Cultural resource consultation requirements;
- A copy of the Health and Safety Plan for the project.