

State of Washington  
Department of Ecology

In the Matter of Remedial Action by:  
Love's Travel Stops and Country Stores, Pilot Travel Centers, and PBC Properties  
Agreed Order  
No. DE 22455

To: Chris Weldon

Love's Travel Stops and Country Stores  
PO Box 26210  
Oklahoma City, OK 73126

Joey Cupp  
Pilot Travel Centers  
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Gerald Williams  
PBC Properties  
800 N. Prospect Street  
Ellensburg, WA 98926

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## 1. Introduction

The mutual objective of the State of Washington, Department of Ecology (Ecology), Love's Travel Stops and Country Stores (Love's), and Pilot Travel Centers (Pilot) 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 Pilot and Love's to complete a Remedial Investigation (RI), Feasibility Study (FS) and draft Cleanup Action Plan (dCAP) in order to provide sufficient data, analysis, and evaluations to enable Ecology to select a cleanup option for the Site. 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 applies to and is 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. The Subject PLPs agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status will alter the Subject PLPs' responsibility under this Order. The Subject PLPs will provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order and will 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 and WAC 173-340 control the meanings of the terms in this Order.

- 4.1 Site:** The Site is referred to as Pilot Travel Center 389. 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 1512 Hwy 97, Ellensburg as shown in the Location Diagram (Exhibit A).
- 4.2 Parties:** Refers to the State of Washington, Department of Ecology, Love's Travel Stops and Country Stores, Pilot Travel Centers, and PBC Properties.
- 4.3 Potentially Liable Persons (PLPs):** Refers to 1.) Love's Travel Stops and Country Stores 2.) Pilot Travel Centers 3.) PBC Properties.
- 4.4 Subject PLPs:** Refers to 1.) Love's Travel Stops and Country Stores and 2.) Pilot Travel Centers.
- 4.5 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 the Subject PLPs:

- 5.1** Based upon factors currently known to Ecology, the Site is generally located at the property address 1512 Hwy 97 in Ellensburg in Kittitas County, approximately 1000 feet north-northeast of Exit 106 off Highway 90, as shown in the Site Location Map (Exhibit A).
- 5.2** The Site has operated as a truck stop and fueling station since before 1996, when Pilot become an operator at the Site. The Site contains both gasoline and diesel tanks and dispensers.
- 5.3** PBC Properties is a former owner of the property where the truck stop and fueling station operated.
- 5.4** Pilot is a former operator of the truck stop and fueling station.
- 5.5** Love's has been the owner and operator of the truck stop and fueling station since 2010.
- 5.6** Petroleum hydrocarbons in soil and groundwater, present at concentrations exceeding Model Toxic Cleanup Act (MTCA) standards, were confirmed in samples collected in 1996 and 2010 during two separate Limited Subsurface Investigation reports.

- 5.7** Characterization and investigation activities have occurred at the Site, including soil borings and a monitoring well network.
- 5.8** Concentrations of contaminants in soil collected from the recent excavation area consists of gas and diesel range total petroleum hydrocarbons exceeding MTCA standards, based on preliminary samples analyzed on site. The extent of soil contamination has not yet been characterized.
- 5.9** A gasoline release occurred in 2018 at or near the auto fuel islands located in front of the retail building, resulting in increased gasoline range organics in nearby wells and an extraction well being used to remove free product.
- 5.10** A gasoline spill in October 2023 released 700+ gallons of unleaded gasoline into the recently excavated tank nest. Approximately 700 gallons were reportedly recovered during the spill response effort.
- 5.11** The extent or concentrations of contaminants in groundwater has not been fully characterized.
- 5.12** The site was enrolled in the voluntary cleanup program (VCP) in 2011. The VCP agreement was terminated in 2023 at Ecology's request.
- 5.13** Concentrations of contaminants in soil and groundwater above MTCA standards constitute a threat to human health and the environment and further action is therefore required.

## **6. Ecology Determinations**

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

- 6.1** Love's Travel Stop and Country Stores, Pilot Travel Centers, and PBC Properties-- the PLPs--are "owners or operators" 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 PLP status letter to Love's Travel Stops and Country Stores (Love's) dated 8/4/2023 pursuant to RCW 70A.305.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing

any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that Love's is a PLP under RCW 70A.305.040 and notified Love's of this determination by letter dated 10/9/23.

- 6.4** Based upon credible evidence, Ecology issued a PLP status letter to Pilot Travel Centers (Pilot) dated 8/4/2023 pursuant to RCW 70A.305.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that Pilot is a PLP under RCW 70A.305.040 and notified Pilot of this determination by letter dated 10/09/23.
- 6.5** Based upon credible evidence, Ecology issued a PLP status letter to PBC Properties (PBC) dated 8/4/2023 pursuant to RCW 70A.305.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that PBC is a PLP under RCW 70A.305.040 and notified PBC of this determination by letter dated 10/9/23.
- 6.6** Pursuant to RCW 70A.305.030(1), .050(1), Ecology may require the 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.
- 6.7** 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. Either party may propose an interim action under this Order. If the Parties agree concerning the interim action, the Parties will follow the process in Section 7.2. If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70A.305, or to undertake the interim action itself.

## **7. Work to be Performed**

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the Subject PLPs will complete a Supplemental Remedial Investigation (RI), Feasibility Study (FS), and submit a draft Cleanup Action Plan (dCAP) for the Site. These remedial actions must be

conducted in accordance with WAC 173-340 and 173-204 unless otherwise specifically provided for herein:

- 7.1** All plans or other deliverables submitted by the Subject PLPs for Ecology's review and approval will, upon Ecology's approval, become integral and enforceable parts of this Order. The Subject PLPs will take any action required by such deliverable.
- 7.2** If the Parties agree on an interim action under Section 6.7, the Subject PLPs will prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). The Subject PLPs will not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and the Subject PLPs are required to conduct the interim action in accordance with the approved Interim Action Work Plan.
- 7.3** To effectuate the work to be performed under this Order in the most efficient manner, certain PLPs have elected to take the lead in performing various aspects of the work required under this Order. Language in this Order, and the exhibits attached hereto, may reflect this agreement among the Subject PLPs. However, the PLPs remain strictly, jointly, and severally liable for the performance of any and all obligations under this Order. In the event the party identified as a lead should fail to timely and properly complete performance of all or any portion of its work, all Subject PLPs must perform that remaining work, if any.
- 7.4** If the Subject PLPs learn 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, the Subject PLPs, within seven days of learning of the change in condition, will 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.
- 7.5** The Subject PLPs will submit to Ecology written quarterly Progress Reports that describe the actions taken during the previous quarter to implement the requirements of this Order. All Progress Reports will be submitted by the 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 will be sent via email to Ecology's project coordinator. The Progress Reports will include the following:

  - 7.5.1.** A list of onsite activities that have taken place during the quarter.

- 7.5.2. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests.
  - 7.5.3. Description of all deviations from the Scope of Work and Schedule (Exhibit B) during the current quarter and any planned deviations in the upcoming quarter.
  - 7.5.4. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.
  - 7.5.5. 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.
  - 7.5.6. A list of deliverables for the upcoming quarter.
- 7.6** Except where necessary to abate an emergency situation or where required by law, the Subject PLPs will 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, the Subject PLPs must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within 24 hours of the discovery of the event.
- 7.7** If Ecology determines that the Subject PLPs have failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to the Subject PLPs, perform any or all portions of the remedial action or at Ecology's discretion allow the Subject PLPs opportunity to correct. In an emergency, Ecology is not required to provide notice to the Subject PLPs, or an opportunity for dispute resolution. The Subject PLPs will reimburse Ecology for the costs of doing such work in accordance with Section 8.1 (Payment of Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section 10 (Enforcement).

## **8. Terms and Conditions**

### **8.1 Payment of Remedial Action Costs**

The Subject PLPs will pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs will 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 will include work performed both before and after the issuance of this Order. Ecology's

costs will include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). For all Ecology costs incurred, the Subject PLPs will pay the required amount within 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 will be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within 90 days of receipt of the itemized statement of costs will result in interest charges at the rate of 12% per annum, compounded monthly.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70A.305.060, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

## **8.2 Designated Project Coordinators**

The project coordinator for Ecology is:

Chelsea Wisotzkey  
1250 W. Alder Street, Union Gap, WA 98903  
509-571-4708  
chelsea.wisotzkey@ecy.wa.gov

The project coordinator for the Subject PLPs is:

Chris Weldon  
PO Box 26210, Oklahoma City, OK 73126  
405-302-6673  
chris.weldon@loves.com

Each project coordinator is 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 the Subject PLPs, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order will 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 will be given to the other Party at least 10 calendar days prior to the change.

## **8.3 Performance**

All geologic and hydrogeologic work performed pursuant to this Order will 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 will 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 will 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 will be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

The Subject PLPs will 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 will have access to enter and freely move about all property at the Site that the Subject PLPs owns or controls, or has access rights to, at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the Subject PLPs' progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the Subject PLPs. Ecology or any Ecology authorized representative will give reasonable notice before entering any Site property owned or controlled by the Subject PLPs unless an emergency prevents such notice. All persons who access the Site pursuant to this section will comply with any applicable health and safety plan(s). Ecology employees and their representatives will not be required to sign any liability release or waiver as a condition of Site property access.

The Subject PLPs will make best efforts to secure access rights for those properties within the Site not owned or controlled by the Subject PLPs 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 the Subject PLPs would use 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 60 days after the effective date of this Order, the Subject PLPs are unable to accomplish what is required through "best efforts," they will notify Ecology and include a description of the steps taken to comply with the requirements. If Ecology deems it appropriate, Ecology may assist the Subject PLPs, or take independent action in obtaining such access and/or use restrictions. Ecology reserves the right to seek payment from the Subject PLPs 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, the Subject PLPs will make the results of all sampling, laboratory reports, and/or test results generated by them or on their behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data will be submitted to Ecology in both printed and electronic formats in accordance with Section 7 (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, the Subject PLPs will allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the Subject PLPs pursuant to implementation of this Order. The Subject PLPs will notify Ecology seven days in advance of any sample collection or work activity at the Site. Ecology will, upon request, allow the Subject PLPs and/or their 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 will notify the Subject PLPs 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 will 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 will 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 will maintain the responsibility for public participation at the Site. However, the Subject PLPs will assist Ecology if requested.

- 8.6.1. Ecology will 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. Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.
- 8.6.2. The Subject PLPs will 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 will notify the Subject PLPs 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 the Subject PLPs that do not receive prior Ecology approval, the Subject PLPs will clearly indicate to their 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. When requested by Ecology, arrange, and maintain a repository to be located at:

Central Regional Office  
1250 W Alder St.  
Union Gap, WA 98903

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods will be promptly placed in these repositories. A copy of all documents related to this Site will be maintained in the repository at Ecology's Central Regional Office in Union Gap, Washington.

## **8.7 Access to Information**

The Subject PLPs will 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 the Subject PLPs' 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. The Subject PLPs will 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 the Subject PLPs may have under applicable law to limit disclosure of Records protected by the attorney work-product doctrine and/or the attorney-client privilege. If the Subject PLPs withhold any requested Records based on an assertion of privilege, the Subject PLPs will provide Ecology with a privilege log specifying the Records withheld and the applicable privilege. No Site-related data collected pursuant to this Order will 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 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 10 years from the date of completion of the work performed pursuant to this Order, the Subject PLPs will preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and will insert a similar record retention requirement into all contracts with project contractors and subcontractors.

#### **8.9 Resolution of Disputes**

In the event that the Subject PLPs elect to invoke dispute resolution Subject PLPs must utilize the procedure set forth below.

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

- 8.9.2. The Parties' project coordinators will then confer in an effort to resolve the dispute informally. The Parties will informally confer for up to 14 calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those 14 calendar days, then within seven calendar days Ecology's project coordinator will issue a written decision (Informal Dispute Decision) stating: the nature of the dispute; the PLP's position with regard to the dispute; Ecology's position with regard to the dispute; and the extent of resolution reached by informal discussion.
- 8.9.2.1. The Subject PLPs may then request regional management review of the dispute. The Subject PLPs must submit this request (Formal Dispute Notice) in writing to the Regional Toxics Cleanup Program (TCP) Manager within seven calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice will include a written statement of dispute setting forth: the nature of the dispute; the Subject PLPs' position with respect to the dispute; and the information relied upon to support its position.
- 8.9.2.2. The Regional TCP Manager will conduct a review of the dispute and will endeavor to issue a written decision regarding the dispute (Decision on Dispute) within 30 calendar days of receipt of the Formal Dispute Notice. The Decision on Dispute will be Ecology's final decision on the disputed matter.
- 8.9.3. 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.
- 8.9.4. Implementation of these dispute resolution procedures will not provide a basis for delay of any activities required in this Order unless Ecology agrees in writing to a schedule extension.
- 8.9.5. In case of a dispute, failure to either proceed with the work required by this Order or to 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. The Subject PLPs' request for an extension of schedule will 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 will be requested in writing. The request will specify:

8.10.1.1. The deadline that is sought to be extended.

The length of the extension sought.

The reason(s) for the extension.

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

8.10.2. The burden will be on the Subject PLPs 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 the Subject PLPs including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the Subject PLPs.

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 will be considered circumstances beyond the reasonable control of the Subject PLPs.

8.10.3. Ecology will act upon any Subject PLPs' written request for extension in a timely fashion. Ecology will give the Subject PLPs written notification of any extensions granted pursuant to this Order. A requested extension will not be effective until approved by Ecology. Unless the extension is a substantial change, it will 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 the Subject PLPs' request, an extension will only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding 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 days of verbal agreement.

Except as provided in Section 8.13 (Reservation of Rights), substantial changes to the work to be performed will require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and the Subject PLPs. Ecology will provide its written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

When requesting a change to the Order, the Subject PLPs will submit a written request to Ecology for approval. Ecology will 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 will 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 the Subject PLPs to cease such direction.

In the event the Subject PLPs 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, the Subject PLPs may cease such activities. The Subject PLPs will notify Ecology's project coordinator as soon as possible, but no later than 24 hours after making such determination or ceasing such activities. Upon Ecology's direction, the Subject PLPs will provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the Subject PLPs' cessation of activities, it may direct the Subject PLPs to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, the Subject PLPs' obligations with respect to the ceased activities will 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, will 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 limits 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 the Subject PLPs to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the Subject PLPs regarding remedial actions required by this Order, provided the Subject PLPs comply 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, the Subject PLPs do not admit to any liability for the Site. Although the Subject PLPs are committing to conducting the work required by this Order under the terms of this Order, the Subject PLPs expressly reserve 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 will be consummated by the Subject PLPs 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 Subject PLPs' transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the Subject PLPs will provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and at least 30 days prior to any transfer, the Subject PLPs will notify Ecology of said transfer. Upon transfer of any interest, the Subject PLPs will 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**

##### **8.15.1. Applicable Laws**

All actions carried out by the Subject PLPs pursuant to this Order will be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits or approvals, except as provided in RCW 70A.305.090. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order. The Subject PLPs have a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or the Subject PLPs, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and the Subject PLPs must implement those requirements.

##### **8.15.2. Relevant and appropriate requirements**

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

8.15.3. Pursuant to RCW 70A.305.090(1), the Subject PLPs may be exempt from the procedural requirements of RCW 70A.15, 70A.205, 70A.300, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, the Subject PLPs will 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. The Subject PLPs have a continuing obligation to determine whether additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the Subject PLPs 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 will promptly notify the other Party of its determination. Ecology will determine whether Ecology or the Subject PLPs are responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the Subject PLPs will 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 will make the final determination on the additional substantive requirements that must be met by the Subject PLPs and on how the Subject PLPs must meet those requirements. Ecology will inform the Subject PLPs in writing of these requirements. Once established by Ecology, the additional requirements will be enforceable requirements of this Order. The Subject PLPs may 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 will not apply, and the Subject PLPs will 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**

The Subject PLPs agree to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions of the Subject PLPs, its officers, employees, agents, or contractors arising from entering into or implementing this Order. However, the Subject PLPs will not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington or the employees or agents of the State, arising from entering into or implementing this Order.

### **9. Satisfaction of Order**

The provisions of this Order will be deemed satisfied upon the Subject PLPs' receipt of written notification from Ecology that the Subject PLPs have completed the remedial activity required by this Order, as amended by any modifications, and that the Subject PLPs have 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 times the amount of any costs incurred by the State of Washington as a result of its refusal to comply.
  - 10.3.2.** 10.3.2 Civil penalties of up to \$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.

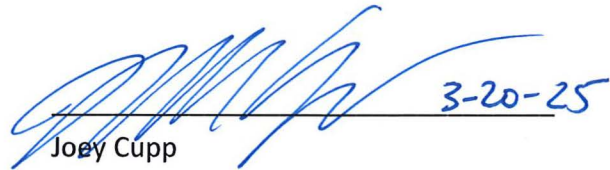
Effective date of this Order: \_\_\_\_\_

4-8-25

The Subject PLPs:

State of Washington

Department of Ecology:

 3-20-25

Joey Cupp

Sr Environmental Director

5508 Lonas Drive

Knoxville, TN 37909

865-474-2826



Valerie Bound

Section Manager

Toxics Cleanup Program

Central Regional Office

509-454-78

Chris Weldon

Environmental Manager

PO BOX 26210

Oklahoma City, OK 73126

405-302-6673

Effective date of this Order: \_\_\_\_\_

The Subject PLPs:

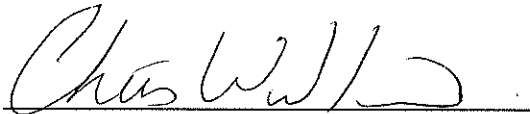
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Chris Weldon  
Environmental Manager  
PO BOX 26210  
Oklahoma City, OK 73126  
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# Exhibit A—Site Map



## Exhibit B — Scope of work (SOW) and schedule

### Scope of work

#### Purpose

The work required under this Agreed Order (AO) involves completion of a Remedial Investigation (RI), Feasibility Study (FS), and preparing a Draft Cleanup Action Plan (dCAP) to select a cleanup alternative. The purpose of the RI, FS, and dCAP is to provide sufficient data, analysis, and evaluations to enable Ecology to select a cleanup alternative for the Site.

The Subject PLPs will coordinate with Ecology throughout the development of the RI, FS, and dCAP. The Subject PLPs will keep Ecology informed of any changes to work plan or other project plans, and of any issues or problems as they develop.

The SOW is divided into four major tasks as follows:

- Task 1. Supplemental RI Work Plan
- Task 2. Supplemental RI Report
- Task 3. FS Report
- Task 4. dCAP

#### Task 1. Supplemental remedial investigation work plan

Within 90 days of the Effective Date of this Order, the Subject PLPs will submit to Ecology a *Draft* Supplemental RI Work Plan.

The Work Plan will contain sufficient information and sampling necessary to determine the nature and extent of contamination that has resulted from the release(s) of hazardous substances at the Site in all affected or potentially affected media (soil, interstitial air in soil, air, groundwater, drinking water, surface water, and/or sediments if applicable), and complete the development of a Conceptual Site Model (CSM) to the satisfaction of Ecology.

The Work Plan will 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 sediments; a CSM 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 173-204-560.

The Work Plan will include a combined Sampling and Analysis Plan and Quality Assurance Project Plan (SAP/QAPP) and a Site Health and Safety Plan (HASP) consistent with the requirements specified in WAC 173-340-820 (Sampling and Analysis Plans) and WAC 173-340-810 (Worker Safety and Health). The Draft Work Plan, SAP/QAPP, and HASP will comply with all requirements set forth in WAC 173-340-350 and WAC 173-204-600 for defining the nature and extent of contamination. While Ecology does not approve Site HASPs, such plans must comply with the requirements of the Washington State Department of Labor and Industries' Division of Occupational Safety and Health regulations and standards.

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 QAPP. 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 will provide a detailed description of sampling tasks. The SAP will 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 Subject will not perform environmental work at the site without written approval from Ecology. The Work Plan will provide seven days' notice to Ecology prior to beginning field work and sampling. Ecology may obtain split samples.

Ecology will endeavor to provide comments on the Draft Work Plan for revision by the Subject PLPs within 30 days of receipt of the Draft Work Plan.

Within 30 days of receipt of review comments from Ecology on the Draft Work Plan, the Subject PLPs will, as necessary, submit to Ecology a Revised Draft Work Plan satisfactory to Ecology and responsive to Ecology's comments.

Ecology will endeavor to respond regarding approval status within 30 days of receipt of the documents. The Work Plan will not be implemented until approved by Ecology. Once approved by Ecology, the Subject PLPs will implement the Final Work Plan according to the schedule contained in this Exhibit.

The Final Work Plan approved by Ecology will be appended to this AO and become an integral and enforceable part of this AO.

## Task 2. Supplemental remedial investigation (SRI)

The Subject PLPs will complete the investigation work described in the Final Work Plan within 120 days after Ecology's acceptance of the Final Work Plan.



Within 90 days of receipt of the RI validated analytical data, the Subject PLPs will submit to Ecology a Draft SRI Report.

The Subject PLPs will conduct a SRI that meets the requirements of WAC 173-340-350(7) and WAC 173-204-560 according to the SRI 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 and other regulatory requirements. The SRI must provide sufficient data and information to define the nature and extent of contamination and select a cleanup alternative for the Site.

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.

Laboratory analysis data will be provided in electronic format when it has been validated. Raw laboratory data will be provided to Ecology upon request. The Subject PLPs or their contractors will submit all new sampling data generated under this SAP, and any other relevant historical 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.

Ecology will endeavor to provide comments on the Draft SRI Report within 30 days of receipt.

Within 60 days of receipt of comments by Ecology on the Draft SRI Report, the Subject PLPs will, as necessary, deliver to Ecology a Revised Draft SRI Report satisfactory to Ecology and responsive to Ecology's comments.

Ecology will endeavor to respond on approval status within 30 days of receipt of the *Revised* Draft SRI Report.

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 will be conducted to define the extent of contamination.

### Task 3. Feasibility study

Within 90 days after Ecology's approval of the Revised Draft SRI Report, including any additional investigation needed to define the extent of the contamination, the Subject PLPs will submit a Draft FS Report.

The Subject PLPs will use the information obtained in the RI Report to prepare a FS Report that meets the applicable requirements of WAC 173-340-350(8). The FS Report will evaluate remedial alternatives for site cleanup, consistent with MTCA 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.

The FS Report will provide a detailed analysis of each remedial alternative according to the applicable requirements of WAC 173-340-350, MTCA Remedial Investigation and Feasibility Study, and WAC 173-204-560. The remedial alternatives will be evaluated for compliance with the applicable requirements of WAC 173-340-360, Selection of Cleanup Actions, and WAC 173-204-560(4), including a detailed evaluation of remedial alternatives relative to the following criteria:

- Compliance with Cleanup Standards and Applicable Laws
- Protection of Human Health
- Protection of the Environment
- Provision for a Reasonable Restoration Time Frame
- Use of Permanent Solutions to the Maximum Extent Practicable
- The Degree to which Recycling, Reuse, and Waste Minimization are Employed
- Short-term Effectiveness
- Long-Term Effectiveness
- Net Environmental Benefit
- Implementability
- Provision for Compliance Monitoring
- Cost-Effectiveness
- Prospective Community Acceptance

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.

Ecology will endeavor to provide comments on the Draft FS Report within 30 days of receipt of the Draft FS Report.

Following review and comment by the Ecology Project Coordinator, within 60 days of receipt of comments from Ecology on the Draft FS Report, the Subject will, as necessary, submit to Ecology a Revised Draft FS Report satisfactory to Ecology and responsive to Ecology's comments.

Ecology will endeavor to respond on approval status within 30 days of receipt of the Revised Draft FS Report.

The FS Report will not be considered Final until after a public review and comment period.

#### Task 4. Preliminary draft cleanup action plan

Within 90 days of Ecology's approval of the Revised Draft FS Report, the Subject PLPs will submit to Ecology a Preliminary dCAP.

The Subject PLPs will prepare a Preliminary dCAP in accordance with WAC 173-340-380 that provides a proposed remedial action to address the contamination present on the Site. If contaminated sediments are included in the remedial action, the cleanup plan will comply with WAC 173-204-580, in addition to the MTCA requirements cited above. The Preliminary dCAP will include a general description of the proposed remedial actions, cleanup standards developed from the RI and FS and rationale regarding their selection, a schedule for implementation, description of any institutional controls proposed, and a summary of applicable local, state, and federal laws pertinent to the proposed cleanup actions.

Ecology will endeavor to provide comments on the Preliminary dCAP within 30 days of receipt of the Preliminary dCAP.

Within 60 days of receipt of comments from Ecology on the Preliminary dCAP, the Subject PLPs will, as necessary, submit to Ecology a Revised Preliminary dCAP satisfactory to Ecology and responsive to Ecology's comments.

Ecology will endeavor to respond on approval status within 30 days of receipt of the Revised Preliminary dCAP.

The dCAP will not be considered Final until after a public review and comment period.

## Schedule of deliverables

The schedule for deliverables described in the Agreed Order and the Scope of Work is presented below.

RI/FS Deliverables	Deliverable Description <sup>5</sup>	Completion Times <sup>4</sup>
RI Work Plan	Draft RI Work Plan (including SAP, QAPP, & HASP)	Within 90 days following effective date of the Agreed Order
	Revised Draft SRI Work Plan	Within 30 days following receipt of Ecology's review comments on the Draft Work Plan.
	Final SRI Work Plan	Contingent on Ecology's satisfaction with the Revised Draft Work Plan. <sup>1,2</sup>
Completion of RI Field Work		Within 120 days following Ecology's acceptance of the Final RI Work Plan. <sup>3</sup>
EIM Data Entry		Prior to submittal of the Draft RI Report.
RI Report	Draft SRI Report	Within 90 days following receipt of laboratory data.
	Revised Draft SRI Report	Within 60 days following receipt of Ecology review comments on the Draft SRI Report.  The SRI Report will not be considered Final until after a public review and comment period.
	Final SRI Report	Contingent on the nature and significance of comments received during public comment period.
FS Report	Draft FS Report	Within 90 days after Ecology's acceptance of the Revised Draft RI Report. <sup>1, 2</sup>
	Revised Draft FS Report	Within 60 days following receipt of Ecology review comments Draft FS Report.

		The FS Report will not be considered Final until after a public review and comment period.
	Final FS Report	Contingent on the nature and significance of comments received during the public comment period.
dCAP	Preliminary dCAP	Within 90 days after Ecology's acceptance of the Revised Draft FS Report. <sup>1, 2</sup>

1. Ecology reserves the right, at the sole discretion of Ecology, to require one additional comment and document revision round, if needed. All Ecology comments must be addressed to Ecology's satisfaction prior to document acceptance and finalization.
2. If the document submitted is not satisfactory to Ecology after completion of two rounds of review and comments (including initial review and comments), Ecology may at its sole discretion complete the document or contract with an Ecology contractor for completion of the document at the expense of the Subject PLPs under Section 8.1 of the Agreed Order.
3. The schedule for RI field work may be revised by Ecology, based on the exact scope of work presented within the RI Work Plan prepared by the Subject PLPs.
4. All completion times are based on calendar days, not business working days. 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 the Subject PLPs 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 via email.
5. For all deliverables, including drafts(s) and final documents, Subject PLPs will prepare and submit one (1) hard copy via mail and one (1) electronic copy in Adobe (.pdf) format to Ecology for review.