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7 **STATE OF WASHINGTON**
8 **YAKIMA COUNTY SUPERIOR COURT**

9 STATE OF WASHINGTON,
10 DEPARTMENT OF ECOLOGY,

11 Plaintiff,

12 v.

13 ESTATE OF GREGORY A.
14 STOFFERS,

15 Defendant.

NO. _____

CONSENT DECREE

16 **TABLE OF CONTENTS**

17	I.	INTRODUCTION	3
18	II.	JURISDICTION	4
19	III.	PARTIES BOUND	5
20	IV.	DEFINITIONS.....	5
21	V.	FINDINGS OF FACT	5
22	VI.	WORK TO BE PERFORMED.....	9
23	VII.	DESIGNATED PROJECT COORDINATORS.....	15
24	VIII.	PERFORMANCE.....	15
25	IX.	ACCESS	16
26	X.	SAMPLING, DATA SUBMITTAL, AND AVAILABILITY	17
	XI.	ACCESS TO INFORMATION	18
	XII.	RETENTION OF RECORDS	19
	XIII.	TRANSFER OF INTEREST IN PROPERTY	19
	XIV.	RESOLUTION OF DISPUTES.....	20
	XV.	AMENDMENT OF DECREE.....	22
	XVI.	EXTENSION OF SCHEDULE	22
	XVII.	ENDANGERMENT	24
	XVIII.	COVENANT NOT TO SUE	25
	XIX.	CONTRIBUTION PROTECTION	26

1	XX.	INDEMNIFICATION	26
	XXI.	COMPLIANCE WITH APPLICABLE LAWS	27
2	XXII.	REMEDIAL ACTION COSTS	28
	XXIII.	IMPLEMENTATION OF REMEDIAL ACTION.....	29
3	XXIV.	PERIODIC REVIEW	30
	XXV.	PUBLIC PARTICIPATION	30
4	XXVI.	DURATION OF DECREE	31
	XXVII.	CLAIMS AGAINST THE STATE.....	32
5	XXVIII.	EFFECTIVE DATE.....	32
	XXIX.	WITHDRAWAL OF CONSENT	32
6			
7	EXHIBIT A	Site Location Diagram	
	EXHIBIT B	Scope of Work	
8	EXHIBIT C	Schedule	
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			

I. INTRODUCTION

1. The mutual objective of the State of Washington, Department of Ecology (Ecology) and Estate of Gregory A. Stoffers (Defendant) under this Decree is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Decree requires Defendant to conduct interim actions per WAC 173-340-430 (which include updating the remedial investigation and feasibility study per WAC 173-340-350-351) and implement a final cleanup action plan (CAP) per WAC 173-340-360 through WAC 173-340-380 at the Site located in the area of 106 South 3rd Avenue, Yakima, Washington. Ecology believes the actions required by this Order are in the public interest.

2. Ecology has determined that these actions are necessary to protect human health and the environment.

3. The Complaint in this action is being filed simultaneously with this Decree. An Answer has not been filed, and there has not been a trial on any issue of fact or law in this case. However, the Parties wish to resolve the issues raised by Ecology's Complaint. In addition, the Parties agree that settlement of these matters without litigation is reasonable and in the public interest, and that entry of this Decree is the most appropriate means of resolving these matters.

4. By signing this Decree, the Parties agree to its entry and agree to be bound by its terms.

5. By entering into this Decree, the Parties do not intend to discharge non-settling potentially liable persons (PLPs) from any liability they may have with respect to matters alleged in the Complaint. The Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for sums expended under this Decree.

6. This Decree shall not be construed as proof of liability or responsibility for any releases of hazardous substances or cost for remedial action nor an admission of any facts; provided, however, that Defendant shall not challenge the authority of the Attorney General and Ecology to enforce this Decree.

7. The Court is fully advised of the reasons for entry of this Decree, and good cause having been shown:

Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter and over the Parties pursuant to the Model Toxics Control Act (MTCA), RCW 70A.305.

2. Authority is conferred upon the Washington State Attorney General by RCW 70A.305.040(4)(a) to agree to a settlement with any PLP if, after public notice and any required public meeting, Ecology finds the proposed settlement would lead to a more expeditious cleanup of hazardous substances. RCW 70A.305.040(4)(b) requires that such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

3. Ecology has determined that a release or threatened release of hazardous substances has occurred at the Site that is the subject of this Decree.

4. Ecology gave notice to the late Gregory A. Stoffers, the former owner and operator of property at the Site, of Ecology's determination that he was a PLP for the Site, as required by RCW 70A.305.020(26) and WAC 173-340-500.

5. The actions to be taken pursuant to this Decree are necessary to protect public health and the environment.

6. This Decree has been subject to public notice and comment.

7. Ecology finds that this Decree will lead to a more expeditious cleanup of hazardous substances at the Site in compliance with the cleanup standards established under RCW 70A.305.030(2)(e) and WAC 173-340.

8. Defendant has agreed to undertake the actions specified in this Decree and consents to the entry of this Decree under MTCA.

III. PARTIES BOUND

1. This Decree shall apply to and be binding upon the Parties to this Decree. The undersigned representative of each party hereby certifies that they are fully authorized to enter into this Decree and to execute and legally bind such party to comply with this Decree. Defendant agrees to undertake all actions required by the terms and conditions of this Decree. No change in ownership or corporate status shall alter Defendant's responsibility under this Decree. Defendant shall provide a copy of this Decree to all agents, contractors, and subcontractors retained to perform work required by this Decree, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Decree.

IV. DEFINITIONS

1. Unless otherwise specified herein, all definitions in RCW 70A.305.020 and WAC 173-340 shall control the meanings of the terms in this Decree.

A. Site: The Site is referred to as Frank Wear Cleaners. 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.

B. Consent Decree or Decree: Refers to this Consent Decree and each of the exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent Decree.

C. Defendant: Refers to Estate of Gregory A. Stoffers.

D. Parties: Refers to the State of Washington, Department of Ecology and Defendant.

V. FINDINGS OF FACT

1. Ecology makes the following findings of fact without any express or implied admissions of such facts by Defendant.

1 A. Based upon factors currently known to Ecology, the Site is generally
2 located at 106 South 3rd Avenue, Yakima, Washington (Latitude 46.59889, Longitude -
3 120.51226, WGS84 Datum, Yakima Couty Parcel 18132441442) as shown in the Site
4 Location Diagram (Exhibit A). Tetrachloroethylene (PCE), trichloroethylene (TCE),
5 dichloroethylene (DCE), and vinyl chloride (VC) have been detected in soil,
6 groundwater, and soil vapor at the Site. Soil contamination is present on the property
7 located at 106 South 3rd Avenue and likely in soil on the property directly south, located
8 at 108 South 3rd Avenue, Yakima (Yakima County Parcel 18132441443). Groundwater
9 contamination is present on the 106 South 3rd Avenue property, and properties to the
10 north, south and southeast (Exhibit A). Groundwater generally flows to the southeast and
11 the leading edge of the groundwater plume has not been delineated. Soil vapor
12 contamination is located everywhere soil contamination is located and may be located in
13 areas above contaminated groundwater.

14 B. Frank Wear Cleaners operated as a dry cleaning facility at the property at
15 106 South Third Street in Yakima, Washington, from the early 1940s to 2000.
16 Gregory A. Stoffers was a former owner and operator of Frank Wear Cleaners. During
17 operation, the dry cleaner used PCE as the dry cleaning solvent. The building housing
18 Frank Wear Cleaners' operations was demolished in 2000.

19 C. The water table in the Yakima area typically occurs at depths between
20 8 feet and 30 feet below ground surface. Wells exist in the Yakima Basin which withdraw
21 water used for drinking from this shallow unconfined aquifer, which is highly permeable
22 near the Yakima River

23 D. PCE is widely prevalent throughout the shallow Yakima Basin aquifer. In
24 1991, Ecology identified 13 commercial and industrial facilities as potential sources of
25 PCE contamination in the Yakima area and defined the contaminated area as the Yakima
26 Railroad Area (YRRA). Frank Wear Cleaners is located within the YRRA. The United

1 States Environmental Protection Agency Maximum Contaminant Level for drinking
2 water is 5 ppb (parts per billion) for PCE.

3 E. On February 11, 1992, Ecology issued Enforcement Order No. DE
4 92- TC-C108 to multiple PLPs for the YRRA, including Frank Wear Cleaners. This order
5 instructed respondents to conduct an interim remedial action, including providing bottled
6 water to affected households. This order was dismissed by Ecology February 7, 2018.

7 F. On November 7, 1994, Ecology and Frank Wear Cleaners entered into
8 Agreed Order No. DE 94TC-C420 (1994 Agreed Order), which required Frank Wear
9 Cleaners to conduct a remedial investigation at and a feasibility study for the Site.
10 Ecology and Frank Wear Cleaners amended that 1994 Agreed Order in 1995 to add the
11 option for Frank Wear Cleaners to perform a MTCA interim action at the Site. In April
12 2003, Mr. Stoffers passed away.

13 G. In April 2012, a soil vapor extraction (SVE) system was installed at the
14 Site as a mitigation and interim cleanup measure to capture and remove PCE vapors that
15 were migrating from soils to a building at the Site that included a childcare center. The
16 SVE system has been in operation at the Site since July 2012. The childcare center is still
17 operating.

18 H. On June 6, 2013, an Environmental Covenant was recorded with the
19 Yakima County Assessor's Office, which prohibits groundwater being taken from a
20 parcel of property that is part of the Site. The Environmental Covenant also prohibited
21 any activity on that property that may result in the release or exposure to the environment
22 of the contaminated soil, or create a new exposure pathway, or any activity on the
23 Property that may interfere with the integrity of the SVE system Action and continued
24 protection of human health and the environment.

25 I. From 2014 to 2015, an interim action groundwater recirculation system
26 was operated at the Site to remediate groundwater. The system was shut down in 2016.

1 J. On February 5, 2018, Ecology dismissed the 1994 Agreed Order.

2 K. In December 2023, Ecology conducted a vapor intrusion study to study
3 the effectiveness of the SVE system at the Site. Results from the vapor intrusion study
4 indicated that the SVE system operation continues to be productive of the building air
5 space. However, the Washington State Department of Health (DOH) recommended
6 regular vapor intrusion studies and continued SVE maintenance at the site.

7 L. Release(s) and/or potential release(s) of hazardous substances occurred at
8 the Site. During and as a result of the past dry cleaning operations, the following
9 hazardous substances at the Site have been detected at concentrations above MTCA
10 cleanup levels: tetrachloroethylene (PCE), trichloroethylene (TCE), dichloroethylene
11 (DCE), and vinyl chloride (VC) in soil vapor, soil, and groundwater at the Site. These
12 hazardous substances have been, and may continue to be, released at the Site into the
13 environment including soil, groundwater, and air.

14 M. Groundwater sampling was conducted at the Site from 2018 to 2024.
15 Samples from multiple wells exceeded cleanup levels, including the following results
16 from one monitoring well at the Site (FWMW-20):

17 (1) PCE concentrations in this well exceeded the 5 ug/L (micrograms
18 per liter) cleanup level during October 2018 (102 ug/L), April 2019 (181 ug/L),
19 May 2018 (113 ug/L), October 2019 (6,090 ug/L), November 2020 (16,900
20 ug/L), April 2021 (10,100 ug/L) October 2021 (17,700 ug/L), April 2022 (1880
21 ug/L), October 2022 (20,000ug/L), April 2023 (7,410 ug/L), October 2023
22 (22,000 ug/L), April 2024 (18,200), October 2024 (17,000 ug/L).

23 (2) TCE concentrations in this well exceeded the 5 ug/L cleanup level
24 during May 2018 (35 ug/L), October 2018 (37.6 ug/L), April 2019 (35.7 ug/L),
25 October 2019 (3,710ug/L), November 2020 (2,000 ug/L), April 2021(1,460),
26 October 2021 (681 ug/L), April 2022 (511 ug/L), October 2022 (640 ug/L),

1 April 2023 (564 ug/L), October 2023 (407 ug/L), April 2023 (564 ug/L),
2 October 2023 (407 ug/L), April 2024 (370 ug/L), October 2024 (401 ug/L).

3 (3) DCE concentrations exceeded the 70 ug/L cleanup level during
4 October 2018 (275 ug/L), October 2019 (694 ug/L), November 2020 (598 ug/L),
5 April 2021 (512 ug/L), October 2021 (272 ug/L), April 2022 (334 ug/L),
6 October 2022 (300 ug/L), April 2023 (301ug/L), October 2023 (207 ug/L),
7 April 2024 (194ug/L), October 2024 (191 ug/L).

8 (4) Vinyl chloride concentrations exceeded the 0.2 ug/L cleanup level
9 during May 2018 (15 ug/L), October 2018 (198 ug/L), April 2019 (17.1 ug/L),
10 October 2019 (249 ug/L), November 2020 (323 ug/L), April 2021 (124 ug/L),
11 October 2021 (111 ug/L), April 2022 (56.5 ug/L), October 2022 (100 ug/L),
12 April 2023 (50 ug/L), October 2023 (51.4 ug/L), April 2024 (19.4 ug/L), and
13 October 2024 (35.1 ug/L).

14 N. Based on data obtained during the interim actions and updated feasibility
15 study, Ecology will determine the final cleanup actions to be implemented at the site.
16 This will be documented in a CAP for the Site.

17 VI. WORK TO BE PERFORMED

18 1. This Decree contains a program designed to protect human health and the
19 environment from the known release, or threatened release, of hazardous substances at, on, or
20 from the Site. All remedial action(s) conducted by Defendant at the Site shall be done in
21 accordance with WAC 173-340.

22 2. The Defendant shall undertake the following actions at the Site including, but not
23 limited to:

24 a. Maintain and operate, and, if necessary, expand the current Soil Vapor
25 Extraction (SVE) system located at 106 South 3rd Avenue, Yakima, Washington to
26 prevent contaminant vapors from entering the adjacent daycare building located at 108

1 South 3rd Avenue, Yakima, Washington. This work is part of an ongoing interim action
2 being conducted at the Site that is needed to reduce a threat to human health or the
3 environment by eliminating or substantially reducing one or more pathways for exposure
4 to a hazardous substance at the facility (daycare building), per WAC 173-340-430(1)(a).
5 Maintenance and operation will include regular performance monitoring and carbon
6 replacement until sampling demonstrates there is no longer a risk of contaminated
7 subsurface vapors entering the building. Expansion of the SVE system may include
8 excavation of contaminated soil to remove the source of contaminant vapors. Any
9 excavation will require an Ecology-approved soil management plan.

10 b. Continue the current groundwater monitoring interim action at the Site to
11 monitor the risk of Site contaminants impacting human health and the environment via
12 downgradient groundwater and surface water receptors. This monitoring will be
13 conducted until sampling demonstrates there is no longer a risk of contaminated
14 groundwater impacting downgradient receptors. This interim action is needed to reduce
15 a threat to human health or the environment by reducing groundwater and surface water
16 pathways for exposure per WAC 173-340-430(1)(a).

17 c. Conduct data gap investigations as an interim action per WAC 173-340-
18 430(1)(c), which are necessary to provide for completion of a site hazard assessment,
19 remedial investigation/feasibility study, or design of a cleanup action. Data gap
20 investigations are necessary to complete a site feasibility study and may include: soil,
21 groundwater, air and soil vapor sampling; installation of groundwater monitoring wells;
22 site characterization using technologies appropriate for former dry cleaning sites; pilot
23 studies to test remediation technologies including, but not limited to, groundwater pump
24 and treat and enhanced bioremediation; soil removal to facilitate the effectiveness data
25 gap activities. Once Ecology has determined that the data gap investigation is complete
26

1 and enough information has been collected to determine an effective cleanup action for
2 the Site, the Defendant shall update the site feasibility study.

3 d. Provide a Draft Updated Operations and Monitoring (O&M) plan for the
4 SVE system to Ecology for review and comment. Based on Ecology comments, the
5 Defendant shall submit a Final Updated O& M Plan for the SVE system to Ecology
6 incorporating Ecology changes.

7 e. Provide a Draft Interim Action Groundwater Monitoring Plan to Ecology
8 for review and comment. Based on Ecology comments, the Defendant shall submit a
9 Final Interim Action Groundwater Monitoring Plan to Ecology incorporating Ecology
10 changes.

11 f. Provide a Draft Data Gap Investigation and Updated Feasibility Study
12 report to Ecology for review and comment. Based on Ecology comments, the Defendant
13 shall submit a Final Data Gap Investigation and Updated Feasibility Study report to
14 Ecology incorporating Ecology changes. The Updated Feasibility Study shall identify
15 cleanup action alternatives.

16 g. Submit a Draft CAP to Ecology for review and comment. The Defendant
17 shall submit a Final Draft CAP to Ecology incorporating Ecology changes. After the
18 CAP has been finalized, the Defendant shall implement the CAP.

19 h Continue to implement institutional controls at the Site.

20 All activities in this paragraph shall be completed in accordance with the Scope of Work and
21 Schedule attached to this Decree (Exhibits B and C).

22 3. All plans or other deliverables submitted by Defendant for Ecology's review and
23 approval under the work described above or Scope of Work and Schedule (Exhibits B and C)
24 shall, upon Ecology's approval, become integral and enforceable parts of this Decree.

25 4. If Defendant learns of a significant change in conditions at the Site, including
26 but not limited to a statistically significant increase in contaminant and/or chemical

1 concentrations in soil, groundwater, and/or soil vapor, Defendant, within seven (7) days of
2 learning of the change in condition, shall notify Ecology in writing of said change and provide
3 Ecology with any reports or records (including laboratory analyses, sampling results) relating to
4 the change in conditions.

5 5. Pursuant to WAC 173-340-440(11), Defendant shall maintain sufficient and
6 adequate financial assurance mechanisms to cover all costs associated with the operation and
7 maintenance of the remedial action at the Site, including institutional controls, compliance
8 monitoring, and corrective measures.

9 A. Within ninety (90) days of the completion of the interim remedial
10 construction actions, Defendant shall submit to Ecology for review and approval an
11 estimate of the costs associated with the operation and maintenance of the interim actions
12 at the Site that it will incur in carrying out the terms of this Decree. Within sixty (60)
13 days after Ecology approves the aforementioned cost estimate, Defendant shall provide
14 proof of financial assurances sufficient to cover those costs in a form acceptable to
15 Ecology.

16 B. Defendant shall adjust the financial assurance coverage and provide
17 Ecology's project coordinator with documentation of the updated financial assurance for:

18 i. Inflation, annually, within thirty (30) days of the anniversary date
19 of the entry of this Decree; or if applicable, the modified anniversary date
20 established in accordance with this section, or if applicable, ninety (90) days after
21 the close of Defendant's fiscal year if the financial test or corporate guarantee is
22 used.

23 ii. Changes in cost estimates, within thirty (30) days of issuance of
24 Ecology's approval of a modification or revision to the CAP that result in
25 increases to the cost or expected duration of remedial actions. Any adjustments
26 for inflation since the most recent preceding anniversary date shall be made

1 concurrent with adjustments for changes in cost estimates. The issuance of
2 Ecology's approval of a revised or modified CAP will revise the anniversary date
3 established under this section to become the date of issuance of such revised or
4 modified CAP.

5 C. The Financial Assurance Officer for Ecology shall work with the project
6 coordinators to review and approve financial assurance coverage pursuant to this Decree
7 and make determinations on any adjustments necessary based on the annual reporting.
8 As of the execution date of this Decree, Ecology's Financial Assurance Officer is
9 Joanna Richards, 360-485-5992 or Joanna.Richards@ecy.wa.gov.

10 7. As detailed in the CAP, institutional controls are required at the Site.
11 Environmental (Restrictive) Covenants will be used to implement the institutional controls.

12 A. In consultation with Defendant, Ecology will prepare the Environmental
13 (Restrictive) Covenants consistent with WAC 173-340-440, RCW 64.70, and any
14 policies or procedures specified by Ecology. The Environmental (Restrictive) Covenants
15 shall restrict future activities and uses of the Site as agreed to by Ecology and Defendant.

16 B. After approval by Ecology, Defendant shall record the Environmental
17 (Restrictive) Covenant for affected properties it owns with the office of the Yakima
18 County Auditor as detailed in the Schedule (Exhibit C). Defendant shall provide Ecology
19 with the original recorded Environmental (Restrictive) Covenants within thirty (30) days
20 of the recording date.

21 C. The Defendant may be required to implement institutional controls on
22 properties not owned by Defendant. If necessary, Defendant will ensure that the owner
23 of each affected property records an Ecology-approved Environmental (Restrictive)
24 Covenant as detailed in the Schedule (Exhibit C). Upon a showing that Defendant has
25 made a good faith effort to secure an Environmental (Restrictive) Covenant for an
26 affected property and failed to do so, Ecology may provide assistance to Defendant.

1 Defendant shall provide Ecology with the original recorded Environmental (Restrictive)
2 Covenant within thirty (30) days of the recording date.

3 8. Unless otherwise directed by Ecology, Defendant shall submit to Ecology written
4 monthly Progress Reports that describe the actions taken during the previous month to
5 implement the requirements of this Decree. All Progress Reports shall be submitted by the tenth
6 (10th) day of the month in which they are due after the effective date of this Decree. Unless
7 otherwise specified in writing by Ecology, Progress Reports and any other documents submitted
8 pursuant to this Decree shall be sent by email to Ecology's project coordinator. The Progress
9 Reports shall include the following:

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

11 B. Description of any sample results which deviate from the norm.

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

14 D. Description of all deviations from the Scope of Work and Schedule
15 (Exhibits B and C) during the current month and any planned deviations in the upcoming
16 month.

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

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

22 G. A list of planned activities for the upcoming month.

23 9. Except in the case of an emergency, Defendant agrees not to perform any
24 remedial actions at the Site outside the scope of this Decree without prior written approval of
25 Ecology. In the case of an emergency, Defendant must notify Ecology of the event and remedial
26

1 action(s) as soon as practical, but no later than twenty-four (24) hours after discovery of the
2 emergency.

3 **VII. DESIGNATED PROJECT COORDINATORS**

- 4 1. The project coordinator for Ecology is:

5 Rachel Caron
6 1250 West Alder Street
7 Union Gap, WA 98903-0009
8 509-907-1353
9 rcar461@ecy.wa.gov

- 10 2. The project coordinator for Defendant is:

11 Tom Zeilman
12 32 N. Third Street, Suite 310
13 P.O. Box 34
14 Yakima, WA 98907
15 509-949-7942
16 tzeilman@qwestoffice.net

17 3. Each project coordinator shall be responsible for overseeing the implementation
18 of this Decree. Ecology's project coordinator will be Ecology's designated representative for the
19 Site. To the maximum extent possible, communications between Ecology and Defendant and all
20 documents, including reports, approvals, and other correspondence concerning the activities
21 performed pursuant to the terms and conditions of this Decree shall be directed through the
22 project coordinators. The project coordinators may designate, in writing, working level staff
23 contacts for all or portions of the implementation of the work to be performed required by this
24 Decree.

25 4. Any party may change its respective project coordinator. Written notification
26 shall be given to the other party at least ten (10) calendar days prior to the change, or any change
of address or other relevant notice information.

24 **VIII. PERFORMANCE**

25 1. Except as otherwise provided for by RCW 18.43 and 18.220, all geologic and
26 hydrogeologic work performed pursuant to this Decree shall be under the supervision and

1 direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct
2 supervision of an engineer registered by the State of Washington.

3 2. Except as otherwise provided for by RCW 18.43.130, all engineering work
4 performed pursuant to this Decree shall be under the direct supervision of a professional engineer
5 registered by the State of Washington.

6 3. Except as otherwise provided for by RCW 18.43.130, all construction work
7 performed pursuant to this Decree shall be under the direct supervision of a professional engineer
8 registered by the State of Washington or a qualified technician under the direct supervision of a
9 professional engineer registered by the State of Washington.

10 4. As required by RCW 18.43 and 18.220, any documents submitted containing
11 geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed
12 professional.

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

16 IX. ACCESS

17 1. Ecology or any Ecology authorized representative shall have access to enter and
18 freely move about all property at the Site that Defendant either owns, controls, or has access
19 rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs,
20 and contracts related to the work being performed pursuant to this Decree; reviewing
21 Defendant's progress in carrying out the terms of this Decree; conducting such tests or collecting
22 such samples as Ecology may deem necessary; using a camera, sound recording, or other
23 documentary type equipment to record work done pursuant to this Decree; and verifying the data
24 submitted to Ecology by Defendant.

25 2. Nothing in this Decree is intended by the Defendant to waive any right it may
26 have under applicable law to limit disclosure of documents protected by the attorney work-

1 product privilege and/or the attorney-client privilege. If Defendant withholds any requested
2 records based on an assertion of privilege, it shall provide Ecology with a privilege log specifying
3 the records withheld and the applicable privilege. No Site-related data collected pursuant to this
4 Decree shall be considered privileged.

5 3. Defendant shall make all reasonable efforts to secure access rights for those
6 properties within the Site not owned or controlled by Defendant where remedial activities or
7 investigations will be performed pursuant to this Decree.

8 4. Ecology or any Ecology authorized representative shall give reasonable notice
9 before entering any Site property owned or controlled by Defendant unless an emergency
10 prevents such notice. All Parties who access the Site pursuant to this section shall comply with
11 any applicable health and safety plan(s). Ecology employees and their representatives shall not
12 be required to sign any liability release or waiver as a condition of Site property access.

13 **X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY**

14 1. With respect to the implementation of this Decree, Defendant shall make the
15 results of all sampling, laboratory reports, and/or test results generated by it or on its behalf
16 available to Ecology by submitting data as detailed in this section. Pursuant to WAC 173-340-
17 840(5), all sampling data shall be submitted to Ecology in electronic formats in accordance with
18 paragraph 8 of Section VI (Work to be Performed), Ecology's Toxics Cleanup Program
19 Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by
20 Ecology for data submittal.

21 2. If requested by Ecology, Defendant shall allow Ecology and/or its authorized
22 representative to take split or duplicate samples of any samples collected by Defendant pursuant
23 to the implementation of this Decree. Defendant shall notify Ecology seven (7) days in advance
24 of any sample collection or work activity at the Site. Ecology shall, upon request, allow
25 Defendant and/or its authorized representative to take split or duplicate samples of any samples
26 collected by Ecology pursuant to the implementation of this Decree, provided that doing so does

1 not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section IX
2 (Access), Ecology shall notify Defendant prior to any sample collection activity unless an
3 emergency prevents such notice.

4 3. In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses
5 shall be conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be
6 conducted, unless otherwise approved by Ecology.

7 **XI. ACCESS TO INFORMATION**

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

18 2. Nothing in this Decree is intended to waive any right Defendant may have under
19 applicable law to limit disclosure of Records protected by the attorney work-product privilege
20 and/or the attorney-client privilege. If Defendant withholds any requested Records based on an
21 assertion of privilege, Defendant shall provide Ecology with a privilege log specifying the
22 Records withheld and the applicable privilege. No Site-related data collected pursuant to this
23 Decree shall be considered privileged, including: (1) any data regarding the Site, including, but
24 not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical,
25 radiological, biological, or engineering data, or the portion of any other record that evidences
26

1 conditions at or around the Site; or (2) the portion of any Record that Defendant is required to
2 create or generate pursuant to this Order.

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

6 **XII. RETENTION OF RECORDS**

7 1. During the pendency of this Decree, and for ten (10) years from the date this
8 Decree is no longer in effect as provided in Section XXVI (Duration of Decree), Defendant shall
9 preserve all records, reports, documents, and underlying data in its possession relevant to the
10 implementation of this Decree and shall insert a similar record retention requirement into all
11 contracts with project contractors and subcontractors. Upon request of Ecology, Defendant shall
12 make all records available to Ecology and allow access for review within a reasonable time.

13 **XIII. TRANSFER OF INTEREST IN PROPERTY**

14 1. No voluntary conveyance or relinquishment of title, easement, leasehold, or other
15 interest in any portion of the Site shall be consummated by Defendant without provision for
16 continued operation and maintenance of any containment system, treatment system, and/or
17 monitoring system installed or implemented pursuant to this Decree.

18 2. Prior to Defendant's transfer of any interest in all or any portion of the Site, and
19 during the effective period of this Decree, Defendant shall provide a copy of this Decree to any
20 prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at
21 least thirty (30) days prior to any transfer, Defendant shall notify Ecology of said transfer. Upon
22 its transfer of any interest, Defendant shall notify all transferees of the restrictions on the
23 activities and uses of the property under this Decree and incorporate any such use restrictions
24 into the transfer documents.
25
26

XIV. RESOLUTION OF DISPUTES

1. In the event that Defendant elects to invoke dispute resolution, Defendant must utilize the procedure set forth below.

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

B. 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 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 Defendant's position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

C. Defendant may then request regional management review of the dispute. Defendant must submit this request (Formal Dispute Notice) in writing to the Central 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; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

D. The Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar days of receipt of the Formal Dispute Notice.

E. If Defendant finds Ecology's Regional Section Manager's decision of the disputed matter unacceptable, Defendant may then request final management review of

1 that decision. Defendant must submit this request (Final Review Request) in writing to
2 the Toxics Cleanup Program Manager within seven (7) calendar days of Defendant's
3 receipt of the Decision on Dispute. The Final Review Request shall include a written
4 statement of dispute setting forth: the nature of the dispute; the disputing Defendant's
5 position with respect to the dispute; and the information relied upon to support its
6 position.

7 F. Ecology's Toxics Cleanup Program Manager shall conduct a review of
8 the dispute and shall issue a written decision regarding the dispute (Final Decision on
9 Dispute) within thirty (30) calendar days of receipt of the Final Review Request. The
10 Toxics Cleanup Program Manager's decision shall be Ecology's final decision on the
11 disputed matter.

12 2. If Ecology's Final Decision on Dispute is unacceptable to Defendant, Defendant
13 has the right to submit the dispute to the Court for resolution. The Parties agree that one judge
14 should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising under
15 this Decree. Under RCW 70A.305.070, Ecology's investigative and remedial decisions shall be
16 upheld unless they are arbitrary and capricious.

17 3. The Parties agree to only utilize the dispute resolution process in good faith and
18 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
19 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,
20 the other party may seek sanctions.

21 4. Implementation of these dispute resolution procedures shall not provide a basis
22 for delay of any activities required in this Decree, unless Ecology agrees in writing to a schedule
23 extension or the Court so orders.

24 5. In case of a dispute, failure to either proceed with the work required by this
25 Decree or timely invoke dispute resolution may result in Ecology's determination that
26

1 insufficient progress is being made in preparation of a deliverable, and may result in Ecology
2 undertaking the work under Section XXIII (Implementation of Remedial Action).

3 **XV. AMENDMENT OF DECREE**

4 1. The Parties may agree to minor changes to the work to be performed without
5 formally amending this Decree. Minor changes will be documented in writing by Ecology.

6 2. Substantial changes to the work to be performed shall require formal amendment
7 of this Decree. This Decree may only be formally amended by a written stipulation among the
8 Parties that is entered by the Court, or by order of the Court. Ecology will provide its written
9 consent to a formal amendment only after public notice and opportunity to comment on the
10 formal amendment. Such amendment shall become effective upon entry by the Court.
11 Agreement to amend the Decree shall not be unreasonably withheld by any party.

12 3. When requesting a change to the Decree, Defendant shall submit a written request
13 to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a
14 timely manner after the written request is received. If Ecology determines that the change is
15 substantial, then the Decree must be formally amended. Reasons for the disapproval of a
16 proposed change to this Decree shall be stated in writing. If Ecology does not agree to the
17 requested change, the disagreement may be addressed through the dispute resolution procedures
18 described in Section XII (Resolution of Disputes).

19 **XVI. EXTENSION OF SCHEDULE**

20 1. Defendant's request for an extension of schedule shall be granted only when a
21 request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior
22 to expiration of the deadline for which the extension is requested, and good cause exists for
23 granting the extension. All extensions shall be requested in writing. The request shall specify:

- 24 A. The deadline that is sought to be extended.
25 B. The length of the extension sought.
26 C. The reason(s) for the extension.

1 D. Any related deadline or schedule that would be affected if the extension
2 were granted.

3 2. The burden shall be on Defendant to demonstrate to the satisfaction of Ecology
4 that the request for such extension has been submitted in a timely fashion and that good cause
5 exists for granting the extension. Good cause may include, but may not be limited to:

6 A. Circumstances beyond the reasonable control and despite the due
7 diligence of Defendant including delays caused by unrelated third parties or Ecology,
8 such as (but not limited to) delays by Ecology in reviewing, approving, or modifying
9 documents submitted by Defendant.

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

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

14 D. Endangerment as described in Section XVII (Endangerment).

15 3. However, neither increased costs of performance of the terms of this Decree nor
16 changed economic circumstances shall be considered circumstances beyond the reasonable
17 control of Defendant.

18 4. Ecology shall act upon any Defendant's written request for extension in a timely
19 fashion. Ecology shall give Defendant written notification of any extensions granted pursuant to
20 this Decree. A requested extension shall not be effective until approved by Ecology or, if
21 required, by the Court. Unless the extension is a substantial change, it shall not be necessary to
22 amend this Decree pursuant to Section XV (Amendment of Decree) when a schedule extension
23 is granted.

24 5. At Defendant's request an extension shall only be granted for such period of time
25 as Ecology determines is reasonable under the circumstances. Ecology may grant schedule
26 extensions exceeding ninety (90) days only as a result of one of the following:

1 A. Delays in the issuance of a necessary permit which was applied for in a
2 timely manner.

3 B. Other circumstances deemed exceptional or extraordinary by Ecology.

4 C. Endangerment as described in Section XVII (Endangerment).

5 **XVII. ENDANGERMENT**

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

10 2. In the event Defendant determines that any activity being performed at the Site
11 under this Decree is creating or has the potential to create a danger to human health or the
12 environment, Defendant may cease such activities. Defendant shall notify Ecology's project
13 coordinator as soon as possible, but no later than twenty-four (24) hours after making such
14 determination or ceasing such activities. Upon Ecology's direction, Defendant shall provide
15 Ecology with documentation of the basis for the determination or cessation of such activities. If
16 Ecology disagrees with Defendant's cessation of activities, it may direct Defendant to resume
17 such activities.

18 3. If Ecology concurs with or orders a work stoppage pursuant to this section,
19 Defendant's obligations with respect to the ceased activities shall be suspended until Ecology
20 determines the danger is abated, and the time for performance of such activities, as well as the
21 time for any other work dependent upon such activities, shall be extended, in accordance with
22 Section XVI (Extension of Schedule), for such period of time as Ecology determines is
23 reasonable under the circumstances.

24 4. Nothing in this Decree shall limit the authority of Ecology, its employees, agents,
25 or contractors to take or require appropriate action in the event of an emergency.
26

XVIII. COVENANT NOT TO SUE

1. Covenant Not to Sue: In consideration of Defendant's compliance with the terms and conditions of this Decree, Ecology covenants not to institute legal or administrative actions against Defendant regarding the release or threatened release of hazardous substances at the Site, as described in Section V (Findings of Fact). This Covenant Not to Sue does not cover any other hazardous substance(s) or area. Other than the Estate of Gregory A. Stoffers, this Covenant Not to Sue does not apply to any prospective purchaser, lessee, transferee, assignee, or other successor in any interest in all of any portion of the Site. Ecology retains all of its authority relative to any hazardous substance(s) or area not covered by this Decree.

This Covenant Not to Sue shall have no applicability whatsoever to:

- A. Criminal liability.
- B. Liability for damages to natural resources.
- C. Any Ecology action, including cost recovery, against PLPs not a party to this Decree.

2. Pursuant to RCW 70A.305.040(4)(c), the Court shall amend this Covenant Not to Sue if factors not known at the time of entry of this Decree are discovered and present a previously unknown threat to human health or the environment.

3. Reopeners: Ecology specifically reserves the right to institute legal or administrative action against Defendant to require it to perform additional remedial actions at the Site and to pursue appropriate cost recovery, pursuant to RCW 70A.305.050, under any of the following circumstances:

- A. Upon Defendant's failure to meet the requirements of this Decree.
- B. Failure of the remedial action to meet the cleanup standards identified in the CAP that will be developed for the Site.

1 C. Upon Ecology's determination that remedial action beyond the terms of
2 this Decree is necessary to abate an imminent and substantial endangerment to human
3 health or the environment.

4 D. Upon the availability of information previously unknown to Ecology
5 regarding Site or factors including the nature, quantity, migration, pathway, or mobility
6 of hazardous substances, and Ecology's determination, in light of this information, that
7 further remedial action is necessary at the Site to protect human health or the
8 environment.

9 E. Upon Ecology's determination that additional remedial actions are
10 necessary to achieve cleanup standards within the reasonable restoration time frame set
11 forth in the CAP.

12 4. Except in the case of an emergency, prior to instituting legal or administrative
13 action against Defendant pursuant to this section, Ecology shall provide Defendant with fifteen
14 (15) calendar days' notice of such action.

15 **XIX. CONTRIBUTION PROTECTION**

16 1. With regard to claims for contribution against Defendant, the Parties agree that
17 Defendant is entitled to protection against claims for contribution for matters addressed in this
18 Decree as provided by RCW 70A.305.040(4)(d).

19 **XX. INDEMNIFICATION**

20 1. Defendant agrees to indemnify and save and hold the State of Washington, its
21 employees, and agents harmless from any and all claims or causes of action (1) for death or
22 injuries to persons, or (2) for loss or damage to property to the extent arising from or on account
23 of acts or omissions of Defendant, its officers, employees, agents, or contractors in entering into
24 and implementing this Decree. However, Defendant shall not indemnify the State of Washington
25 nor save nor hold its employees and agents harmless from any claims or causes of action to the
26

1 extent arising out of the negligent acts or omissions of the State of Washington, or the employees
2 or agents of the State, in entering into or implementing this Decree.

3 **XXI. COMPLIANCE WITH APPLICABLE LAWS**

4 1. *Applicable Law.* All actions carried out by Defendant pursuant to this Decree
5 shall be done in accordance with all applicable federal, state, and local requirements, including
6 requirements to obtain necessary permits, except as provided in RCW 70A.305.090. At this time,
7 no federal, state, or local requirements have been identified as being applicable to the actions
8 required by this Decree. Defendant has a continuing obligation to identify additional applicable
9 federal, state, and local requirements which apply to actions carried out pursuant to this Decree,
10 and to comply with those requirements. As additional federal, state, and local requirements are
11 identified by Ecology or the Defendant, Ecology will document in writing if they are applicable
12 to actions carried out pursuant to this Decree, and the Defendant must implement those
13 requirements.

14 2. *Relevant and Appropriate Requirements.* All actions carried out by Defendant
15 pursuant to this Decree shall be done in accordance with relevant and appropriate requirements
16 identified by Ecology. At this time, no relevant and appropriate requirements have been
17 identified as being applicable to the actions required by this Decree. If additional relevant and
18 appropriate requirements are identified by Ecology or the Defendant, Ecology will document in
19 writing if they are applicable to actions carried out pursuant to this Decree and the Defendant
20 must implement those requirements.

21 3. Pursuant to RCW 70A.305.090(1), Defendant may be exempt from the
22 procedural requirements of RCW 70A.15, 70A.205, 70A.300, 77.55, 90.48, and 90.58 and of
23 any laws requiring or authorizing local government permits or approvals. However, Defendant
24 shall comply with the substantive requirements of such permits or approvals. For permits and
25 approvals covered under RCW 70A.305.090(1) that have been issued by local government, the
26 Parties agree that Ecology has the non-exclusive ability under this Decree to enforce those local

1 government permits and/or approvals. At this time, no state or local permits or approvals have
2 been identified as being applicable but procedurally exempt under this section.

3 4. Defendant has a continuing obligation to determine whether additional permits or
4 approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial
5 action under this Decree. In the event either Ecology or Defendant determines that additional
6 permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the
7 remedial action under this Decree, it shall promptly notify the other party of its determination.
8 Ecology shall determine whether Ecology or Defendant shall be responsible to contact the
9 appropriate state and/or local agencies. If Ecology so requires, Defendant shall promptly consult
10 with the appropriate state and/or local agencies and provide Ecology with written documentation
11 from those agencies of the substantive requirements those agencies believe are applicable to the
12 remedial action. Ecology shall make the final determination on the additional substantive
13 requirements that must be met by Defendant and on how Defendant must meet those
14 requirements. Ecology shall inform Defendant in writing of these requirements. Once established
15 by Ecology, the additional requirements shall be enforceable requirements of this Decree.
16 Defendant shall not begin or continue the remedial action potentially subject to the additional
17 requirements until Ecology makes its final determination.

18 5. Pursuant to RCW 70A.305.090(2), in the event Ecology determines that the
19 exemption from complying with the procedural requirements of the laws referenced in
20 RCW 70A.305.090(1) would result in the loss of approval from a federal agency that is necessary
21 for the state to administer any federal law, the exemption shall not apply and Defendant shall
22 comply with both the procedural and substantive requirements of the laws referenced in
23 RCW 70A.305.090(1), including any requirements to obtain permits or approvals.

24 **XXII. REMEDIAL ACTION COSTS**

25 1. Defendant shall pay to Ecology costs incurred by Ecology pursuant to this Decree
26 and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology

1 or its contractors for, or on, the Site under RCW 70A.305, including remedial actions and Decree
2 preparation, negotiation, oversight, and administration. These costs shall include work
3 performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall include
4 costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2).
5 For all costs incurred, Defendant shall pay the required amount within thirty (30) days of
6 receiving from Ecology an itemized statement of costs that includes a summary of costs incurred,
7 an identification of involved staff, and the amount of time spent by involved staff members on
8 the project. A general statement of work performed will be provided upon request. Itemized
9 statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay
10 Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result
11 in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

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

15 **XXIII. IMPLEMENTATION OF REMEDIAL ACTION**

16 1. If Ecology determines that the Defendant has failed to make sufficient progress
17 or failed to implement the remedial action, in whole or in part, Ecology may, after notice to
18 Defendant, perform any or all portions of the remedial action or at Ecology's discretion allow
19 the Defendant opportunity to correct. In an emergency, Ecology is not required to provide notice
20 to Defendant, or an opportunity for dispute resolution. The Defendant shall reimburse Ecology
21 for the costs of doing such work in accordance with Section XXII (Remedial Action Costs).

22 2. Except where necessary to abate an emergency or where required by law, the
23 Defendant shall not perform any remedial actions at the Site outside those remedial actions
24 required by this Decree to address the contamination that is the subject of this Decree, unless
25 Ecology concurs, in writing, with such additional remedial actions pursuant to Section XV
26 (Amendment of Decree). In the event of an emergency, or where actions are taken as required

1 by law, Defendant must notify Ecology in writing of the event and remedial action(s) planned
2 or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of
3 the event.

4 **XXIV. PERIODIC REVIEW**

5 1. So long as remedial action continues at the Site, the Parties agree to review the
6 progress of remedial action at the Site, and to review the data accumulated as a result of
7 monitoring the Site as often as is necessary and appropriate under the circumstances. Unless
8 otherwise agreed to by Ecology, at least every five (5) years after the initiation of cleanup action
9 at the Site the Parties shall confer regarding the status of the Site and the need, if any, for further
10 remedial action at the Site. At least ninety (90) days prior to each periodic review, Defendant
11 shall submit a report to Ecology that documents whether human health and the environment are
12 being protected based on the factors set forth in WAC 173-340-420(4). Under Section XVIII
13 (Covenant Not to Sue), Ecology reserves the right to require further remedial action at the Site
14 under appropriate circumstances. This provision shall remain in effect for the duration of this
15 Decree.

16 **XXV. PUBLIC PARTICIPATION**

17 1. Ecology shall maintain the responsibility for public participation at the Site.
18 However, Defendant shall cooperate with Ecology, and shall:

19 A. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts
20 of public notices and fact sheets at important stages of the remedial action, such as the
21 submission of work plans, remedial investigation/feasibility study reports, cleanup action
22 plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and
23 distribute such fact sheets and prepare and distribute public notices of Ecology's
24 presentations and meetings.

25 B. Notify Ecology's project coordinator prior to the preparation of all press
26 releases and fact sheets, and before meetings related to remedial action work to be

1 performed at the Site with the interested public and/or local governments. Likewise,
2 Ecology shall notify Defendant prior to the issuance of all press releases and fact sheets
3 related to remedial action work to be performed at the Site, and before meetings related
4 to remedial action work to be performed at the Site with the interested public and/or local
5 governments. For all press releases, fact sheets, meetings, and other outreach efforts by
6 Defendant that do not receive prior Ecology approval, Defendant shall clearly indicate to
7 its audience that the press release, fact sheet, meeting, or other outreach effort was not
8 sponsored or endorsed by Ecology.

9 C. When requested by Ecology, participate in public presentations on the
10 progress of the remedial action at the Site. Participation may be through attendance at
11 public meetings to assist in answering questions, or as a presenter.

12 D. When requested by Ecology, arrange and/or continue information
13 repositories at the following locations:

- 14 i. Yakima Valley Regional Library
15 102 North 3rd Street
16 Yakima, Washington 98901

17 At a minimum, copies of all public notices, fact sheets, and documents relating to public
18 comment periods shall be promptly placed in this repository. A copy of all documents
19 related to this Site shall be maintained at Ecology's Central Region Office in Union Gap,
20 Washington.

21 **XXVI. DURATION OF DECREE**

22 1. The remedial actions required pursuant to this Decree shall be maintained and
23 continued until Defendant has received written notification from Ecology that the requirements
24 of this Decree have been satisfactorily completed. This Decree shall remain in effect until
25 dismissed by the Court. When dismissed, Section XII (Retention of Records), Section XVIII
26 (Covenant Not to Sue), Section XIX (Contribution Protection), Section XX (Indemnification),
and Section XXVII (Claims Against the State) shall survive.

XXVII. CLAIMS AGAINST THE STATE

1. Defendant hereby agrees that it will not seek to recover any costs accrued in implementing the remedial action required by this Decree from the State of Washington or any of its agencies; and further, that Defendant will make no claim against the State Toxics Control Account, the Local Toxics Control Account, the Environmental Legacy Stewardship Account, or a MTCA Cleanup Settlement Account for any costs incurred in implementing this Decree. Except as provided above, however, Defendant expressly reserves its right to seek to recover any costs incurred in implementing this Decree from any other PLP. This section does not limit or address funding that may be provided under WAC 173-322A.

XXVIII. EFFECTIVE DATE

1. This Decree is effective upon the date it is entered by the Court.

XXIX. WITHDRAWAL OF CONSENT

1. If the Court withholds or withdraws its consent to this Decree, it shall be null and void at the option of any party and the accompanying Complaint shall be dismissed without costs and without prejudice. In such an event, no party shall be bound by the requirements of this Decree.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

NICHOLAS W. BROWN
Attorney General

Nhi Irwin
Program Manager
Toxics Cleanup Program
360- 791-5514

John A. Level, WSBA # 20439
Assistant Attorney General
360-586-6753

Date: _____

Date: _____

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1 ESTATE OF GREGORY A. STOFFERS

2
3 _____
4 Sonia Stoffers
5 Personal Representative for the Estate of Gregory A. Stoffers
6 509-966-7177

7 Date: _____

8 ENTERED this _____ day of _____ 2025.

9 _____
10 JUDGE
11 Yakima County Superior Court
12
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EXHIBIT A

Exhibit A - Figure 1

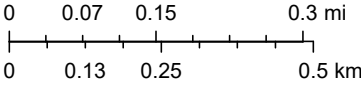


Frank Wear Site



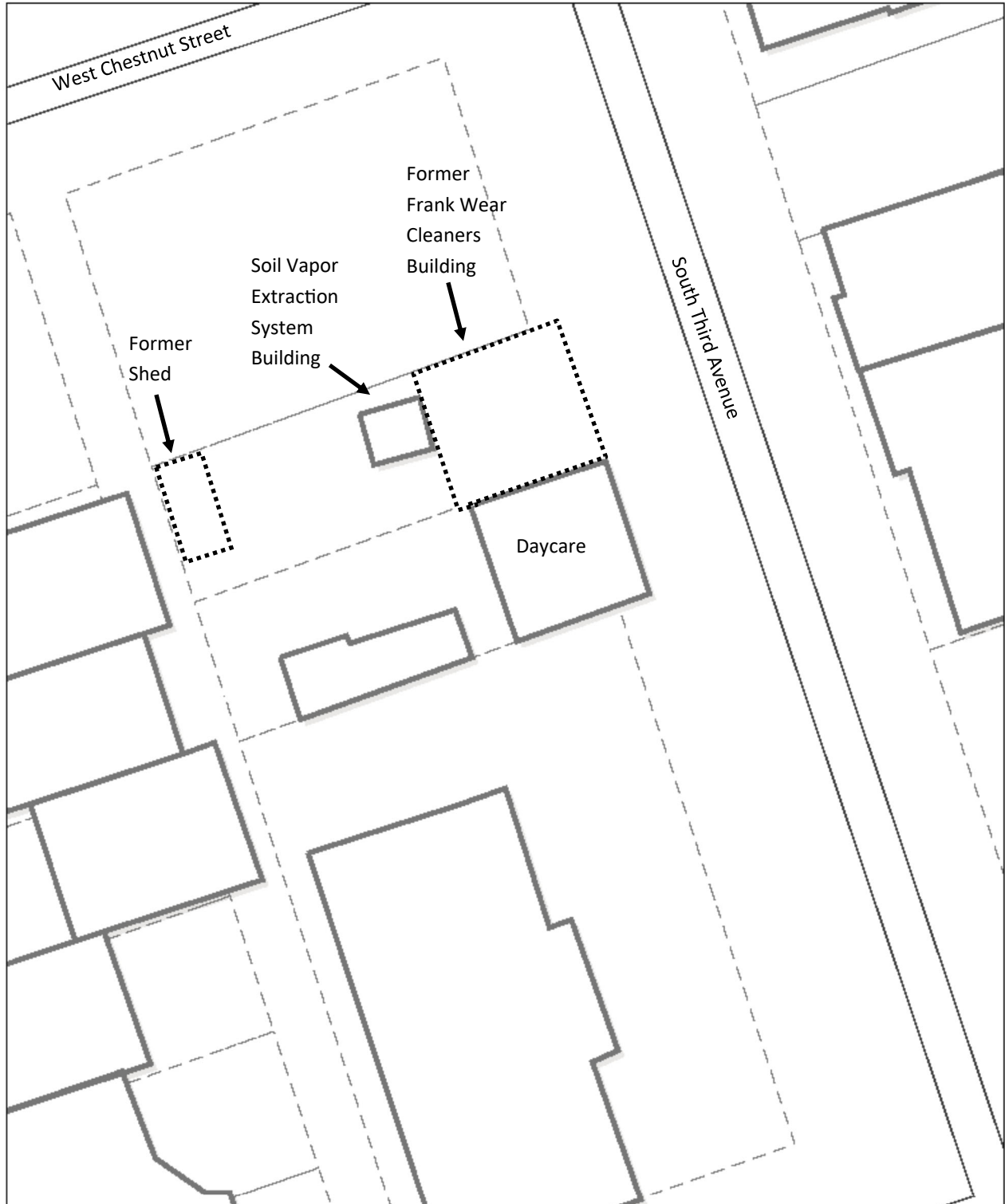
1:18,056

Frank Wear Site 106 S. 3rd Avenue, Yakima, Washington



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

Exhibit A - Figure 2



Frank Wear Cleaners Site
106 S. 3rd Avenue, Yakima, Washington

1:564
0 0 0.01 0.01 mi
0 0.01 0.01 0.02 km
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Esri Community Maps Contributors, WSU Facilities Services GIS, City of Yakima, WA State Parks GIS, © OpenStreetMap, Microsoft, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/ NASA, USGS, Bureau of Land Management, EPA, NPS, US Census Bureau, USDA, USFWS

EXHIBIT B

EXHIBIT B – Scope of Work

PURPOSE

The work under the Consent Decree (Decree) involves conducting a Remedial Investigation (RI) and Feasibility Study (FS), conducting interim actions, preparing a preliminary Draft Cleanup Action Plan (DCAP) to select a cleanup alternative, and implementing a Final Cleanup Action Plan (CAP). The purpose of the RI, FS, and preliminary DCAP for the Site is to provide sufficient data, analysis, and evaluations to enable Ecology to select a cleanup alternative for the Site.

The Estate of Gregory A. Stoffers (Estate) shall coordinate with Ecology throughout the development of any work plans, the RI, FS, DCAP, and CAP, and shall keep Ecology informed of changes to project plans, and of any issues or problems as they develop as required by the Decree.

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

- Task 1. Remedial Investigation Work Plan
- Task 2. Remedial Investigation
- Task 3. Interim Actions
- Task 4. Feasibility Study
- Task 5. State Environmental Policy Act (SEPA) Compliance
- Task 6. Public Participation
- Task 7. Draft Cleanup Action Plan (DCAP)
- Task 8. Cleanup Action Plan Implementation
- Task 9. Monthly Progress Reports

TASK 1. REMEDIAL INVESTIGATION WORK PLAN

The Estate shall prepare a Remedial Investigation Work Plan (RI Work Plan). The RI Work Plan shall include an overall description and schedule of all RI activities. The RI 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 RI Planning Meeting will be held prior to submittal of the RI Work Plan. The purpose of the RI Planning Meeting is to review requirements for the RI Work Plan and plan RI field work, discuss the preliminary Conceptual Site Model, and identify project data needs and possible interim actions.

The RI 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, soil vapor, air, and groundwater; 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.

As part of the project background, existing environmental data on site soil, soil vapor, air, and groundwater will be compiled and evaluated for data gaps. The data gaps will be used as the basis for conducting additional site investigations.

The RI Work Plan will also identify specific data collection procedures in a Sampling and Analysis Plan (SAP) and Quality Assurance Project Plan (QAPP) in compliance with WAC 173-340-820, an Inadvertent Discovery Plan (IDP) in compliance with WAC 173-340-815, and a Health and Safety Plan (HASP) meeting the requirements of WAC 173-340-810.

The SAP identifies the proposed number and location of all environmental samples and methods, including soil borings, groundwater monitoring wells, soil, groundwater, soil vapor, and air samples, approximate depths, and includes a Quality Assurance Project Plan (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 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 QAPP will follow Ecology's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies (July 2004) ¹ 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 Estate shall prepare and submit a Draft RI Work Plan to Ecology for review and comment. After incorporating Ecology's comments on the Draft RI Work Plan, the Estate shall prepare the Final RI Work Plan and submit it to Ecology. The number and type of document (electronic, print copy, etc.) will be determined by the Ecology Project Coordinator. Once approved by Ecology, the Estate will implement the Final RI Work Plan according to this Exhibit's schedule.

The Estate or their contractors shall submit all new sampling data generated under this SAP and any other data collected related to the Consent Decree to Ecology via entry of the data into the Environmental Information Management System (EIM) in accordance

¹ Found at [http:// https://apps.ecology.wa.gov/publications/SummaryPages/0403030.html](http://https://apps.ecology.wa.gov/publications/SummaryPages/0403030.html)

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, and the Estate must enter the data within 30 days of receipt of validated data from the analytical laboratory.

TASK 2. REMEDIAL INVESTIGATION

The Estate shall conduct an RI that meets the requirements of WAC 173-340-350 according to the 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. The RI must provide sufficient data and information to define the nature and extent of contamination.

Field sampling and analysis will be completed in general accordance with the SAP, QAPP, and IDP. Deviation(s) from the approved plans must be communicated to Ecology immediately and documented as required by Ecology.

The Estate shall provide interim data reports and updates to Ecology 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.

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

The Estate shall compile the results of the RI into a Draft RI Report and submit it to Ecology.

After incorporating Ecology's comments on the Draft RI Report, the Estate shall prepare a Public Review Draft RI Report and submit it to Ecology for distribution and public comment. The number and type of document (electronic, print copy, etc.) will be determined by the Ecology Project Coordinator. The RI Report will not be considered Final until after a public review and comment period. The public review and comment period for the RI Report may be combined with the public review and comment period for the Feasibility Study, or Interim Actions, if appropriate, with Ecology approval.

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

TASK 3. INTERIM ACTIONS

The following remedial actions may be implemented prior to completion of the RI/FS, including those that:

- 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 RI/FS or design of the cleanup action.

These actions will be implemented in accordance with WAC 173-340-430 and the Decree. They will be designed in a manner that will not foreclose reasonable alternatives for any final cleanup action that may be required.

The scope of the interim actions may include, but not be limited to:

- Soil removal
- Maintenance, operation, performance monitoring and expansion, if necessary, of the current Soil Vapor Extraction (SVE) system
- Installation of groundwater monitoring wells
- Groundwater, soil, soil vapor, and air sampling/monitoring
- Groundwater remediation
- Free product remediation or removal
- Installation of best management practices

For all interim actions performed, the Estate will prepare and submit for Ecology approval a Draft Interim Action Work Plan (IAWP) with detail commensurate with the work to be performed. The 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),
- Existing site conditions and alternative interim actions considered,
- Information regarding design and construction requirements, including a proposed schedule and personnel roles and responsibilities,
- Compliance Monitoring Plan,
- SAP/QAPP,
- Permits required.

The Estate will also submit a copy of the Health and Safety Plan for the project. The Estate will be responsible for complying with the State Environmental Policy Act (SEPA) rules, including preparing and submitting an environmental checklist for the interim action, and

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.

The Estate shall prepare and submit the Draft Interim Action Work Plan to Ecology for review and approval. The Estate shall incorporate Ecology's comments and prepare and submit a Public Review Draft IAWP and submit it to Ecology for public review and distribution. The number and type of document (electronic, print copy, etc.) will be determined by the Ecology Project Coordinator. After a public notice and comment period for the Public Review Draft IAWP (and SEPA determination), Ecology will approve the IAWP (if appropriate) and the document will be considered final. The public notice and comment period for the IAWP may be combined with other comment periods (e.g. RI Report, FS Report), if appropriate, with Ecology approval.

Once Ecology approves the IAWP, the Estate will implement the interim action according to the schedule contained in the IAWP.

Upon successful completion of the work, the Estate will prepare a Draft Interim Action Report as a separate deliverable. After incorporating Ecology's comments on the Draft Interim Action Report and after Ecology approval of a revised Report, the Estate shall prepare and submit the Final Interim Action Report. The number and type of document (electronic, print copy, etc.) will be determined by the Ecology Project Coordinator.

TASK 4. FEASIBILITY STUDY

The Estate shall use the information obtained in the RI to prepare a Draft Feasibility Study (FS) that meets the applicable requirements of WAC 173-340-351 according to the schedule in this Exhibit.

The Draft FS will evaluate remedial alternatives for site cleanup, consistent with MTCA to ensure protection of human health and the environment by eliminating, reducing, or otherwise controlling risk posed through each exposure pathway and migration route.

Prior to beginning the FS, an FS Planning Meeting will be held to review Applicable Relevant and Appropriate Requirements, potential remedial alternatives and establish points of compliance.

The Draft FS must include a detailed analysis of each remedial alternative according to the applicable requirements of WAC 173-340-360., including a detailed evaluation of remedial alternatives relative to the following criteria:

- Protect human health and the environment, including likely vulnerable populations and overburdened communities;
- Compliance with cleanup standards;

- Comply with applicable state and federal laws;
- Prevent or minimize present and future releases and migration of hazardous substances in the environment;
- Provide resilience to climate change impacts that have a high likelihood of occurring and severely compromising its long-term effectiveness;
- Provide for compliance monitoring;
- Not rely primarily on institutional controls and monitoring at a site, or portion thereof, if it is technically possible to implement a more permanent cleanup action;
- Provision for a reasonable restoration time frame;
- Use of permanent solutions to the maximum extent practicable.

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.

The Estate shall prepare and submit the Draft FS to Ecology for review. After incorporating Ecology's comments on the Draft FS, the Estate shall prepare the Public Review Draft FS and submit it to Ecology for distribution and public comment. The number and type of document (electronic, print copy, etc.) will be determined by the Ecology Project Coordinator. The FS will not be considered Final until after a public review and comment period. The public review and comment period may be combined with the public review and comment period for the RI Report, or Interim Actions, if appropriate, with Ecology approval.

TASK 5. SEPA COMPLIANCE

The Estate shall be responsible for assisting Ecology with its compliance with the State Environmental Policy Act (SEPA) Rules (WAC 197-11-250 through 268), including the Estate preparing and submitting a draft and final environmental checklist. The SEPA checklist will be provided to Ecology for review as a requirement of the Decree.

If, after completion of the DCAP, additional remedial actions are necessary that require permits and which trigger an additional SEPA review, and additional SEPA checklist will be completed as required by the permitting agency.

If the result of the threshold determination is a determination of significance (DS), the Estate may be responsible for the preparation of an agency review draft environmental impact statements. The Estate shall assist Ecology with coordinating SEPA public involvement requirements with MTCA public involvement requirements whenever practicable, such that public comment periods and meetings or hearings can be held concurrently.

TASK 6. PUBLIC PARTICIPATION AND TRIBAL ENGAGEMENT

Ecology will prepare a Draft and Final Public Participation Plan that complies with the provisions of WAC 173-340-600(9) and a Tribal Engagement Plan that complies with the provisions of WAC 173-340-620. The Estate will provide information requested by Ecology to assist in this process.

The Estate shall support Ecology in presenting the Public Review RI/FS Report, Public Review DCAP, and SEPA evaluations at a public meeting if such a meeting takes place. The Estate 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.

Public comment periods will be held for 1) the RI/FS Report, and 2) the DCAP and SEPA evaluation, and 3) Interim Actions, if necessary. After each public comment period is completed, the Estate shall prepare and submit a Draft Responsiveness Summary that addresses public comments to Ecology for review. The number and type of document (electronic, print copy, etc.) will be determined by the Ecology Project Coordinator.

For each public comment period, after addressing Ecology's comments and after Ecology approval, the Estate shall prepare the Final Responsiveness Summary and final technical documents (RI/FS Report; DCAP and SEPA) after public comments are incorporated and submit them to Ecology for distribution. The number and type of document (electronic, print copy, etc.) will be determined by the Ecology Project Coordinator.

TASK 7. DRAFT CLEANUP ACTION PLAN

Upon Ecology approval of the Public Review Draft RI Report and Public Review Draft FS, a Cleanup Action Plan Meeting will be held regarding the Cleanup Action Plan. The Cleanup Action Plan Meeting will be used to review plans for developing the Agency Review preliminary Draft Cleanup Action Plan (DCAP).

The Estate shall prepare a DCAP in accordance with WAC 173-340-380 that provides a proposed remedial action to address the contamination present on the Site. The DCAP shall include a general description of the proposed remedial actions, an Inadvertent Discovery Plan (IDP), cleanup standards developed from the RI/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.

The Estate will submit a DCAP for Ecology's review and approval. After receiving Ecology's comments on the DCAP, if any, the Estate shall revise the DCAP to address Ecology's comments and submit the Public Review DCAP to Ecology for distribution and public comment. The number and type of document (electronic, print copy, etc.) will be determined by the Ecology Project Coordinator. The public review and comment period may be combined with the public review and comment period for the RI/FS, if appropriate, with Ecology approval. The DCAP will not be considered Final until after a public review and comment period. At this time, Ecology will issue the CAP for the site.

TASK 8. CLEANUP ACTION PLAN IMPLEMENTATION

The Estate will implement actions outlined in the Final Cleanup Action Plan (CAP) in accordance with WAC 173-340-400. The Estate will prepare and submit the following documents to Ecology for review and approval prior to CAP implementation:

- Engineering Design Report per WAC 173-340-400(4)(a)
- Construction Plans and Specifications per WAC 173-340-400(4)(b)
- Operation and Maintenance Plan per WAC 173-340-400(4)(c)

The Estate will prepare and submit a Compliance Monitoring Plan per WAC 173-340-410.

TASK 9. MONTHLY PROGRESS REPORTS

As required by the Decree, the Estate shall submit Progress Reports on a monthly basis to Ecology electronically; this submittal frequency may be revised in accordance with Subsection 8 of the Decree's Work to be Performed section. Progress Reports will be submitted to the Ecology project coordinator every month by the 10th of the month following the reporting period. If this day is a weekend or holiday, Progress Reports will be submitted to Ecology on the next business day. At a minimum, Progress Reports will contain the following information regarding the preceding reporting period:

- A list of on-site activities that have taken place during the month.
- Description of any sample results which deviate from the norm.
- Detailed descriptions of any deviations from required tasks not otherwise documented in project plans or amendment requests.
- Description of all deviations from the Scope of Work and Schedule during the current month and any planned deviations in the upcoming month.
- For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.
- All raw data (including laboratory analyses) received during the previous quarter, together with a detailed description of the underlying samples collected.
- Changes in key personnel.

- A description of work planned for the next reporting period, including a list of deliverables for the upcoming month.

EXHIBIT C

Exhibit C – Schedule

The schedule for deliverables is presented below and is in calendar days. If the date for the PLP's/Defendant's 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 PLP/Defendant received such notification, comments, or approval from Ecology.

Deliverable/Action	Due Date
Administrative	
Progress reports	Every month by the 10th of the month beginning after the effective date of the Consent Decree until completion of the Final Construction Completion Report, and thereafter annually
Interim Action – Soil Vapor Extraction (SVE) System	
Submit Draft Interim Action Work Plan (IAWP) per WAC 173-340-430 for SVE Maintenance, Operation, and Performance Monitoring. Submit Health and Safety Plan per WAC 173-340-810 for SVE Maintenance, Operation and Performance Monitoring	No later than 45 days after the Effective Date of the Consent Decree
Submit Public Review Draft IAWP	No later than 30 days after receiving Ecology comments on Draft IAWP
Implement SVE IAWP	No later than 30 days after end of public comment period on SVE IAWP
Remedial Investigation	
Submit Remedial Investigation (RI) Work Plan per WAC 173-340-350 (includes Sampling and Analysis Plan, Quality Assurance Project Plan, Inadvertent Discovery Plan, Health and Safety Plan)	No later than 90 days after the Effective Date of the Consent Decree
Submit Final RI Work Plan	No later than 45 days after receiving Ecology comments on Draft RI Work Plan

Exhibit C – Frank Wear Cleaners Schedule

Implement RI Work Plan	No later than 30 days after Ecology finalizes the RI Work Plan
Submit Draft RI Report	No later than 45 days after completion of activities described in the RI Work Plan.
Submit Public Review Draft RI Report	No later than 30 days after receiving Ecology comments on the Draft RI Report
Feasibility Study	
Submit Draft Feasibility Study (FS) per WAC 173-340-351	No later than 90 days after Ecology approves the Public Review Draft RI
Submit Public Review Draft FS	No later than 30 days after receiving Ecology comments on the Draft FS
Interim Action To Be Determined	
Submit Draft Interim Action Work Plan (IAWP)	Submitted as necessary, based on results of Remedial Investigation
Submit Public Review Draft IAWP	No later than 30 days after receiving Ecology comments on Draft IAWP
Implement SVE IAWP	No later than 30 days after end of public comment period on SVE IAWP
Cleanup Action Plan – Design – Construction	
Submit Draft Cleanup Action Plan (DCAP) per WAC 173-340-360 through 380	No later than 90 days after end of public comment period for RI/FS
Submit Final Cleanup Action Plan (CAP)	No later than 60 days after resolution of Ecology comments on DCAP
Submit Engineering Design Report (EDR) per WAC 173-340-400(4)(a), Construction Plans and Specifications per WAC 173-340-400(4)(b), Operation and Maintenance Plan per WAC 173-340-400(4)(c), Compliance Monitoring Plan per WAC 173-340-410	No later than 120 days after Ecology approval of Final CAP
Implementation of the Cleanup Action Plan	Within 120 days after Ecology's acceptance of the Engineering Design Report, Construction Plans and Specifications, and Operation and

Exhibit C – Frank Wear Cleaners Schedule

	Maintenance Plan, Compliance Monitoring Plan
Post Construction Work	
Draft Construction Completion Report, including As Built Drawings and an Operation, Maintenance, and Monitoring Plan	Within 120 days of completion of work outlined in CAP
Final Construction Completion Report	Within 30 days of receipt of Ecology comments on Draft Construction Completion Report
Draft Environmental Covenant(s) (if necessary)	Within 30 days of Ecology approval of Final Construction Completion Report
Record Environmental Covenant(s) (if necessary)	Within 60 days of Ecology approval of Draft Environmental Covenant(s)
State Environmental Policy Act	
Submit Draft State Environmental Policy Act (SEPA) Checklist	Submit at the same time as the DCAP. It may also be necessary to submit as part of the Interim Action process
Submit Final SEPA Checklist	No later than 60 days after resolution of Ecology comments on Draft SEPA Checklist