

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

**Burlington Environmental LLC
625 South 32nd Street
Washougal, Washington 98671**

AGREED ORDER

No. DE 24122

TO: Burlington Environmental LLC
1701 Alexander Avenue
Tacoma, Washington 98421

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Burlington Environmental LLC (Burlington) 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. Burlington is a wholly owned subsidiary of PSC Environmental Services, LLC, a wholly owned subsidiary of Clean Earth Environmental Solutions, Inc. This Order requires Burlington to implement the cleanup action plan finalized by Ecology. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the authority of the Model Toxics Control Act (MTCA), RCW 70A.305.050(1). This Order also satisfies the requirements of WAC 173-303-646 through -64630.

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each Party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such Party to comply with the Order. Burlington agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Burlington's responsibility under this Order. Burlington shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in RCW 70A.305 and WAC 173-340 shall control the meanings of the terms used in this Order.

A. 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. The terms “Agreed Order” or “Order” shall include all exhibits to this Order.

B. Area of Concern (AOC): Refers to any area of the Facility where a release of dangerous constituents (including dangerous waste and hazardous substances) has occurred, is occurring, is suspected to have occurred, or threatens to occur.

C. Cleanup Action Plan (CAP): Refers to the document issued by Ecology under WAC 173-340-380 that selects Facility-specific corrective measures and specifies cleanup standards (cleanup levels, points of compliance, and other requirements for the corrective measures).

D. Cleanup Standards: Refers to the standards promulgated under RCW 70A.305.030(2)(e) and include (1) hazardous substance concentrations (cleanup levels) that protect human health and the environment, (2) the location at the Facility where those cleanup levels must be attained (points of compliance), and (3) additional regulatory requirements that apply to a cleanup because of the type of action and/or the location of the Facility.

E. Corrective Action: Refers to any activities including investigations, studies, characterizations, and corrective measures, including actions taken pursuant to RCW 70A.305 and WAC 173-340, undertaken in whole or in part to fulfill the requirements of WAC 173-303-64620.

F. Corrective Measure: Refers to any measure or action to control, prevent, or mitigate release(s) and/or potential release(s) of dangerous constituents (including dangerous waste and hazardous substances) reviewed and approved by Ecology for the Facility and set forth in a Facility-specific CAP prepared in compliance with the requirements of WAC 173-340, including WAC 173-340-360. Corrective measures may include interim actions as defined by WAC 173-340. Interim actions will not necessarily be set forth in a Facility-specific CAP.

G. Dangerous Constituent or Dangerous Waste Constituent: Refers to any constituent identified in WAC 173-303-9905 or 40 C.F.R. part 264, appendix IX; any constituent that caused

a waste to be listed or designated as dangerous under the provisions of WAC 173-303; and any constituent defined as a hazardous substance under RCW 70A.305.020(13).

H. Dangerous Waste: Refers to any solid waste designated in WAC 173-303-070 through -100 as dangerous or extremely hazardous or mixed waste. Dangerous wastes are considered hazardous substances under RCW 70A.305.020(13).

I. Dangerous Waste Management Facility: Used interchangeably in this document with the term “Facility.”

J. Dangerous Waste Management Unit (DWMU): Refers to a contiguous area of land on or in which dangerous waste is placed, or the largest area in which there is a significant likelihood of mixing dangerous waste constituents in the same area, as defined in WAC 173303040.

K. Facility: Refers to the Burlington DWMU controlled by Burlington located at located at 625 South 32nd Street Washougal, Washington; all property contiguous to the DWMU also controlled by Burlington; and all property, regardless of control, affected by release(s) or threatened release(s) of hazardous substances, including dangerous wastes and dangerous constituents, at and from these areas. “Facility” also includes the definition found in RCW 70A.305.020(8).

L. Feasibility Study (FS): Refers to the investigation and evaluation of potential corrective measures performed in accordance with the FS requirements of WAC 173-340-350, which includes the substantive requirements for a Resource Conservation and Recovery Act Corrective Measures Study, and which is undertaken in whole or in part to fulfill the corrective action requirements of WAC 173303-64620.

M. Parties: Refers to the State of Washington, Department of Ecology and Burlington

N. Potentially Liable Person (PLP(s)): Refers to Burlington.

O. Permit or Permitting Requirement: Unless otherwise specified, refers to the requirements of WAC 173-303 for applying for, obtaining, maintaining, modifying, and terminating Dangerous Waste Management Facility permits.

P. RCRA: Refers to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901–6992k.

Q. RCRA Facility Assessment (RFA): Refers to the EPA-conducted investigation of release(s) and potential release(s) at the Dangerous Waste Management Facility and the information contained in the report entitled Final Report, RCRA Facility Assessment, McClary Columbia Corporation, Washougal, Washington and dated May 31, 1988 (RFA Report). The RFA Report is incorporated into this Order by this reference as if fully set forth herein.

R. Release: Refers to any intentional or unintentional spilling, leaking, pouring, emitting, emptying, discharging, injecting, pumping, escaping, leaching, dumping, or disposing of dangerous waste or dangerous constituents into the environment. It also includes the abandonment or discarding of barrels, containers, and other receptacles containing dangerous waste or dangerous constituents, and includes the definition of “release” in RCW 70A.305.020(32).

S. Remedial Investigation (RI): Refers to a facility-wide investigation and characterization performed in accordance with the requirements of WAC 173-340, which includes the substantive requirements for a RCRA facility investigation, undertaken in whole or in part to fulfill the corrective action requirements of WAC 173-303-64620.

T. Solid Waste Management Unit (SWMU): Refers to any discernible location at the Dangerous Waste Management Facility where solid wastes have been placed at any time, irrespective of whether the location was intended for the management of solid or dangerous waste. Such locations include any area at the Dangerous Waste Management Facility at which solid wastes, including spills, have been routinely and systematically released, and include regulated units as defined by WAC 173-303.

V. FINDINGS OF FACT

Ecology makes the following Findings of Fact, without any express or implied admissions of such facts by Burlington:

A. McClary Columbia Corporation (MCC) under the ownership of Mr. Jack McClary operated the facility between approximately 1978 and 1985.

B. On February 14, 1985, Ecology entered into a Consent Agreement and Final Order (DE-85-165) with MCC and Chemical Processors, Inc. (Chempro). The agreement states Chempro would acquire a majority interest in MCC and perform a soil and groundwater investigation.

C. On June 28, 1985, Chempro purchased majority ownership in MCC.

D. On August 28, 1987, Chempro notified Ecology that Chempro had acquired a majority interest in MCC and that Chempro would assume and maintain responsibility for the RCRA Permit, insurance coverage, and financial assurance for the Facility.

E. In March 1988, Burlington Northern Inc. (BNI) acquired from then sole shareholder, David Sabey, a majority interest in Chempro through BNI's wholly owned real estate subsidiary Glacier Park Company (GPC).¹

F. Chempro acquired the remaining interest in MCC from Jack McClary and effected a statutory merger of MCC with Chempro on or about July 30, 1989.

G. On January 6, 1992, the legal name of Chempro was changed to Burlington Environmental, Inc. (Burlington).

H. In December 1993, Philip Environmental Inc., a publicly traded Canadian company, acquired all interest in Burlington and its subsidiaries from BRI and GPC. In 1997, through a series of public mergers, Burlington became a wholly owned subsidiary of PSC Environmental Services, Inc.

I. In April 2008, Burlington Environmental, Inc. merged with PSC-Burlington, LLC to form a new entity called Burlington Environmental LLC. ¹ In late 1988, BNI spun out its

resources companies, including GPC (and its majority interest in Chempro) in a public reorganization into a new public company, Burlington Resources Inc. (BRI). At that time, Chempro became an indirect majority owned subsidiary of BRI. Corrective Action Agreed Order No. DE 4308 Page 8 of 32

J. In approximately April 2014, Burlington was acquired by, and became a wholly-owned indirect subsidiary of, Stericycle Environmental Services, Inc.; and, in approximately June 2020, Burlington was acquired by, and became a wholly-owned indirect subsidiary of Clean Earth Environmental Solutions, Inc.

Findings of Fact Addressing Permit Status and Corrective Action

K. Burlington is and has been an owner of the Dangerous Waste Management Facility located at 625 South 32nd Street, Washougal, Washington 98671, formerly known as the McClary Columbia Corporation (MCC), now known as PSC Washougal facility (the “Facility” as defined above) since on or about 1985

L. Burlington owned and operated as a Dangerous Waste Management Facility on or after November 19, 1980, the date which subjects facilities to RCRA permitting requirements, including interim status requirements pursuant to RCRA, 42 U.S.C. § 6925, and implementing regulations thereunder, and including authorized state regulations promulgated in WAC 173303.

M. Burlington is and has been an owner of the Dangerous Waste Management Facility located at 625 South 32nd Street, Washougal, Washington 98671, formerly known as the McClary Columbia Corporation (MCC), now known as PSC Washougal facility (the “Facility” as defined above) since on or about 1985.

N. Between approximately 1978 and 1985, MCC engaged in phenolic resin manufacturing and the production of specialty chemicals and defoamers for water treatment and use in the pulp and paper industry. During this time, MCC also conducted waste oil recycling activities and eventually converted the former phenolic resin plant to a waste solvent

recovery system. Solvents recovered included mineral spirits, acetone, toluene, isopropyl alcohol, methanol, 1,1,2-trichloro-1,2,2-trifluoroethane (Freon 113), trichloroethylene, methylene chloride, and 1,1,1-trichloroethene. MCC also constructed Building 2 in 1981.

O. On November 19 and 20, 1980, MCC notified the U.S. Environmental Protection Agency (EPA) of its dangerous waste management activities and submitted a Part A application for a RCRA permit. In the notification, MCC identified itself as managing dangerous wastes.

P. Pursuant to the November 19 and 20, 1980 notifications, EPA issued MCC identification number WAD 092300250. Corrective Action Agreed Order No. DE 4308 Page 9 of 32

Q. On February 14, 1985, Ecology entered into a Consent Agreement and Final Order (DE-85-165) with MCC and Chempro. The agreement states Chempro would acquire a majority interest in MCC and perform a soil and groundwater investigation. A preliminary soil and groundwater investigation report dated December 17, 1985, documented the presence of organic solvents in soils and groundwater at the Facility.

R. In 1986, MCC constructed Building 3 at the Facility for additional container storage capacity, and waste oil storage/blending tanks and concrete truck loading pads at three locations at the Facility.

S. On May 31, 1988, EPA completed an RCRA Facility Assessment (1988 RFA) at the Facility. The purpose of the 1988 RFA was to identify those areas at the Facility where release(s) of hazardous substances, as currently defined in RCW 70A.305.020(13), may have occurred or may be occurring.

T. Pursuant to the 1988 RFA Report and other information, EPA identified the RCRA-regulated units, certain SWMUs, and AOCs at the Dangerous Waste Management Facility and made the conclusions and recommendations found in Exhibit C attached to this Agreed Order. The 1988 RFA identified release(s) and/or potential release(s) of hazardous

substances including, but not limited to 1,1-dichloroethene, benzene, toluene, ethylbenzene, chloroethane, 1,1,2-trichloro-1,2,2-trifluoroethane (Freon 113), cis-1,2-dichloroethylene, xylenes, trichloroethene, tetrachloroethene, and vinyl chloride from SWMUs and AOCs at the Dangerous Waste Management Facility.

U. On September 30, 1988, EPA and Chempro negotiated and entered into a RCRA Section 3008(h) order, EPA Docket No. 1088-09-03-3008(h), under which Chempro agreed to perform corrective action in accordance with RCRA interim status regulations. The 3008(h) order required Chempro to develop and submit a work plan for a RCRA Facility Investigation (RFI) to characterize the nature and extent of dangerous constituents in soil and groundwater at the Facility Corrective Action Agreed Order No. DE 4308 Page 10 of 32 and to evaluate whether a Corrective Measures Study (CMS) would be required to address contamination at the Facility.

V. Chempro submitted Part B of its permit application for a dangerous waste permit on November 1, 1988. This permit application was amended numerous times.

W. In August 1990, EPA transferred lead regulatory agency oversight of the Facility to Ecology.

X. On June 28, 1991, Chempro submitted a Phase I RFI Report to EPA. This Report confirmed volatile organic contaminants, semi-volatile contaminants, and metal contaminants in soil and groundwater at the Facility.

Y. On September 17, 1992, Ecology and EPA issued the Dangerous Waste Management Permit for the Facility, effective October 23, 1992. The 3008(h) order, referred to above in paragraph K. was terminated on June 22, 1993, after the requirements of the 3008(h) order were incorporated into the Permit.

Z. Permitted activities under the Facility Permit included waste solvent recycling, treatment and storage of dangerous wastes, blending of dangerous waste fuels, blending of non-hazardous waste oil, and operation of an on-site wastewater treatment system with treated

effluent discharged under a Clean Water Act national pollutant discharge elimination system (NPDES) permit. The process and design capacity permitted were as follows:

Process	Design Capacity
S01 Container Storage	234,960 gallons
S02 Tank Storage	205,995 gallons
T01 Tank Treatment	Average 33,550 gallons per day with a maximum of 54,000 gallons per day

AA. In 1995, Burlington decontaminated the tank system, including tanks and secondary containment, decontaminated the north-loading pad, and removed tanks according to a closure plan approved by Ecology on November 13, 1995. In September and October 1997, Burlington conducted an interim action, including removal of concrete containment areas for the tank system and the north loading pad and excavation of the underlying soil.

BB. On September 1, 1998, Ecology approved Permit Modification 31-2 that modified Part VII (Corrective Action) of the Dangerous Waste Management Facility Permit. Permit Modification 31-2 required Burlington to monitor groundwater, to complete a RI and FS, and to develop a CAP pursuant to MTCA regulations to satisfy requirements for corrective action at the Facility.

CC. On April 21, 1999, Ecology granted conditional approval of Permit modification WAMOD 28-1 to update the closure plan section of the Dangerous Waste Management Facility Permit relative to closure of significant portions of the Facility dangerous waste inventory and dangerous waste processing units and to update and reconcile closure cost estimates to reflect significant reduction in Facility dangerous waste management operations.

DD. CC. On July 31, 2000, Ecology conditionally accepted certification for final clean closure of units permitted at the Facility after reviewing the certification report and supporting documentation in "Final RCRA Closure Report" (submitted by Burlington on November 22, 1999) and "Closure of Interim Status Dangerous Waste Tank System" plan (submitted December 13, 1993, revised September 16, 1994 and July 28, 1995). Based upon the foregoing

certifications and reports, Ecology made the determinations found in Exhibit D, attached to this Agreed Order.

EE. On September 29, 2000, Ecology accepted the revised certification submitted by Burlington for final clean closure of dangerous waste management units permitted at the Facility. Corrective Action Agreed Order No. DE 4308 Page 12 of 32 Ecology stated that, by submitting the revised certification, Burlington had met conditions stated in Ecology's conditional approval letter dated July 31, 2000, and Burlington had satisfied the certification of closure requirements in accordance with WAC 173-303-610(6) and by reference, 40 C.F.R. § 264.115. Ecology stated that Burlington was released from the financial assurance requirements for closure in WAC 173-303-620(4). In accordance with WAC 173-303-620(8)(e), Burlington was also released from the liability requirements of WAC 173-303-620(8) and by reference, 40 C.F.R. § 264.147. Ecology stated that the closure verification required any release of dangerous constituents to soil or groundwater that has occurred, is occurring, is suspected to have occurred, or threatens to occur from former dangerous waste management units would be addressed under Part VII (Corrective Action) of the 1992 Dangerous Waste Management Permit. This included any remaining area of contamination such as the soils identified in the "Final Interim Action Report" (September 1998) and "Final RCRA Closure Report" (November 1999). Ecology stated that, following corrective action, Burlington must address dangerous constituents left in place above appropriate MTCA cleanup levels under post-closure requirements of WAC 173-303.

FF. Under the previous order Burlington was required to submit a Feasibility Study and Remedial Investigation and these reports identified release(s) and/or potential release(s) at the Facility in Washougal, Washington. These reports document that dangerous waste units at the Facility are situated among other SWMUs or AOCs, a release has occurred, and both the dangerous waste units and one or more of the SWMUs or AOCs have likely contributed to the release.

GG. On September 12, 2013, Burlington submitted the Final Remedial Investigation Report, PSC Washougal Facility, Washougal, Washington, dated September 2013 (2013 RI Report). In a letter dated May 21, 2019, Ecology stated it had completed its review of the 2013 RI Report and comments on the 2013 RI Report can be addressed in revisions to the Feasibility Study Report for the Washougal Facility. The 2013 Report is the Public Review Draft of the RI Report.

HH. On August 25, 2020, Burlington submitted the Revised Feasibility Study, Stericycle Washougal Site, Washougal, Washington, dated August 25, 2020 (2020 FS Report), along with comment response letter addressing previous comments from Ecology. In an email dated January 11, 2021, Ecology stated that 2020 FS Report and the comment response letter satisfactorily addressed Ecology's previous comments. The 2020 FS Report is the Public Review Draft of the FS Report.

II. On November 14 and 15, 2022, an audit of Burlington's groundwater monitoring plan was conducted on site by Ecology. Groundwater samples from ten ground water monitoring wells were observed and split samples were collected for the analyses of the following contaminants/analytes: VOCs, 1,4-dioxane, and arsenic (split samples were not analyzed for arsenic).

JJ. Hazardous substances may have been and might continue to be released from the Dangerous Waste Management Facility into the environment including surface water drainage areas, groundwater beneath and beyond the Dangerous Waste Management Facility, air, human work areas, and floral and faunal habitats.

VI. ECOLOGY DETERMINATIONS

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

A. Burlington is a person within the meaning of RCW 70A.305.020(24).

B. Burlington is the owner and operator of a Dangerous Waste Management Facility that has operated, is operating, or should have been operating under interim status or a final facility permit, subject to RCRA sections 3004 and 3005, 42 U.S.C. §§ 6924 and 6925, and regulations promulgated thereunder, including authorized state regulations in RCW 70A.300 and WAC 173-303. Burlington is also an “owner or operator” as defined by RCW 70A.305.020(22) of a “facility” as defined by RCW 70A.305.020(8).

C. Certain waste and constituents found at the Facility are dangerous wastes and/or dangerous constituents as defined by WAC 173-303 and in Section IV (Definitions) of this Order.

D. These dangerous wastes and dangerous constituents are considered hazardous substances within the meaning of RCW 70A.305.020(13).

E. Based on the Findings of Fact and the administrative record, Ecology has determined that release(s) and potential release(s) of hazardous substances at and/or from the Facility present a threat to human health and the environment.

F. Based on credible evidence, Ecology issued a PLP status letter to Burlington dated November 5, 2003, 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 Burlington is a PLP under RCW 70A.305.040 and notified Burlington of this determination by letter dated December 10, 2003.

G. Pursuant to RCW 70A.305.030(1) and .050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

H. 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 are in agreement concerning the interim action, the Parties will follow the process in Section VII.E. 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.

I. Pursuant to WAC 173-303-610(1)(e), the requirements in WAC 173-340 will serve to meet the alternative requirements for closure and post-closure for the permitted units at the Facility.

J. Pursuant to WAC 173-303-620(1)(d), the financial assurance requirements in WAC 173-303-64620(5) will serve to meet the alternative requirements for financial assurance for the permitted units at the Facility.

K. Pursuant to WAC 173-303-645(1)(e), the groundwater monitoring requirements in WAC 173-340 will serve to meet the alternative groundwater monitoring requirements for the permitted units at the Facility.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that Burlington take the following remedial action(s) at the Facility. The area within the Facility where remedial action is necessary under RCW 70A.305 is described in the Cleanup Action Plan (Exhibit B). These remedial actions must be conducted in accordance with WAC 173-340:

A. Burlington will implement the Cleanup Action Plan (Exhibit B) and remedial actions set forth in the Scope of Work (Exhibit C).

B. If Burlington learns of a significant change in conditions at the Facility, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations

in media, e.g. soil, groundwater, surface water, air, and/or sediments, Burlington, within seven (7) days of learning of the change in condition, shall notify Ecology in writing of said change and provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.

C. Burlington shall submit to Ecology written quarterly Progress Reports that describe the actions taken during the previous reporting period to implement the requirements of this Order. Burlington shall submit all Progress Reports by the tenth (10th) day of the month in which they are due after the effective date of this Order. Unless otherwise specified by Ecology, Burlington shall send Progress Reports and any other documents submitted pursuant to this Order by certified mail, return receipt requested, to Ecology's project coordinator. The Progress Reports shall include the following:

1. A list of activities that have taken place at the Facility during the reporting period.
2. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests.
3. Description of all deviations from the Scope of Work and Schedule (Exhibit C) during the current reporting period and any planned deviations in the upcoming reporting period.
4. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.
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.
6. All quality assurance results and associated data validation assessments.
7. Tabulated groundwater data showing specific groundwater monitoring wells, sample collection dates, constituent concentrations, and applicable cleanup levels

or any other groundwater reporting requirements as specified in the groundwater monitoring plan.

8. A list of deliverables for the upcoming reporting period if different from the schedule.

D. As detailed in the Cleanup Action Plan, institutional controls are required at the Facility. Environmental (Restrictive) Covenants will be used to implement the institutional controls.

1. In consultation with Burlington, Ecology will prepare the Environmental (Restrictive) Covenants consistent with WAC 173-340-440, RCW 64.70, and any policies or procedures specified by Ecology. The Environmental (Restrictive) Covenants shall restrict future activities and uses of the Facility as agreed to by Ecology and Burlington.
2. After approval by Ecology, Burlington shall record the Environmental (Restrictive) Covenant for affected properties it owns with the office of the Clark County Auditor as detailed in the Scope of Work and Schedule (Exhibit C). Burlington shall provide Ecology with the original recorded Environmental (Restrictive) Covenants within thirty (30) days of the recording date.

E. Financial Assurance

1. Financial assurance for corrective action is required by WAC 173-303-64620. Ecology's Financial Assurance Officer shall determine when Burlington's actions and submissions meet the requirements of WAC 173-303-64620.

2. Ecology's Financial Assurance Officer is:

Joanna Seymour
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
Phone: 360-485-5992
Fax: 360-407-6715
Email: joanna.seymour@ecy.wa.gov

F. All plans or other deliverables submitted by Burlington for Ecology's review and approval under the Scope of Work and Schedule (Exhibit C) shall, upon Ecology's approval, become integral and enforceable parts of this Order.

G. Burlington shall notify Ecology's project coordinator in writing of any newly identified SWMU(s), newly discovered release(s) from known SWMU(s), and newly discovered AOCs at the Facility no later than 5 calendar days after discovery and shall investigate and report on these areas as directed by Ecology's project coordinator. If required, the investigation (assessment) and reporting shall be done in accordance with attached Scope of Work and Schedule (Exhibit C).

H. If Ecology determines that Burlington has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to Burlington, perform any or all portions of the remedial action or at Ecology's discretion allow the Burlington opportunity to correct. In an emergency, Ecology is not required to provide notice to Burlington, or an opportunity for dispute resolution. Burlington shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section IX (Enforcement).

I. Except where necessary to abate an emergency situation or where required by law, Burlington shall not perform any remedial actions at the Facility 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 VIII.J. (Amendment of Order). In the event of an emergency, or where actions are taken as required by law, Burlington must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

VIII. TERMS AND CONDITIONS

A. Payment of Remedial Action Costs

Burlington shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Facility under RCW 70A.305, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173340550(2). For all Ecology costs incurred, Burlington shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

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.

B. Designated Project Coordinators

The project coordinator for Ecology is:

Stephanie Krupp
Southwest Regional Office
300 Desmond Drive SE
Lacey, WA 98504-7600
360-485-7961
stephanie.krupp@ecy.wa.gov

The project coordinator for Burlington is:

Laura Dell'Olio
Clean Earth
933 First Avenue, Suite 200

King of Prussia, PA 19406
1-856-283-9089
ladellolio@cleanearthinc.com

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Facility. To the maximum extent possible, communications between Ecology and Burlington, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

C. Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist licensed by the state of Washington or under the direct supervision of an engineer registered by the state of Washington, except as otherwise provided for by RCW 18.43 and 18.220.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered by the state of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered by the state of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

Burlington shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Facility.

D. Access

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

E. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, Burlington shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, Burlington shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by Burlington pursuant to implementation of this Order. Burlington shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Facility. Ecology shall, upon request, allow Burlington and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.E (Access), Ecology shall notify Burlington prior to any sample collection activity unless an emergency prevents such notice.

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

F. Public Participation

RCW 70A.305.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing this public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that this Order is inadequate or improper in any respect.

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

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

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before meetings related to remedial action work to be performed at the Facility with the interested public and/or local governments. Likewise, Ecology shall notify Burlington prior to the issuance of all press releases and fact sheets, and before and before meetings related to the Facility with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by Burlington that do not receive prior Ecology approval, Burlington shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

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

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- (a) Fort Vancouver Regional Library – Washougal Branch
1661 "C" Street
Washougal, Washington 98671
360-906-4860
- (b) Ecology's Southwest Regional Office
300 Desmond Drive SE
Lacey, Washington 98503
360-407-6300

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

G. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, Burlington shall preserve all records, reports, documents,

and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, Burlington shall make all records available to Ecology and allow access for review within a reasonable time.

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

H. Resolution of Disputes

1. In the event that Burlington elects to invoke dispute resolution Burlington 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), Burlington 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; Burlington's position with regards to the dispute; Ecology's position with regard to the dispute; and the extent of resolution reached by informal discussion.

c. Burlington may then request regional management review of the dispute. Burlington must submit this request (Formal Dispute Notice) in writing to the Southwest

Region Hazardous Waste and Toxics Reduction 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. The Decision on Dispute shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

4. In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section VII.E (Work to be Performed) or initiating enforcement under Section X (Enforcement).

I. Extension of Schedule

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

- a. The deadline that is sought to be extended;
- b. The length of the extension sought;

- c. The reason(s) for the extension; and
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on Burlington 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:

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

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of Burlington.

3. Ecology shall act upon any Burlington written request for extension in a timely fashion. Ecology shall give Burlington written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.K (Amendment of Order) when a schedule extension is granted.

4. At Burlington's request, an extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:

- a. Delays in the issuance of a necessary permit which was applied for in a timely manner;
- b. Other circumstances deemed exceptional or extraordinary by Ecology; or

c. Endangerment as described in Section VIII.L (Endangerment).

J. Amendment of Order

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

Except as provided in Section VIII.L (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and Burlington. 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, Burlington shall submit a written request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request is received. If Ecology determines that the change is substantial, then the Order must be formally amended. Reasons for the disapproval of a proposed change to this Order shall be stated in writing. If Ecology does not agree to a proposed change, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.H (Resolution of Disputes).

K. Endangerment

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

In the event Burlington determines that any activity being performed at the Facility under this Order is creating or has the potential to create a danger to human health or the environment, Burlington may cease such activities. Burlington shall notify Ecology's project coordinator as

soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction, Burlington shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Burlington's cessation of activities, it may direct Burlington to resume such activities.

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

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

L. 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 Burlington to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against Burlington regarding remedial actions required by this Order, provided Burlington complies with this Order.

Ecology nevertheless reserves its rights under RCW 70A.305, including the right to require additional or different remedial actions at the Facility should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Facility.

By entering into this Order, Burlington does not admit to any liability for the Facility. Although Burlington is committing to conducting the work required by this Order under the terms of this Order, Burlington expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

M. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Facility shall be consummated by Burlington 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 Burlington's transfer of any interest in all or any portion of the Facility, and during the effective period of this Order, Burlington shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, Burlington shall notify Ecology of said transfer. Upon transfer of any interest, Burlington shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

N. Compliance with Applicable Laws

1. *Applicable Laws.* All actions carried out by Burlington pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits or approvals, except as provided in RCW 70A.305.090. The permits or specific federal, state, or local requirements that the agency has determined are applicable and that are known at the time of the execution of this Order have been identified in Exhibit D. Burlington has a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by

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

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

3. Pursuant to RCW 70A.305.090(1), Burlington 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, Burlington shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70A.305.090(1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Order to enforce those local government permits and/or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

4. Burlington has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or Burlington determines that additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or Burlington shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Burlington shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the

remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by Burlington and on how Burlington must meet those requirements. Ecology shall inform Burlington in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Burlington shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

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

O. Periodic Review

So long as remedial action continues at the Facility, the Parties agree to review the progress of remedial action at the Facility, and to review the data accumulated as a result of monitoring the Facility as often as is necessary and appropriate under the circumstances. At least every five (5) years after the initiation of cleanup action at the Facility, the Parties shall meet to discuss the status of the Facility and the need, if any, for further remedial action at the Facility. At least ninety (90) days prior to each periodic review, Burlington shall submit a report to Ecology that documents whether human health and the environment are being protected based on the factors set forth in WAC 173-340-420(4). Ecology reserves the right to require further remedial action at the Facility under appropriate circumstances. This provision shall remain in effect for the duration of this Order.

P. Indemnification

Burlington agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (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 Burlington, its officers, employees, agents, or contractors in entering into and implementing this Order. However, Burlington shall 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, in entering into or implementing this Order.

IX. SATISFACTION OF ORDER

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

X. ENFORCEMENT

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

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

B. 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 Facility.

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

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

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

D. 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: _____

BURLINGTON ENVIRONMENTAL LLC

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

[NAME OF SIGNATORY]
[Title of signatory]
[Location]
[Telephone]

Michelle Underwood
Section Manager
Hazardous Waste and Toxics Reduction
Program
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360-407-6337