

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

The City of Sunnyside

AGREED ORDER

No. DE 9746

TO: Frank Sweet
818 East Edison Avenue
Sunnyside, WA 98944

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EXHIBIT A. Site Location Map

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the City of Sunnyside (City) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the City to conduct a Remedial Investigation (RI). Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

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 this Order. The City agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the City's responsibility under this Order. The City shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as Sunnyside Municipal Airport Pesticide Spray Shed and is generally located at 3318 East Edison Road, in Sunnyside, Washington. The Site has a Facility/Site ID of 20367 and a Cleanup Site ID of 11423. The Site is defined by the extent of

contamination caused by the release of hazardous substances at the Site. Based upon factors currently known to Ecology, the Site is more particularly described in the Site Diagram (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(4).

B. Parties: Refers to the State of Washington, Department of Ecology and City.

C. Potentially Liable Person (PLP): Refers to the City.

D. 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.

V. FINDINGS OF FACT

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

A. A compliant was received on October 27, 2008 and entered into Ecology's Environmental Report Tracking System, with an identification number (ID #) of 609136. In the complaint, Mr. Don Padelford of Sunnyside reported an old polluted spray shed was torn down and that dumping of chemicals had taken place at the Site.

B. Documented phone conversations between Ecology staff and interested parties took place. Interested parties were the complainant Don Padelford; a person named in the complaint, Ted Durfey; former spray operator Rolly Bonny; and City Airport Manager Jim Bridges.

C. Soil sampling conducted on June 18, 2010, in the vicinity of the old spray shed by Ecology staff confirmed the presence of 4,4'-DDT, 4,4'-DDE, toxaphene, and dieldrin in levels that exceed MTCA cleanup standards.

D. A Department Decision Recommendation (DDR) was completed and recommended a Site Hazard Assessment (SHA) be conducted. The DDR was dated and signed by Ecology's Toxic Cleanup Section Manager, Valerie Bound, on September 28, 2010.

VI. ECOLOGY DETERMINATIONS

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

A. The City is an "owner or operator" as defined in RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4).

B. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(20) and RCW 70.105D.020(7), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to the City dated December 16, 2011, pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500. By letter dated January 5, 2012, the City voluntarily waived its rights to notice and comment and accepted Ecology's determination that the City is a PLP under RCW 70.105D.040.

D. Pursuant to RCW 70.105D.030(1) and -.050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

E. 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 SHA, RI, Feasibility Study (FS), or design of a cleanup action. Ecology or the City may propose interim actions at the Site. After consulting with the City, Ecology will determine if the interim action(s) are warranted

under WAC 173-340-430. Any interim action must be approved by Ecology under Section VII.D.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the City take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

- A. Within 60 days of the issuance of this Order, the PLP must submit a draft RI Work Plan including a combined draft Quality Assurance Project Plan (QAPP)/Sample and draft Analysis Plan (SAP), and a Site Health and Safety Plan (HASP) for Ecology's review per WAC 173-340-350(7)(c)(iv). The documents must conform to the requirements specified in WAC 173-340-810, worker safety and health, and 173-340-820, sampling and analysis plans. The final documents are due within 30 days of receipt of Ecology's comments on the draft documents.
- B. The RI field work shall begin within 30 days, and be completed within 60 days, of Ecology's review and approval of the final RI Work Plan. The RI must conform to WAC 173-340-350, remedial investigation and feasibility study. A draft RI Report will be submitted within 60 days of the receipt of the final analytical data to Ecology for review and approval. Within 30 days of receipt of comments from Ecology, the PLP must deliver to Ecology a final RI Report that is fully responsive to Ecology's comments, if any, to Ecology's complete and sole satisfaction.
- C. Monthly progress reports will be submitted to Ecology via email. The first progress report shall be submitted to Ecology on or by 15th of the month for work performed the previous month. Progress reports shall continue to be submitted on a monthly basis until the full nature and extent of the contaminant(s) are described, documented, and submitted in a RI report.

- D. Depending on the nature and extent of contamination discovered during the RI, interim remedial actions may be appropriate. The PLP may propose and implement interim actions following the conditions set in WAC 173-340-430, at any time, subsequent to approval from Ecology.
- E. Contingent on the findings of the RI, Ecology will draft an Amendment to the Order to require either a Focused FS or an Interim Action Plan (IAP). The draft Focused FS or IAP is due within 60 days of the finalization of the Order Amendment, and the final Focused FS or IAP is due within 30 days of receipt of Ecology's comments on the draft document. An IAP is required prior to implementation of an interim action per WAC173-340-430(7).
- F. If Ecology determines an interim action is warranted under Section VII.E., the City shall prepare and submit to Ecology an IAP, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the IAP in accordance with WAC 173-340-600(16). The PLP shall not conduct the interim action until Ecology approves the IAP. Upon approval by Ecology, the IAP becomes an integral and enforceable part of this Order, and the City is required to conduct the interim action in accordance with the approved IAP.
- G. Each deliverable, once approved by Ecology, becomes an integral and enforceable part of this Order.
- H. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables or completion of any work (e.g. sampling) required by this Section, Ecology may complete and issue the final deliverable or work to be performed.

| Deliverable or Action Required | Completion/Due to Ecology |
|--|--|
| Draft RI Work Plan including SAP/QAPP and HASP. | Due 60 days after the issue date of this Order |
| Final RI Work Plan including SAP/QAPP and HASP. | Due within 30 days after receipt of Ecology's written comments on Draft RI Work Plan. |
| Perform RI field work | Begin within 30 days, and complete within 60 days, after Ecology's written approval of the Final RI Work Plan. The PLP may propose and implement interim actions following the conditions set in WAC 173-340-430, at any time, subsequent to approval from Ecology. |
| Monthly reports on the progress of the RI | Monthly progress reports will be submitted to Ecology via email. The first progress report shall be submitted to Ecology on or by the 15 th of the month for work performed the previous month. |
| Draft RI Report | Due within 60 days of receipt of the final analytical data. |
| Final RI Report | Due within 30 days of Ecology's comments on the Draft. |
| Draft Focused FS or IAP (To be prepared as a requirement of an Amended Order and contingent on the findings of the RI Report) | Due within 60 days of the finalization of the Order Amendment |
| Final Focused FS or IAP | Due within 30 days of Ecology's comments on the Draft. |

VIII. TERMS AND CONDITIONS OF ORDER

A. Remedial Action Costs

The City shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work

performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). For all costs incurred subsequent to the issuance of this Order, the City 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 70.105D.055, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

B. Implementation of Remedial Action

If Ecology determines that the City has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to the City, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of the City's failure to comply with its obligations under this Order, the City shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Remedial Action Costs), provided that the City is not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

Except where necessary to abate an emergency situation, the City shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

C. Designated Project Coordinators

The project coordinator for Ecology is:

Jennifer Lind
15 W. Yakima Avenue, Suite 200, Yakima, WA 98902
(509) 454-7839

The project coordinator for the City is:

Frank Sweet
818 East Edison Avenue, Sunnyside, WA 98944
(509) 836-6300

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

D. Performance

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

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered in 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 in 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 Chapters 18.220 RCW and 18.43 RCW.

The City 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 Site.

E. Access

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that the City 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 the City'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 the City. The City shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the City where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the City unless an emergency prevents such notice. All persons who access the Site pursuant to this Section shall comply with any applicable Health and Safety Plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

F. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the City 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 VI (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, the City shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the City pursuant to implementation of this Order. The City shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the City 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 the City 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 Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

G. Public Participation

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

1. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, RI/FS 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 major meetings with the interested public and local governments. Likewise, Ecology shall notify the City prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the City that do not receive prior Ecology approval, the City 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 Site. 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. The Sunnyside Library
621 Grant, Sunnyside, WA 98944
- b. Ecology's Central Regional Office
15 W. Yakima Ave., Ste 200, Yakima, WA 98902

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 Site shall be maintained in the repository at Ecology's Central Regional Office Yakima, Washington.

H. 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, the City 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, the City shall make all records available to Ecology and allow access for review within a reasonable time.

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

I. Resolution of Disputes

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII.A (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

a. Upon receipt of Ecology's project coordinator's written decision or the itemized billing statement, the City has fourteen (14) days within which to notify Ecology's project coordinator in writing of its objection to the decision or itemized statement.

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

c. The City may then request regional management review of the decision. This request shall be submitted in writing to the Central Region Toxics Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's written decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of the City's request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

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

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

J. Extension of Schedule

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least 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 the City 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 the City including delays caused by unrelated third parties or Ecology, such

as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the City;

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 the City.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the City 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. 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).

K. 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.M (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 the City. The City shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.I (Resolution of Disputes).

L. Endangerment

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

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

If Ecology concurs with or orders a work stoppage pursuant to Section VIII.L (Endangerment), the City'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.J (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.

M. Reservation of Rights

This Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against the City to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the City regarding remedial actions required by this Order, provided the City complies with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

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

N. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the City 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 the City's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the City 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, the City shall notify Ecology of said transfer. Upon transfer of any interest, the City shall notify all transferees of the restrictions on the activities and uses under this Order and through the appropriate transfer mechanism, assure that any activities and uses inconsistent with this Order are prohibited.

O. Compliance with Applicable Laws

1. All actions carried out by the City pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. At this time, no federal, state or local requirements have been identified as being applicable to the actions required by this Order.

2. Pursuant to RCW 70.105D.090(1), the City is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, the City shall comply with the substantive requirements of such permits or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this Section.

The City has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the City determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or the City shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the City 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 the City and on how the City must meet those requirements. Ecology shall inform the City in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The City shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

3. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for the State to administer any federal law, the exemption shall not apply and the City shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

P. Indemnification

The City 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 the City, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the City 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 the City's receipt of written notification from Ecology that the City has completed the remedial activity required by this Order, as amended by any modifications, and that the City has complied with all other provisions of this Agreed Order.

X. ENFORCEMENT

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

- 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 Site.
- C. A liable party, who refuses without sufficient cause to comply with any term of this Order, will be liable for:
 - a. 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
 - b. 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 70.105D.060.

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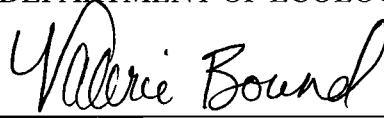
Effective date of this Order: March 13, 2013

THE CITY OF SUNNYSIDE



Frank Sweet
City Manager
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STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY



Valerie Bound
Section Manager
Toxics Cleanup Program
Central Regional Office
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EXHIBIT A
Site Location Map

To see all the details that are visible on the screen, use the "Print" link next to the map.

