

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:

USG Interiors, Inc.

(Highway 99 Site)

AGREED ORDER

No.: DE 6333

TO: Ms. Lanita Stevens
Environmental Manager
USG Interiors, Inc.
550 W. Adams
Chicago, IL 60661

TABLE OF CONTENTS

I.	INTRODUCTION.....	2
II.	JURISDICTION.....	2
III.	PARTIES BOUND.....	2
IV.	DEFINITIONS.....	3
V.	FINDINGS OF FACT.....	4
VI.	ECOLOGY DETERMINATIONS.....	6
VII.	WORK TO BE PERFORMED.....	7
VIII.	TERMS AND CONDITIONS OF ORDER.....	10
	A. Public Notice.....	10
	B. Remedial Action Costs.....	11
	C. Implementation of Remedial Action.....	11
	D. Designated Project Coordinators.....	12
	E. Performance.....	13
	F. Access.....	14
	G. Sampling, Data Submittal, and Availability.....	14
	H. Public Participation.....	15
	I. Retention of Records.....	16
	J. Resolution of Disputes.....	17
	K. Extension of Schedule.....	18

L.	Amendment of Order	20
M.	Endangerment	20
N.	Reservation of Rights	21
O.	Transfer of Interest in Property	22
P.	Compliance with Applicable Laws	22
Q.	Land Use Restrictions	24
R.	Financial Assurances	24
S.	Periodic Review	24
T.	Indemnification	24
IX.	SATISFACTION OF ORDER	25
X.	ENFORCEMENT	25
	EXHIBIT A. Site Diagram	
	EXHIBIT B. Scope of Work	
	EXHIBIT C. Schedule	

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology), USG Interiors, Inc. (USG) 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 USG to conduct a Remedial Investigation (RI) and Feasibility Study (FS) for the USG Highway 99 Site, prepare RI and FS Reports, and a draft Cleanup Action Plan (CAP). 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. USG agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the responsibility of USG under this Order. USG 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 the USG Highway 99 Site (the Site) and is generally located at 7110 Pacific Highway East in Milton, Washington. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. The Site is more particularly described in the Site Diagram (Exhibit A).
- B. Parties: Refers to the State of Washington, Department of Ecology, and USG.
- C. Potentially Liable Persons (PLPs): Refers to USG; Site Owner/Operators, Ms. Jennifer Walker and Mr. Donald Miniken Jr. for

Freeway Sales LLC dba Kanopy Kingdom; and Site Owner/Operator Mr. Michael Rendell for Freeway Trailer Sales.

- 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 USG:

- A. Prior to 1985, USG (formerly US Gypsum Company) disposed of several waste products in pits dug at the Site. The waste products buried at the Site included 20,000 tons of “bag house dust” and “shot” from their Tacoma rock wool manufacturing plant. Both bag house dust and shot contain elevated levels of arsenic.
- B. Ecology issued Order DE 84-506 on August 17, 1984 requiring USG to submit a post-cleanup monitoring plan. This plan, as approved by Ecology, included installation of two monitoring well clusters, with three wells in each cluster.
- C. From June 1985 through April 1986, USG voluntarily excavated shot and bag house dust from the Site, and disposed of this material at a hazardous waste landfill.

- D. Because groundwater was encountered at the bottom of the excavations, not all of the waste materials were removed. The excavations were backfilled with clean soil.

- E. On October 19, 1993, Ecology issued a letter to USG, which proposed, inter alia, that USG sample from the Site monitoring wells, and to submit quarterly reports to Ecology including the results of the groundwater monitoring well arsenic analyses. USG has since submitted monitoring well sampling reports to Ecology on a quarterly basis.

- F. On April 17, 2006, USG provided to Ecology a proposal for testing of Site soil and groundwater. This proposal was accepted by Ecology.

- G. On February 2, 2007, Ecology received a report from USG entitled "Soil and Groundwater Quality Assessment / Source Evaluation Report, USG – Fife Site, 7110 Pacific Highway East, Milton, Washington (the report)" dated January 31, 2007. This report provides the results of nine push-probe borings taken from the Site. The report indicated that of the nine soil borings sampled, eight exceeded the current 20 milligram per kilogram (mg/kg) MTCA Method A residential soil cleanup level for arsenic. The highest soil arsenic concentration discovered by this sampling was 1,400 mg/kg. Of the nine groundwater samples extracted by the push-probes, all nine exceeded the current 5 microgram per liter (ug/l) MTCA Method A groundwater cleanup level for arsenic. The highest groundwater arsenic concentration measured was 30,000 ug/l.

- H. The Site is located directly adjacent to, and on the banks of, Hylebos Creek. Site groundwater is in direct hydrologic connection with the creek, and likely discharges directly to the creek. Therefore, the arsenic contained in the Site soils and groundwater, and likely also in the creek bank sediments, is likely being continuously released into the creek. The Site is located on the banks of the creek close to the point of the creek's discharge into the Hylebos Waterway of Puget Sound. The arsenic presents a threat or potential threat to the environment of Hylebos Creek and of Puget Sound.

- I. Based on this report, Ecology issued to USG a letter proposing that USG is a Potentially Liable Person (PLP) for the USG Puyallup Site, as defined in MTCA.

- J. On May 2, 2007, USG provided Ecology with a letter waiving its right to a 30-day public comment period, and accepting its status as a PLP.

- K. On November 6, 2008, Ecology issued letters of PLP Determination to the current Owner/Operators of the Site: Ms. Jennifer Walker and Mr. Donald Miniken Jr. for Freeway Sales LLC dba Kanopy Kingdom, located at 7110 Pacific Highway E, Milton, Washington 98354; and also to Mr. Michael Rendell for Freeway Trailer Sales, located at 7100 Pacific Highway E, Milton, Washington 98354 (See Exhibit A – Site Diagram for parcel locations).

VI. ECOLOGY DETERMINATIONS

- A. USG is an "owner or operator" as defined in RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4), based on its prior ownership of the Site, and its disposal of waste at the Site.
- 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 USG dated March 30, 2007, pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500. By letter dated May 2, 2007, USG voluntarily waived its rights to notice and comment and accepted Ecology's determination that USG 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.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that USG take remedial actions at the Site set forth in Exhibit B (Scope of Work) to this Order, and per the schedule set forth in Exhibit C (Schedule) to this Order. These actions be conducted in accordance with Chapter 173-340 WAC.

The Scope of Work required by this Order, detailed in Exhibit B, consists of the following tasks:

1. Draft Remedial Investigation (RI) Work Plan
2. Final RI Work Plan
3. Implementation of Final RI Work Plan
4. Completion of Feasibility Study (FS)
5. Draft RI/FS Report
6. Final RI/FS Report
7. Draft Cleanup Action Plan

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notice

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology plans to provide a 30 day public comment period for this Agreed Order. Ecology shall be responsible for providing such 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.

B. Remedial Action Costs

USG shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2), accruing from March 30, 2007, the date that final PLP Notification was issued to USG. 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. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). USG shall pay the required amount within ninety (90) 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.

Pursuant to RCW 70.105D.055, Ecology has authority to recover unreimbursed remedial action costs by filing a lien against real property subject to the remedial actions.

C. Implementation of Remedial Action

If Ecology determines that USG has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to USG, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial

action because of USG's failure to comply with its obligations under this Order, USG shall reimburse Ecology for the costs of doing such work in accordance with Section VIII (Remedial Action Costs), provided that USG 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, USG 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.

D. Designated Project Coordinators

The project coordinator for Ecology is:

Dom Reale, P.E., Site Manager
Washington State Dept. of Ecology
Southwest Regional Office
300 Desmond Drive
Lacey, WA 98503
Telephone: 360-407-6266

The project coordinator for USG is:

Ms. Lanita Stevens
Environmental Manager
USG Interiors, Inc.
550 West Adams Street
Chicago, IL 60661-3676
Telephone: 312-593-7131

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 USG, 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.

E. Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist 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 Chapter 18.220 RCW or RCW 18.43.130.

USG 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. Ecology approves of USG's use of CDM for the work called for in this Order.

F. Access

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that the PLP's either own, control, 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 USG'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 USG. Ecology and USG acknowledge that USG does not own any of the properties that comprise the site. USG shall make all reasonable efforts to secure access rights for Ecology, USG and contractors engaged in the implementation of this Order for those properties within the Site not owned or controlled by USG where remedial activities or investigations will be performed pursuant to this Order. Ecology agrees to assist USG in obtaining access to properties not owned by USG if access cannot be obtained through USG's reasonable efforts. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the PLPs 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.

G. Sampling, Data Submittal, and Availability

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

H. Public Participation

A Public Participation Plan is required for this Site. Ecology shall review any existing Public Participation Plan to determine its continued appropriateness and whether it requires

amendment, or if no plan exists, Ecology shall develop a Public Participation Plan alone or in conjunction with USG.

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

1. Developing 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, if requested to do so in writing or e-mail by Ecology. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.
2. Notifying 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 USG 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 USG that do not receive prior Ecology approval, USG 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. Pierce County Library
1000 Laurel Street
Milton, WA 98354
(253) 922-2870
- b. Tacoma Main Library
1102 Tacoma Ave. South
Tacoma, WA 98402
(253) 591-5666
- c. Citizens for a Healthy Bay
917 Pacific Ave., Suite 100
Tacoma, WA 98402
(253) 383-2429
- d. WA State Department of Ecology
Southwest Regional Office
Toxics Cleanup Program
300 Desmond Drive
Lacey, WA 98503
(360) 407-6365

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

I. 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, USG 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, USG 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 USG may have under applicable law to limit disclosure of records protected by the attorney work product doctrine, the attorney-client privilege or any other privilege recognized under Washington law.

J. 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 Part B (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, USG 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. USG may then request regional management review of the decision. This request shall be submitted in writing to the Southwest 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 issue a written decision regarding the dispute within thirty (30) days of USG's request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

2. If Ecology's final written decision is unacceptable to USG, USG has the right to submit the dispute to Pierce County Superior Court ("the Court") for resolution. In the event USG presents an issue to the Court for review, the Court shall review any investigative or remedial action or decision of Ecology on the basis of whether such action or decision was arbitrary and capricious or inconsistent with law, and render a decision based on such standard of review.

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

4. 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.

K. 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 USG 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 USG 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 USG or delays in obtaining access to properties required to perform the Work required by this Order.
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, earthquake, terrorist attack or other unavoidable casualty; or
- c. Endangerment as described in Section VIII Part M (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 USG.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give USG 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 Part L (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 Part M (Endangerment).

L. 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 Part N (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 USG or by order of the Court. Any party may submit a written request for amendment. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. Agreement to amend shall not be unreasonably withheld by any party to this Order. 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 Part J (Resolution of Disputes).

M. Endangerment

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

In the event USG determines that any activity being performed at the Site or in adjacent areas to the Site is creating or has the potential to create a danger to human health or the environment, USG may cease such activities. USG shall notify Ecology's project coordinator as soon as possible, but no later than 24 hours after making such determination or ceasing such activities. Upon Ecology's direction USG shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with USG's cessation of activities, it may direct USG to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to Section VIII Part M (Endangerment), USG'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 Part K (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.

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

O. Transfer of Interest in Property

Not applicable for this Order.

P. Compliance with Applicable Laws

1. All actions carried out by USG 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), USG 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, USG 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.

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

enforceable requirements of this Order. USG 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 USG 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.

Q. Land Use Restrictions

None required at this time.

R. Financial Assurances

None required at this time.

S. Periodic Review

None required at this time.

T. Indemnification

USG 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 for death or injuries to persons or for loss or damage to property to the extent arising from or on account of acts or omissions of USG, its officers, employees, agents, or contractors in entering into and implementing this Order.

However, USG 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 USG's receipt of written notification from Ecology that USG has completed the remedial activity required by this Order, as amended by any modifications, and that USG 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. In the event USG refuses, without sufficient cause, to comply with any term of this Order, USG 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.

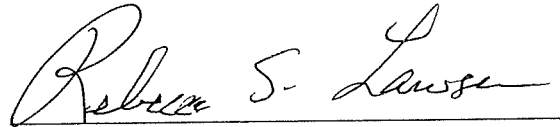
Effective date of this Order: October 19, 2009

USG Interiors, Inc.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY



Jeffrey T. Russart
Vice President
Manufacturing - Ceilings
USG Interiors, Inc.
550 W. Adams Street
Chicago, IL 60661-3676
(312) 436-4000

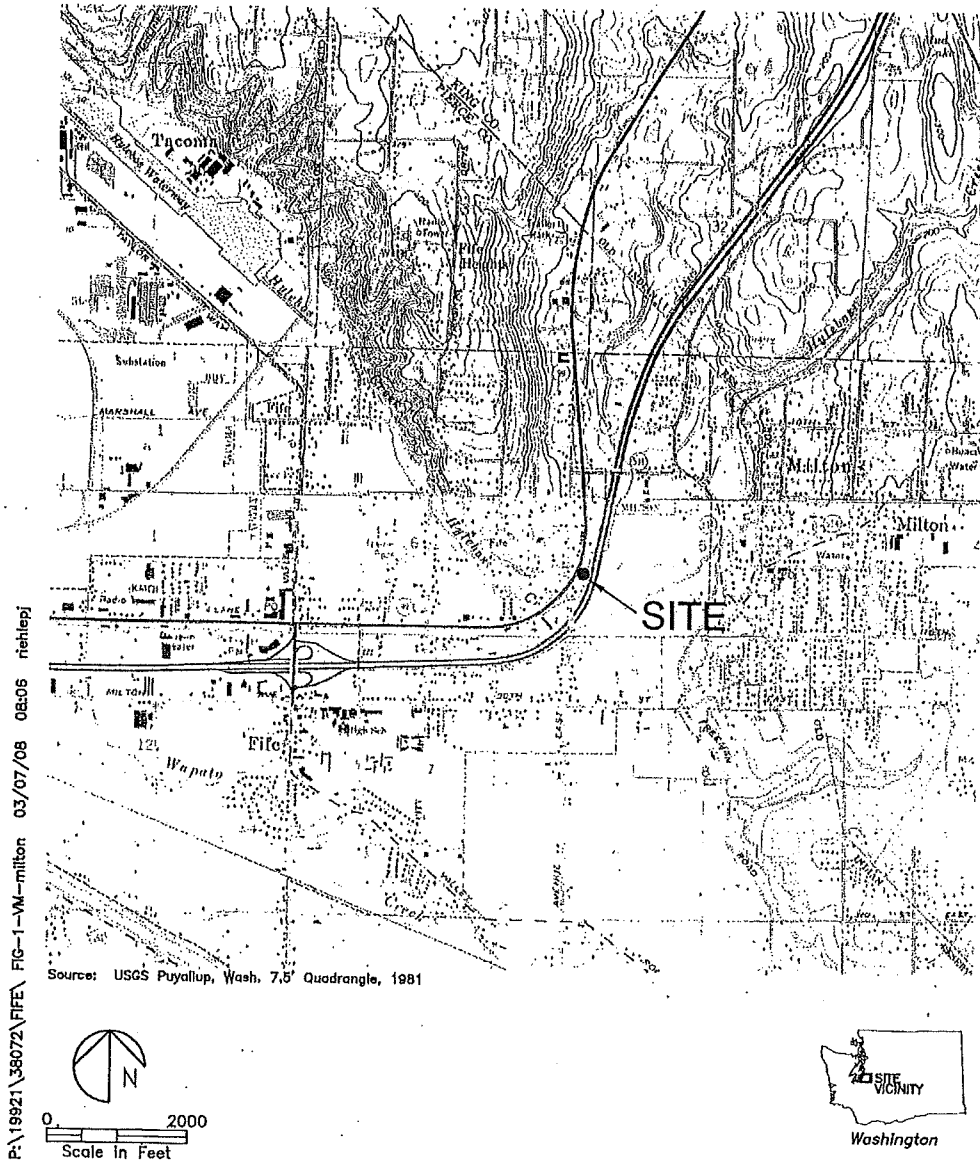


Rebecca S. Lawson, P.E., LHG
Section Manager
Toxics Cleanup Program
Southwest Regional Office
Telephone: (360) 407-6241

Exhibit A - Site Diagram

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| Figure 1 | Vicinity Map |
| Figure 2 | Site Plan |
| Figure 3 | Legal Description |

USG Corporation
Agreed Order No.: DE 6333
Page 27 of 36



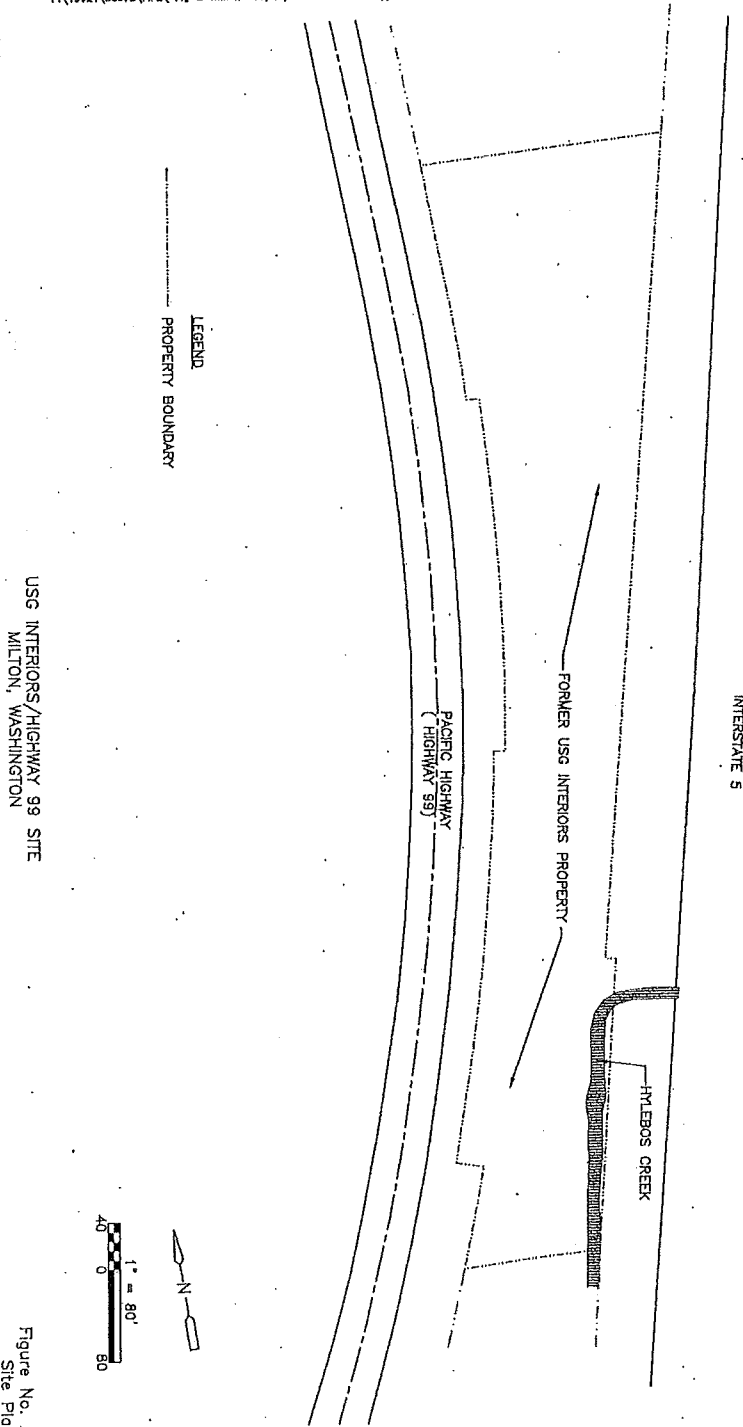
USG INTERIORS/HIGHWAY 99 SITE
MILTON, WASHINGTON

Figure No. 1
Vicinity Map

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USG INTERIORS/HIGHWAY 99 SITE
MILTON, WASHINGTON

Figure No. 2
Site Plan

Figure 3 Legal Description

USG Highway 99 Site:

LEGAL DESCRIPTION:

A PORTION OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 20 NORTH, RANGE 4 EAST, W.M., PIERCE COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF SAID SUBDIVISION; THENCE N88°26'00"E 310.11 FEET ALONG THE NORTH LINE OF SAID SUBDIVISION TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY 99; THENCE S5°42'37"E 349.80 FEET ALONG SAID RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING; THENCE N88°26'00"E 211.50 FEET PARALLEL WITH THE NORTH LINE OF SAID SUBDIVISION TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF INTERSTATE 5; THENCE ALONG SAID WESTERLY RIGHT-OF-WAY LINE S10°08'15"W 726.68 FEET; S79°51'45"E 10.00 FEET; S10°08'15"W 253.47 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH 30 FEET OF SAID SUBDIVISION; THENCE S88°26'00"W 118.65 FEET ALONG THE NORTH LINE OF SAID SOUTH 30 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY 99, SAID POINT INTERSECTING AN ARC OF A NON-TANGENT CURVE WHOSE CENTER BEARS N70°24'28"W 1985.00 FEET; THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE NORTHEASTERLY THROUGH A CENTRAL ANGLE OF 2°37'43" TO THE LEFT AND ALONG AN ARC LENGTH OF 91.07 FEET; N73°02'11"W 25.00 FEET; NORTHEASTERLY THROUGH A CENTRAL ANGLE OF 10°29'57" TO THE LEFT AND ALONG AN ARC LENGTH OF 359.16 FEET; S83°32'08"E 10.00 FEET; NORTHEASTERLY THROUGH A CENTRAL ANGLE OF 8°59'58" TO THE LEFT AND ALONG AN ARC LENGTH OF 309.42 FEET; S87°27'54"W 10.00 FEET; NORTHWESTERLY THROUGH A CENTRAL ANGLE OF 3°10'31" TO THE LEFT AND ALONG AN ARC LENGTH OF 108.62 FEET; N5°42'37"W 103.95 FEET TO THE POINT OF BEGINNING. SUBJECT TO EASEMENTS, RESTRICTIONS AND RESERVATIONS AS RECORDED UNDER A.F.N.'S 1874357, 1874358, 1874360, 963185, 963186 AND 957146 AND AS PER SUPERIOR COURT CAUSE NO. 141980.

Reference:

"Topographic Survey for United States Gypsum Company
In Pierce County, Washington, by Bennett P S & E Inc.,
April, 1982"

Exhibit B - Scope of Work

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that USG 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:

1. **Draft Remedial Investigation (RI) Work Plan:** A Draft RI Work Plan shall be submitted for Ecology review that describes all activities to be taken to characterize the nature and extent of contamination in soils, creek bank sediment, Hylebos Creek surface water, and groundwater at the Site, in accordance with WAC 173-340-350 (7), taking into consideration the results of sampling previously conducted at the Site. The Draft RI Work Plan shall include a site-specific draft health and safety plan (HASP) and a draft sampling and analysis plan (SAP), for Site soil, groundwater, surface water, and bank sediments, in compliance with WAC 173-340-810 and 820, respectively. The sediment sampling and analysis plan shall follow methodologies described in the Draft Sediment Sampling and Analysis Plan Appendix (Ecology 1995) and, as appropriate, recommended Guidelines for Conducting Laboratory Bioassays on Puget Sound Sediments (PSEP 1995). The Draft RI Work Plan shall include plans for a Terrestrial Ecological Evaluation, as specified by WAC 173-340-7490. This plan shall include all sample location mappings, and depths, for all proposed sample locations and monitoring wells. This Draft RI Work Plan shall be designed to provide all data necessary to adequately characterize the nature and

full extent of soil, groundwater, surface water, and creek bank sediment contamination, three dimensionally, in accordance with WAC 173-340-350 (7). This work shall be performed utilizing professionals qualified to perform the tasks required and, when applicable, in accordance with WAC 308-15-020. MTCA defines a facility or site as “..any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, placed, or otherwise come to be located.” This definition of a site does not necessarily end at a property boundary, but continues beyond property boundaries to the extent that the hazardous substances found at the property may extend beyond the property boundary. A system of monitoring wells, including viable existing wells, shall be proposed that provide adequate coverage of the surface aquifer and also can detect any contamination of deeper aquifer(s). This report shall include a proposed schedule for its implementation, not to exceed six months from the date of Ecology approval of the Final RI Work Plan.

2. **Final RI Work Plan:** USG shall prepare a Final RI Work Plan, which incorporates all comments received by Ecology regarding the Draft RI Work Plan.
3. **Remedial Investigation:** USG shall implement the Final RI Work Plan.
4. **Draft Remedial Investigation/Feasibility Study (RI/FS) Report:** Based on the results of the remedial investigation, prepare a Draft RI/FS Report in accordance with WAC 173-340-350 that provides information adequately documenting the

nature and three dimensional extent of soil, surface water, bank sediment, and groundwater contamination, and presents potential options and a preferred option for the remediation of the contamination located at the Site, in accordance with WAC 173-340-360. The Draft RI/FS Report shall include the results of Remedial Investigation at the Site including vertical and lateral distribution of contaminants in soil, groundwater, as well as the surface water and sediments in the adjacent Hylebos Creek, and concentrations of contaminants of concern in all four media. The report shall include plan view maps of the Site indicating: groundwater flow contours, arsenic concentration contours for arsenic detected in soil, in groundwater from shallow and deeper aquifers, and also map the arsenic concentrations and locations of Hylebos Creek surface water samples. Two hard copies of the report shall be submitted, and the report shall also be submitted electronically, in conformance with WAC 173-340-540(5). The report shall include conclusions that can be reasonably drawn regarding potential migration of contamination beyond the boundaries of the Site and of known contamination. Additionally, the report shall include a Feasibility Study analysis, per WAC 173-340-350 and -360, that lists and evaluates potential remedial alternatives and provides recommendations regarding a preferred remedial action to be implemented for soil, groundwater, surface water, and sediments.

5. Draft Cleanup Action Plan

USG shall prepare a Draft Cleanup Action Plan per WAC 173-340-380.

Exhibit C - Schedule

1. The Draft RI Work Plan shall be submitted to Ecology within 60 days of the effective date of this order. A Final RI Work Plan shall be submitted to Ecology within 30 days of the receipt of Ecology's comments. USG shall confer with Ecology about its comments and the PLP's shall incorporate all of Ecology's final comments into the Final RI Work Plan. The investigation shall be performed according to the schedule set forth in the Ecology approved Final RI Work Plan as noted above.
2. The Draft RI/FS Report shall be submitted within 60 days of the completion of remedial investigation activities performed in accordance with the approved work plan as noted above, or 180 days from the date of issuance of Ecology comments to the Draft RI Work Plan, whichever is sooner. USG shall submit a Final RI/FS Report, incorporating all of Ecology's final comments to the draft document, within 60 days of the receipt of Ecology's comments.
3. The Draft Cleanup Action Plan shall be submitted along with the Final RI/FS Report