

Agri-Tech/Yakima Steel fabricators
 mgr.: Brian Deeken
 FSID: 479
 SIC: JIAP8

**STATE OF WASHINGTON
 DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

AGREED ORDER

Yakima Steel Fabricators, Inc.

NO. DE 6091

TO: Yakima Steel Fabricators, Inc.
 921 Lynch Rd.
 Shelton, WA 98584

TABLE OF CONTENTS

I.	INTRODUCTION.....	2
II.	JURISDICTION.....	2
III.	PARTIES BOUND.....	2
IV.	DEFINITIONS.....	2
V.	FINDINGS OF FACT.....	3
VI.	ECOLOGY DETERMINATIONS.....	5
VII.	WORK TO BE PERFORMED.....	7
VIII.	TERMS AND CONDITIONS OF ORDER.....	10
	A. Public Notices.....	10
	B. Remedial Action Costs.....	10
	C. Implementation of Remedial Action.....	11
	D. Designated Project Coordinators.....	11
	E. Performance.....	12
	F. Access.....	12
	G. Sampling, Data Submittal, and Availability.....	13
	H. Public Participation.....	14
	I. Retention of Records.....	15
	J. Resolution of Disputes.....	16
	K. Extension of Schedule.....	17
	L. Amendment of Order.....	18
	M. Endangerment.....	19
	N. Reservation of Rights/No Settlement.....	20
	O. Transfer of Interest in Property.....	20
	P. Compliance with Applicable Laws.....	21
	Q. Indemnification.....	22
IX.	SATISFACTION OF ORDER.....	22
X.	ENFORCEMENT.....	23

- Exhibit A: Facility Location Map
- Exhibit B: Data Submittal Requirements
- Exhibit C: Schedule for Deliverables
- Exhibit D: List of Known Appropriate or Relevant and Applicable Laws

I. INTRODUCTION

The mutual objective of the State of Washington Department of Ecology (Ecology) and Yakima Steel Fabricators, Inc. 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 Yakima Steel Fabricators, Inc. to conduct a Feasibility Study (FS) in accordance with Chapter 70.105D RCW, (Model Toxics Control Act, or MTCA) and Chapter 173-340 WAC. 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 MTCA.

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. Yakima Steel Fabricators, Inc. agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Yakima Steel Fabricators, Inc.'s responsibility under this Order. Yakima Steel Fabricators, Inc. 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 used in this Order.

1. Site/Facility: The Site, which in this case means the same as "facility", has the definition as set forth in RCW 70.105D.020(5). The Site is physically defined by the extent of contamination caused by the releases of hazardous substances originating at 6 and 10 1/2 East

Washington Avenue, Yakima, Washington. The approximate boundaries of the site are more particularly described in Exhibit A to this Order, which includes a Site diagram.

2. Parties: Refers to the State of Washington Department of Ecology and Yakima Steel Fabricators, Inc.

3. PLPs: Refers to Robert A. Coffelt and Yakima Steel Fabricators.

4. Agreed Order or Order: Refers to this Order and each of the exhibits to the Order.

All exhibits are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits to the Order.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by Yakima Steel Fabricators, Inc.:

1. The Facility, Agri-Tech Incorporated/Yakima Steel Fabricators is located at approximately 6 and 10 1/2 East Washington in Yakima, Washington, and includes Parcel numbers #19133141009 and #19133141409 of record at the Yakima County Assessor's Office.

2. Parcel number #19133141409 is owned by Robert Coffelt and is located at 10 1/2 East Washington Avenue.

3. Parcel number #19133141009 is owned by Merv and Sharon Wark and is located at 6 East Washington Avenue.

4. The Facility was formerly known as Yakima Farmers Supply. Yakima Farmers Supply was a farmers' cooperative that formulated, stored, and sold a variety of fertilizers, herbicides, pesticides, and carrier oils. In 1960, a lime and sulfur formulating plant was constructed on what is currently the Agri-Tech property. Residues and wash water from the formulation plant were actively discharged to a waste pit that was located on what is today the Agri-Tech and Yakima Steel Fabricators property (Farallon Consulting, Revised Remedial Investigation Report dated June 10, 2004).

5. Yakima Steel Fabricators, Inc. has a history of generating the following RCRA hazardous wastes during their operation of this facility: trichloroethylene, cadmium, chromium, lead, benzene, chlorobenzene, and petroleum naphtha.

6. The Facility is hereafter referenced as Agri-Tech/Yakima Steel Fabricators (ATI/YSF).

A Remedial Investigation was completed by Yakima Steel Fabricators pursuant to Ecology Agreed Order No. DE 97TC-C154, issued on October 6, 1997. A final Remedial Investigation Report was submitted on June 15, 2004. The Remedial Investigation determined the approximate extent of solvent, pesticide, petroleum, and heavy metals contamination at the Site. Modified MTCA Method B cleanup levels were used as preliminary screening levels. Soil contaminated with cadmium and mercury above the preliminary soil screening levels is located in the western portion of the site. Soil contaminated with perchloroethylene (PCE), trichloroethylene, cis 1,2-dichloroethene, vinyl chloride, 4,4-DDD, 4,4-DDE, dieldrin, endrin, heptachlor epoxide, and alpha chlordane are located in and around the former waste pit with the highest concentrations under the Agri-Tech building.

7. The Draft Preliminary Evaluation of Technically Feasible Remedial Alternatives was submitted to Ecology in July, 2003 identified fifteen (15) indicator hazardous substances (IHSs) in soils and groundwater at the site in accordance with WAC 173-340-703. The IHSs and affected media include:

- PCE (soil and groundwater)
- Trichloroethene (TCE) (soil and groundwater)
- Vinyl chloride (groundwater)
- 1,2-dichloroethene (cis-DCE) (soil and groundwater)
- Chloromethane (groundwater)
- Aldrin (soil)
- 4,4-DDE (soil and groundwater)

- 4,4-DDD (soil and groundwater)
- Dieldrin (soil and groundwater)
- Endrin (soil)
- Heptachlor epoxide (soil)
- Alpha-chlorodane
- Cadmium (soil and groundwater)
- Mercury (soil)

These compounds are present in soil and/or groundwater at concentrations that exceed the preliminary soil and groundwater screening levels selected in the RI.

Soil contamination in the waste pit area appears to be contributing chlorinated organic compounds to the dissolved-phase groundwater contamination plume. Concentrations of PCE in the upgradient monitoring well (MW-1) indicate that there is also a dissolved-phase PCE plume entering the Site from an upgradient source. Groundwater samples collected from the monitoring well located within the waste pit area have historically had the highest concentrations of PCE, other halogenated volatile organic compounds, and pesticides.

8. This Facility is the subject of two different lawsuits in Yakima County Superior Court: (1) Cause Number 93-2-02515-4; and (2) Cause Number 05-2-02060-1.

VI. ECOLOGY DETERMINATIONS

1. Robert A. Coffelt is an "owner or operator" as defined in RCW 70.105D.020(17), of a "facility" as defined in RCW 70.105D.020(5).

2. Yakima Steel Fabricators an "owner or operator" as defined in RCW 70.105D.020(17), of a "facility" as defined in RCW 70.105D.020(5).

3. The Facility is known as Agri-tech/Yakima Steel Fabricators and is approximately located at 6 and 10 1/2 East Washington Avenue in Yakima, Washington.

4. Based upon all factors known to Ecology, a “release” or threatened “release” of “hazardous substance(s)” as defined in RCW 70.105D.020(25) and RCW 70.105D.020(10), respectively, has occurred at the Site.

5. Based upon credible evidence, Ecology issued a potentially liable person status letter to Yakima Steel Fabricators, Inc. dated February 26, 1993, pursuant to RCW 70.105D.040, -.020(21) and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that Yakima Steel Fabricators, Inc. is a potentially liable person (PLP) under RCW 70.105D.040 and notified Yakima Steel Fabricators, Inc. of this determination by letter dated July 7, 1993.

6. Based upon credible evidence, Ecology issued a potentially liable person status letter to Agri-Tech, Inc. dated February 26, 1993, pursuant to RCW 70.105D.040, -.020(21) 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 Agri-Tech, Inc. is a potentially liable person (PLP) under RCW 70.105D.040 and notified Agri-Tech, Inc. of this determination by letter dated July 7, 1993.

7. 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.

8. Based on the foregoing facts, Ecology believes the remedial action required by this Order is in the public interest.

9. This Agreed Order requires that a Feasibility Study (FS) be conducted for the Facility in accordance with WAC 173-340-350(8).

10. Robert A. Coffelt has been given multiple opportunities over the past four years to sign an Agreed Order to perform a Feasibility Study. To date, he has not signed an Order for this

work, nor has he provided a reasonable explanation for his failure to sign. Agri-Tech, Inc.'s status is currently unknown.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that Yakima Steel Fabricators, Inc. take the following remedial action(s) at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

1. Yakima Steel Fabricators, Inc. shall plan and conduct a Feasibility Study (FS) in accordance with WAC 173-340-350(8) to develop and evaluate cleanup action alternatives to enable a cleanup action to be selected for the Agri-Tech/Yakima Steel Fabricators Facility.

2. Yakima Steel Fabricators, Inc. shall provide Ecology with a written Draft Feasibility Study Work Plan (for Ecology review and approval) for an FS that is designed to meet the requirements of WAC 173-340-350(8) within 60 days of the execution of this Agreed Order. Ecology will review and provide written comments to Yakima Steel Fabricators, Inc. on the Draft Feasibility Study Work Plan within 60 days of receiving it. Yakima Steel Fabricators, Inc. will have 30 days to address Ecology's comments and resubmit the Feasibility Study Work Plan for final review and approval. Ecology's approval of a Final Feasibility Study Work Plan is contingent upon the resolution of Ecology's comments.

3. In accordance with the Ecology approved Feasibility Study Work Plan, sufficient information shall be collected, developed, and evaluated to enable the selection of a cleanup action(s) under WAC 173-340-360.

4. The Feasibility Study shall include cleanup action alternatives that protect human health and the environment (including, as appropriate, aquatic and terrestrial ecological receptors) by eliminating, reducing, or otherwise controlling risks posed through each exposure pathway and migration route.

5. A reasonable number and type of alternative approaches shall be evaluated, taking into account the characteristics and complexity of the facility, including current site conditions, and physical constraints.

6. Each alternative may consist of one or more cleanup action components including, but not limited to, components that reuse or recycle the hazardous substances; destroy or detoxify the hazardous substances; immobilize or solidify the hazardous substances; provide for on-site or off-site disposal of the hazardous substances in an engineered, lined, and monitored facility; on-site isolation or containment of hazardous substances with attendant engineering controls; and institutional controls and monitoring.

7. Alternatives may, as appropriate, include remediation levels to define when particular cleanup action components will be used. Alternatives may also include different remediation levels for the same component as defined under WAC 173-340-355 establishing potential remediation levels to be evaluated in the FS.

8. If necessary, evaluate the residual threats that would accompany each alternative and determine if remedies that are protective of human health will also be protective of ecological receptors (see WAC 173-340-350(7)(c)(iii)(F)).

9. The FS shall include alternatives with the standard point of compliance for each environmental media containing hazardous substances, unless those alternatives have been eliminated under WAC 173-340-350(8)(b), and may include, as appropriate, alternatives with conditional points of compliance.

10. Each alternative shall be evaluated on the basis of the requirements and the criteria specified in WAC 173-340-360.

11. A preferred cleanup action may be identified in the FS where appropriate.

12. Except as provided in WAC 173-340-350((8)(c)(iii)(B), the FS shall include at least one permanent cleanup action alternative, as defined in WAC 173-340-200, to serve as a baseline against which other alternatives shall be evaluated for the purpose of determining

whether the cleanup action selected is permanent to the maximum extent practicable. The most practicable permanent cleanup action alternative shall be included.

13. The FS does not need to include a permanent cleanup action alternative under any of the following circumstances:

- a. Where a model remedy is the selected cleanup action;
- b. Where a permanent cleanup action alternative is not technically possible;

or

- c. Where the cost of the most practicable permanent cleanup action alternative is so clearly disproportionate that a more detailed analysis is not necessary, as determined through the screening process in WAC 173-340-350(8)(b)(i).

Unless otherwise specified in accordance with Chapter WAC 173-340, cleanup levels shall be established for hazardous substances in each medium and for each pathway where a release has occurred, using WAC 173-340-700 through WAC 173-340-760.

14. The FS work plan shall include a Sampling and Analysis Plan (SAP) written in accordance with WAC 173-340-820 that describes sample collection, handling, and analysis procedures for the additional necessary investigation work at the Site in order to fill existing data gaps identified during the *Wark et al. v. Ecology* matter, Yakima County Cause No. 05-2-02060-1, and to provide information to support remedy decision-making. This SAP will be provided as an addendum to the SAP prepared for the RI and provided as an attachment to the FS Work Plan. The supplemental investigation shall be carried out in accordance with the SAP and in accordance with the schedule in Exhibit C.

In accordance with WAC 173-340-840(5) electronic sampling data will be submitted with all reports containing new data. The electronic data shall have at a minimum the following fields: latitude and longitude of the well or sampling location (in decimal degrees), date sample taken, sample ID, water level altitude, sample depth, ground surface altitude, chemical constituent name, concentration result, units of measurement, data qualifier, and MTCA cleanup

level. Data shall be submitted in hard copy to the Ecology project coordinator and electronically to the Ecology Electronic Information Management (EIM) system in accordance with the EIM data submittal protocols listed on the EIM web site:

<https://fortress.wa.gov/ecy/eimimport/submit.htm>.

Data submittal requirements (Exhibit B) are incorporated into this Order by reference as an integral and enforceable part of the order.

15. Yakima Steel Fabricators, Inc. shall prepare an FS report that documents the FS investigations and evaluations.

16. Yakima Steel Fabricators, Inc. shall provide, to the Ecology project coordinator, written status reports of activities pertaining to work at the Site on a monthly basis.

17. The work to be performed at the site shall be completed according to Exhibit "C," "Schedule for Feasibility Study Deliverables." Exhibit "C" is hereby incorporated into this Order by reference as an integral and enforceable part of the order.

18. 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 required by this section, Ecology may complete and issue the final deliverable.

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notices

This Order has been the subject of public notice and comment pursuant to WAC 173-340-600.

B. Remedial Action Costs

Yakima Steel Fabricators, Inc. shall pay to Ecology all reasonable 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, Order negotiation, oversight, and administration. Yakima Steel Fabricators, Inc. 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 description 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 also 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

Except where necessary to abate an emergency situation, Yakima Steel Fabricators, Inc. 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:

Brian Deeken
Washington State Department of Ecology
15 West Yakima Avenue, Suite 200
Yakima, WA 98902
(509) 454-7290
bdee461@ecy.wa.gov

The project coordinator for Yakima Steel Fabricators, Inc. is:

Jeffrey Kaspar
Farallon Consulting, LLC
975 5th Avenue Northwest
Issaquah, WA 98027
(425) 427-0061
jkaspar@farallonconsulting.com

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. The Ecology project coordinator will be Ecology's designated representative for the Site.

To the maximum extent possible, communications between Ecology and Yakima Steel Fabricators, Inc., 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 coordinator(s).

Ecology and Yakima Steel Fabricators, Inc. may change their respective project coordinator, but must provide ten (10) days advance written notification of the change to the other party.

E. Performance

All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a licensed professional engineer or licensed hydrogeologist licensed in the State of Washington. Yakima Steel Fabricators, Inc. shall notify Ecology in writing of the identity of such engineer (s), or hydrogeologist(s), or others, and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

Any construction work performed pursuant to the Order shall be under the 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 provided in RCW 18.43.130.

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 Yakima Steel Fabricators, Inc. 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 Yakima Steel Fabricators, Inc.'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 Yakima Steel Fabricators, Inc..

Yakima Steel Fabricators, Inc. shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by Yakima Steel Fabricators, Inc. where remedial activities or investigations will be performed pursuant to this Order. If Yakima Steel Fabricators, Inc. is unable to secure necessary access rights, pursuant to WAC 173-340-800(8), Ecology shall make reasonable efforts to facilitate access to the real property for Yakima Steel Fabricators, Inc. conducting remedial actions under this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by Yakima Steel Fabricators, Inc. unless an emergency prevents such notice. All persons who access the Site pursuant to this paragraph shall comply with the approved health and safety plan, if any. Ecology employees and their representative shall not be required to sign any release or waiver as a condition of site property access.

G. Sampling, Data Reporting, and Availability

All sampling and analysis shall be conducted in accordance with the approved Sampling and Analysis Plan.

With respect to the implementation of this Order, Yakima Steel Fabricators, Inc. shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology and shall submit these results in accordance with Section VII of this Order.

All sampling data shall be submitted to Ecology according to the requirements of WAC 173-340-840(5). Ground water sampling data shall also be submitted electronically Ecology's Environmental Information Management system to Ecology according to the requirements of Exhibit B. These submittals shall be provided to Ecology in accordance with Section VII.14 of this Order.

If requested by Ecology, Yakima Steel Fabricators, Inc. shall allow split or duplicate samples to be taken by Ecology and/or its authorized representative of any samples collected by Yakima Steel Fabricators, Inc. pursuant to implementation of this Order. Yakima Steel

Fabricators, Inc. shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order to be taken by Yakima Steel Fabricators, Inc. or their authorized representative(s) provided it does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.F. of this Order, Ecology shall notify Yakima Steel Fabricators, Inc. 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.

Any drilling and/or probing for sampling that occurs at the Facility shall be conducted in accordance with the Washington State Well Drilling Regulation (Chapter 173-160 WAC).

All investigation derived waste including drill cuttings, monitoring well development water, and monitoring well purge water shall be managed off-site within 60 days of generation in accordance with Chapter 173-303 WAC.

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 Yakima Steel Fabricators, Inc..

Ecology shall maintain the responsibility for public participation at the Site. However, Yakima Steel Fabricators, Inc., or its designated representatives shall cooperate with Ecology, and shall:

1. Notify Ecology's project coordinator prior to any of the following: the issuance of all press releases; distribution of fact sheets; performance of other outreach activities; meetings with the interested public and/or local governments. Likewise, Ecology shall notify Yakima

Steel Fabricators, Inc. prior to the issuance of all press releases and fact sheets, and before meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by Yakima Steel Fabricators, Inc. that do not receive prior Ecology approval, Yakima Steel Fabricators, Inc. shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology;

2. Participate in public presentations on the progress of the remedial action at the Site. Yakima Steel Fabricators, Inc. or its designated representative may participate through attendance at public meetings to assist in answering questions, or as a presenter, when requested by Ecology;

3. Arrange and/or continue to maintain information repositories to be located at the following locations when requested by Ecology:

- (a) Yakima Public Library
102 North 3rd Street
Yakima, Washington 98902
- (b) Ecology's Central Regional Office
15 W Yakima Avenue, Suite 200
Yakima, WA 98902
- (c) Ecology's Internet Web Site

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, Yakima Steel Fabricators, Inc. shall preserve all records, reports, documents, and 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, Yakima Steel Fabricators, Inc. shall make all records available to Ecology and allow access for review within a reasonable time period.

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, the Parties shall utilize the dispute resolution procedure set forth below.

(a) Upon receipt of the Ecology project coordinator's decision, Yakima Steel Fabricators, Inc. has fourteen (14) days within which to notify Ecology's project coordinator of its objection to the decision.

(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) Yakima Steel Fabricators, Inc. may then request Ecology 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 decision.

(d) The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within sixty (60) days of Yakima Steel Fabricators, Inc. 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 as provided below.

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 the reason(s) the extension is needed. 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 Yakima Steel Fabricators, Inc. 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 Yakima Steel Fabricators, Inc. 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 Yakima Steel Fabricators, Inc.; or

(b) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty;

(c) Circumstances such that Robert A. Coffelt does not grant Yakima Steel Fabricators, Inc. reasonable access to his property to carry out the work specified in this Agreed Order. However, the inability to gain reasonable access shall only be good cause for delay in sampling on the Yakima Steel Fabricators' property, not for delay in the completion of the remainder of the deliverables under Exhibit C; or

(d) Endangerment as described in Section VIII.M. of this Order. 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 Yakima Steel Fabricators, Inc.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give Yakima Steel Fabricators, Inc. written notification in a timely fashion of any extensions granted pursuant to the 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.L. 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.M. of this Order.

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.M. of this Order, 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 Yakima Steel Fabricators, Inc.. Yakima Steel Fabricators, Inc. 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 the Order represents a

substantial change, Ecology will provide additional public notice and opportunity to comment. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J. of this Order.

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 Yakima Steel Fabricators, Inc. to cease such activities for such period of time as it deems necessary to abate the danger. Yakima Steel Fabricators, Inc. shall immediately comply with such direction.

If, for any reason, Yakima Steel Fabricators, Inc. 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, Yakima Steel Fabricators, Inc. may cease such activities. Yakima Steel Fabricators, Inc. 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, Yakima Steel Fabricators, Inc. shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Yakima Steel Fabricators, Inc. cessation of activities, it may direct Yakima Steel Fabricators, Inc. to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, Yakima Steel Fabricators, Inc.'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 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/No Settlement

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 Ecology rights or authority. Ecology will not, however, bring an action against Yakima Steel Fabricators, Inc. to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against Yakima Steel Fabricators, Inc. regarding remedial actions required by this Order, provided Yakima Steel Fabricators, Inc. 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

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by Yakima Steel Fabricators, Inc. 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 Yakima Steel Fabricators, Inc.'s transfer of any interest in all or any portion of the Site, and during the effective period of this Order, he shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, he shall notify Ecology of said transfer. Upon transfer of any interest, Yakima Steel Fabricators, Inc. shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

P. Compliance with Applicable Laws

1. All actions carried out by Yakima Steel Fabricators, Inc. 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.

2. Pursuant to RCW 70.105D.090(1), the substantive 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 for the remedial action under this Order and that are known to be applicable at the time this Order becomes effective, have been included in Exhibit D, and are binding and enforceable requirements of this Order.

Yakima Steel Fabricators, Inc. 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 Yakima Steel Fabricators, Inc. 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 Yakima Steel Fabricators, Inc. shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Yakima Steel Fabricators, Inc. 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 Yakima Steel Fabricators, Inc. and on how the he must meet those requirements. Ecology shall inform Yakima Steel Fabricators, Inc. in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Yakima Steel Fabricators, Inc. shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

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 which is necessary for the state to administer any federal law, the exemption shall not apply and Yakima Steel Fabricators, Inc. 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. Indemnification

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

DWA 10-21-08

X. ENFORCEMENT

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

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

2. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for remedial actions and orders related to the Site.

3. In the event Yakima Steel Fabricators, Inc. refuses, without sufficient cause, to comply with any term of this Order, it 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 \$25,000 per day for each day it refuses to comply.

4. 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.

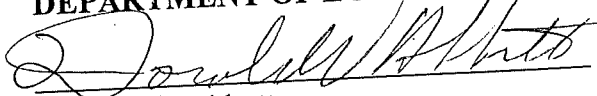
Effective date of this Order: October 27, 2008

YAKIMA STEEL FABRICATORS, INC.



Merv Wark
President

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**



Donald W. Abbott
Section Manager
Toxics Cleanup Program
Central Regional Office
(509) 454-7838

Exhibit A Facility Location Map

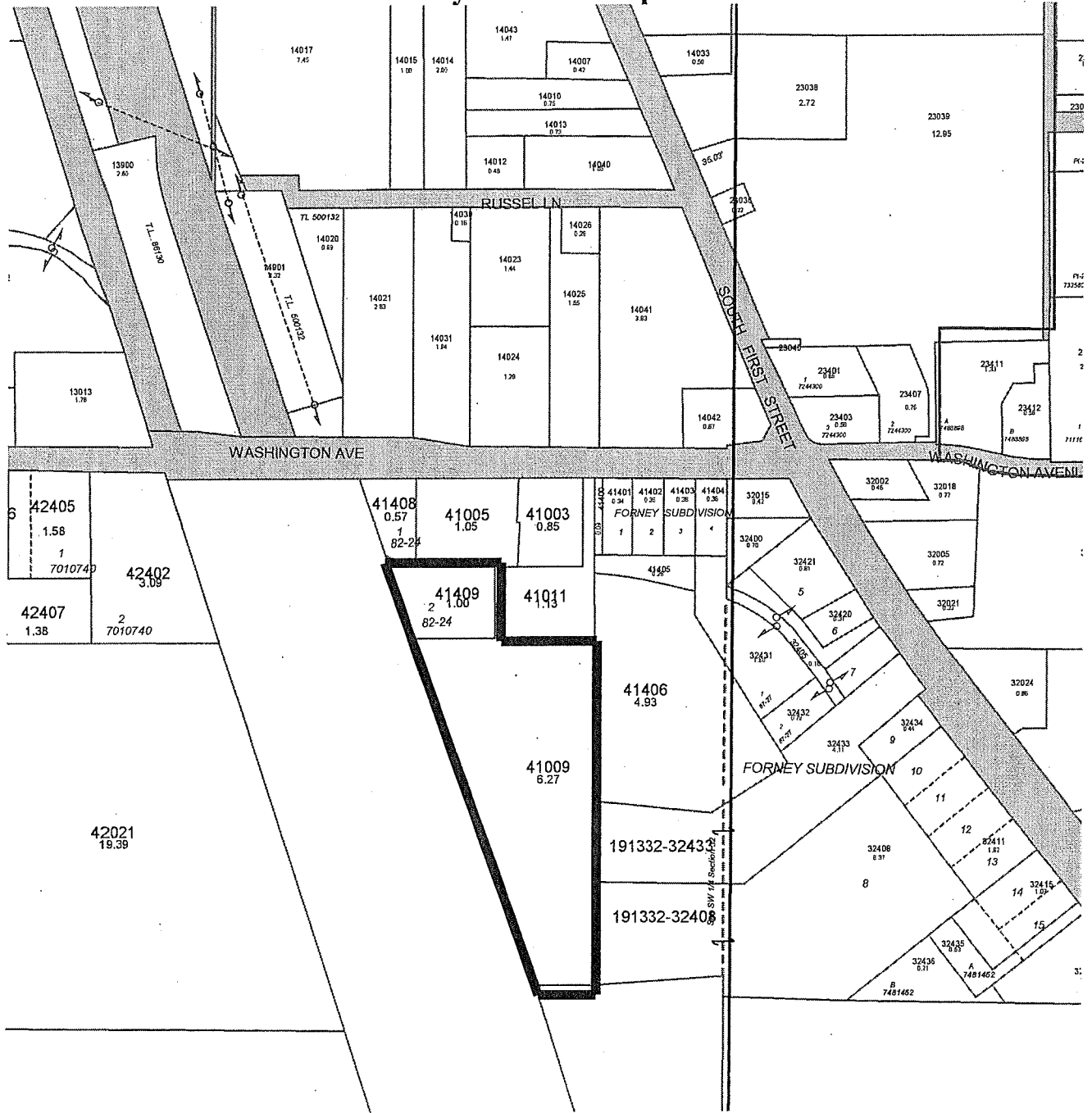


Exhibit B
Data Submittal Requirements

XI. DATA SUBMITTAL REQUIREMENTS FOR ALL CLEANUP SITES

1. Toxics Cleanup Program Policy (as of October, 2005):

Environmental sampling data for all cleanup sites must be submitted both in printed form AND in an electronic form capable of being transferred into Ecology's data management system, consistent with procedures specified by Ecology. The legal basis for this requirement is established in WAC 173-340-840(5).

Policy 840 directs Ecology staff to take certain actions to implement the data submittal requirements.

2. Data Format:

a. Use EIM Format for Most Cleanup Sites (except Sediment sites):

Sampling data must be submitted in EIM (Environmental Information Management) system format. The EIM system is Ecology's main repository for electronic environmental monitoring data. It is intended to provide an accessible means by which to examine and evaluate environmental monitoring data. The EIM system now includes a robust toolset to allow internal staff, contractors, and citizens to search for data either via a map interface, or for a specific study or result set.

For detailed data submittal instructions, please see:

EIM Data Submittal Information <https://fortress.wa.gov/ecy/eimimport/submit.htm>

EIM Spreadsheets, Guidelines, and Help (Zipped file)

Please direct EIM data submittal questions to: EIM Data Coordinator

b. Use SEDQUAL Format for Sediment Cleanup Sites

Sampling data associated with sediment cleanups must be submitted in SEDQUAL (Sediment Quality Information System) format. For details, please see:

SEDQUAL Data Entry Templates

Please direct SEDQUAL data submittal questions to: Martin Payne or Tuan Vu

Exhibit C
Schedule for
Feasibility Study Deliverables
Agri-Tech/Yakima Steel Fabricators Site

- 1.) DRAFT FS WORK PLAN
Yakima Steel Fabricators, Inc. will provide the Draft Feasibility Study Work Plan to Ecology within 60 days after execution of Agreed Order. Ecology will provide written comments back to Yakima Steel Fabricators, Inc. within 60 days of receiving the Draft Feasibility Study Work Plan. The Draft Feasibility Study Work Plan shall have a Sampling and Analysis plan (SAP) as an attachment, that is prepared as an addendum to the SAP prepared in conjunction with the Remedial Investigation (RI) of the Facility, revised to meet the current statutory requirements.
- 2.) FINAL FS WORK PLAN
Yakima Steel Fabricators, Inc. will finalize the Feasibility Study Work Plan within 30 days of receiving Ecology's written comments. Ecology shall give written approval to Yakima Steel Fabricators, Inc. of the Feasibility Study Work Plan.
- 3.) SAMPLING AND MONITORING
Yakima Steel Fabricators, Inc. will provide analytical results to Ecology from the supplemental sampling and monitoring within 60 days after Ecology has approved the Feasibility Study Work Plan.
- 4.) DRAFT FS
Yakima Steel Fabricators, Inc. will provide a Draft FS to Ecology 120 days after analytical results have been submitted and accepted in writing by Ecology.
- 5.) FINAL FS
Yakima Steel Fabricators, Inc. will provide the Final FS to Ecology within 60 days after Yakima Steel Fabricators, Inc. receives Ecology's comments about the Draft FS.

Exhibit D

List of Known Applicable and Relevant and Appropriate Laws

18.104 RCW	Water Well Construction Act
70.105 RCW	Hazardous Waste Management
90.48 RCW	Water Pollution Control Act
70.95 RCW	Solid Waste Management Reduction Recycling