

**FILED**  
MAY 28 2013

**RECEIVED**  
MAY 31 2013  
ATTORNEY GENERAL'S OFFICE  
Ecology Division

KIM M. EATON, YAKIMA COUNTY CLERK

**STATE OF WASHINGTON  
YAKIMA COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

CHEVRON CHEMICAL COMPANY,  
and AMERICAN OIL COMPANY,

Defendants.

NO. **13 2 01766 0**

COMPLAINT

Plaintiff, State of Washington, Department of Ecology (Ecology) alleges as follows:

**I. DESCRIPTION OF ACTION**

1. This action is brought on behalf of the State of Washington, Department of Ecology (Ecology) to enter a settlement agreement known as a Consent Decree (Decree), which requires remedial action at a facility where there has been a release and/or threatened release of hazardous substances.

2. The Complaint and settlement are limited to the scope of the Decree. The facility, or Site, is referred to as the Bee-Jay Scales Site. The Site is located in Sunnyside, Washington.

1 **II. JURISDICTION**

2 3. This Court has jurisdiction over the subject matter and over the parties pursuant  
3 to the Model Toxics Control Act (MTCA), Chapter 70.105D RCW. Venue is proper in  
4 Yakima County, the location of the Site.

5 **III. PARTIES**

6 4. Plaintiff Ecology is an agency of the State of Washington responsible for  
7 overseeing remedial action at sites contaminated with hazardous substances under Chapter  
8 70.105D RCW.

9 5. Defendants are Chevron Oil Company and American Oil Company.

10 **IV. FACTUAL ALLEGATIONS**

11 6. The Site is located in an industrial/commercial corridor of the City of Sunnyside  
12 with residential properties southeast of the Site. Land uses are predominantly light industrial  
13 (e.g., manufacturing and warehousing) with some commercial businesses, occasional  
14 residences, and vacant lots.

15 7. Defendants are former owners or operators of the Site, and/or generators of  
16 hazardous waste that has come to be located at the Site.

17 8. Defendants have all been named potentially liable parties (PLPs) for the Site  
18 under MTCA.

19 9. Ecology has determined that there has been a release or threatened release of  
20 hazardous substances at the Site. Ecology has further determined that contamination at the Site  
21 presents a threat to human health and the environment, and that a final cleanup is necessary to  
22 remedy contamination.

23 10. Ecology developed a draft Cleanup Action Plan (CAP) for the Site and  
24 negotiated a draft Consent Decree with Defendants for implementation of the CAP.

25 11. The draft CAP and draft Consent Decree were subject to public notice and  
26 comment.

1 12. After consideration of all comments received, Ecology issued a final CAP.

2 13. Ecology and Defendants have now entered into the final Consent Decree  
3 requiring cleanup of the Site. The final CAP is an integral and enforceable exhibit to the  
4 Decree.

5 **V. CAUSES OF ACTION**

6 14. Ecology realleges all preceding paragraphs.

7 15. Ecology alleges that all Defendants are responsible, jointly and severally, for  
8 remedial action at the Site, pursuant to Chapter 70.105D RCW.

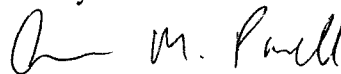
9 **VI. PRAYER FOR RELIEF**

10 16. Ecology requests that the Court approve and order entry of the proposed  
11 Consent Decree.

12 17. Ecology further requests that the Court retain jurisdiction to enforce the terms of  
13 the Consent Decree.

14 DATED this 13 day of May, 2013.

15 ROBERT W. FERGUSON  
16 Attorney General

17 

18 ANNE M. POWELL, WSBA #42934  
19 Assistant Attorney General

20 Attorneys for Plaintiff  
21 State of Washington  
22 Department of Ecology  
23 (360) 586-6770  
24  
25  
26



**FILED** **RECEIVED**  
MAY 28 2013  
MAY 31 2013  
KIM M. EATON, YAKIMA COUNTY CLERK  
ATTORNEY GENERAL'S OFFICE  
Ecology Division

STATE OF WASHINGTON  
YAKIMA COUNTY SUPERIOR COURT

NO. 13 2 01766 0

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

SUMMONS

v.

CHEVRON CHEMICAL COMPANY,  
and AMERICAN OIL COMPANY,

Defendants.

TO: Michelle L. Bacon and Lynn Manolopoulos, attorneys for Chevron Chemical Company,  
and Stephen H. Goodman, attorney for American Oil Company.

A lawsuit has been started against you in the above-entitled court by the State of  
Washington, Department of Ecology. Plaintiff's claim is stated in the written Complaint, a copy  
of which is served upon you with this Summons.

The parties have agreed to resolve this matter by entry of a Consent Decree, a copy of  
which is also attached. Accordingly, this Summons shall not require the filing of an Answer.

\\

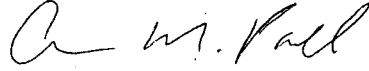
\\

\\

1 Further, all disputes arising under this cause shall be resolved under the terms of the  
2 Consent Decree.

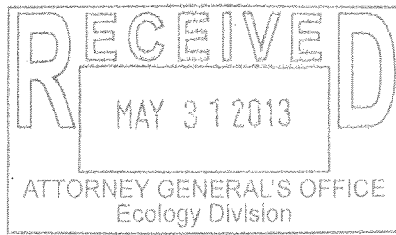
3 DATED this 23 day of May 2013.

4 ROBERT W. FERGUSON  
5 Attorney General

6 

7 ANNE M. POWELL, WSBA #42934  
8 Assistant Attorney General

9 Attorneys for Plaintiff  
10 State of Washington  
11 Department of Ecology  
12 (360) 586-6770  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26



KIM M. EATON, YAKIMA COUNTY CLERK

STATE OF WASHINGTON  
YAKIMA COUNTY SUPERIOR COURT

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

CHEVRON CHEMICAL COMPANY,  
and AMERICAN OIL COMPANY,

Defendants.

NO.

13 2 01766 0

CONSENT DECREE

TABLE OF CONTENTS

16	I.	INTRODUCTION.....	1
17	II.	JURISDICTION.....	2
18	III.	PARTIES BOUND .....	3
18	IV.	DEFINITIONS.....	3
19	V.	FINDINGS OF FACTS.....	4
19	VI.	WORK TO BE PERFORMED .....	6
20	VII.	DESIGNATED PROJECT COORDINATORS .....	8
20	VIII.	PERFORMANCE .....	9
21	IX.	ACCESS.....	10
21	X.	SAMPLING, DATA SUBMITTAL, AND AVAILABILITY .....	11
22	XI.	PROGRESS REPORTS .....	12
22	XII.	RETENTION OF RECORDS.....	12
23	XIII.	TRANSFER OF INTEREST IN PROPERTY.....	13
23	XIV.	RESOLUTION OF DISPUTES .....	13
24	XV.	AMENDMENT OF DECREE .....	15
24	XVI.	EXTENSION OF SCHEDULE .....	16
25	XVII.	ENDANGERMENT .....	17
25	XVIII.	COVENANT NOT TO SUE.....	18
26	XIX.	CONTRIBUTION PROTECTION.....	19
26	XX.	LAND USE RESTRICTIONS .....	19

1	XXI.	FINANCIAL ASSURANCES .....	20
	XXII.	INDEMNIFICATION .....	21
2	XXIII.	COMPLIANCE WITH APPLICABLE LAWS .....	21
	XXIV.	REMEDIAL ACTION COSTS .....	23
3	XXV.	IMPLEMENTATION OF REMEDIAL ACTION .....	23
	XXVI.	PERIODIC REVIEW .....	24
4	XXVII.	PUBLIC PARTICIPATION .....	24
	XXVIII.	DURATION OF DECREE .....	26
5	XXIX.	CLAIMS AGAINST THE STATE .....	26
	XXX.	EFFECTIVE DATE .....	26
6	XXXI.	WITHDRAWAL OF CONSENT .....	27
7		EXHIBIT A Site Diagram	
		EXHIBIT B Cleanup Action Plan	
8		EXHIBIT C Scope of Work and Schedule	
		EXHIBIT D Restrictive Covenant	
9		EXHIBIT E Public Participation Plan	
10		EXHIBIT F Required Permits and Substantive Requirements of Procedurally Exempt Permits or Approvals	
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			



1 I. INTRODUCTION

2 A. The mutual objective of the State of Washington, Department of Ecology  
3 (Ecology) and Chevron Chemical Company and American Oil Company (Defendants) under  
4 this Decree is to provide for remedial action at a facility where there has been a release or  
5 threatened release of hazardous substances. As more fully described in the Cleanup Action  
6 Plan (CAP) (Exhibit B), this Decree requires Defendants to perform actions that may include,  
7 but are not limited to, the following activities: excavate soil and treat groundwater in order to  
8 meet soil and groundwater cleanup levels; provide for protection, performance, and  
9 confirmation monitoring of the cleanup action taken at the Site; implement institutional  
10 controls; and provide for financial assurance sufficient to complete the cleanup actions.

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

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

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

21 D. By entering into this Decree, the Parties do not intend to discharge non-settling  
22 parties from any liability they may have with respect to matters alleged in the Complaint. The  
23 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for  
24 sums expended under this Decree.

25 E. This Decree shall not be construed as proof of liability or responsibility for any  
26 releases of hazardous substances or cost for remedial action nor an admission of any facts;

1 provided, however, Defendants shall not challenge the authority of the Attorney General and  
2 Ecology to enforce this Decree.

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

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

6 **II. JURISDICTION**

7 A. This Court has jurisdiction over the subject matter and over the Parties pursuant  
8 to the Model Toxics Control Act (MTCA), Chapter 70.105D RCW.

9 B. Authority is conferred upon the Washington State Attorney General by  
10 RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if,  
11 after public notice and any required hearing, Ecology finds the proposed settlement would lead  
12 to a more expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that  
13 such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

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

16 D. Ecology has given notice to Defendants of Ecology's determination that  
17 Defendants are PLPs for the Site, as required by RCW 70.105D.020(21) and  
18 WAC 173-340-500.

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

21 F. This Decree has been subject to public notice and comment.

22 G. Ecology finds that this Decree will lead to a more expeditious cleanup of  
23 hazardous substances at the Site in compliance with the cleanup standards established under  
24 RCW 70.105D.030(2)(e) and Chapter 173-340 WAC.

25 H. Defendants have agreed to undertake the actions specified in this Decree and  
26 consent to the entry of this Decree under MTCA.

1 **III. PARTIES BOUND**

2 This Decree shall apply to and be binding upon the Parties to this Decree, their  
3 successors and assigns. The undersigned representative of each party hereby certifies that he  
4 or she is fully authorized to enter into this Decree and to execute and legally bind such party to  
5 comply with this Decree. Defendants agree to undertake all actions required by the terms and  
6 conditions of this Decree. No change in ownership or corporate status shall alter Defendants'  
7 responsibility under this Decree. Defendants shall provide a copy of this Decree to all agents,  
8 contractors, and subcontractors retained to perform work required by this Decree, and shall  
9 ensure that all work undertaken by such agents, contractors, and subcontractors complies with  
10 this Decree.

11 **IV. DEFINITIONS**

12 Unless otherwise specified herein, all definitions in RCW 70.105D.020 and  
13 WAC 173-340-200 shall control the meanings of the terms in this Decree.

14 A. Site: The Site is referred to as Bee-Jay Scales. The Site is generally located at  
15 301 Warehouse Avenue and 116 North 1st Street in Sunnyside, Washington and all locations  
16 where hazardous substances migrating from those properties have come to be located. The  
17 Site is generally described in the Site Diagram (Exhibit A). The Site constitutes a Facility  
18 under RCW 70.105D.020(5).

19 B. Parties: Refers to the State of Washington, Department of Ecology, Chevron  
20 Chemical Company, and American Oil Company .

21 C. Defendants: Refers to Chevron Chemical Company and American Oil  
22 Company.

23 D. Consent Decree or Decree: Refers to this Consent Decree and each of the  
24 exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent Decree.  
25 The terms "Consent Decree" or "Decree" shall include all exhibits to this Consent Decree.  
26

1 E. Days: Shall mean calendar days. The date of the event from which a time  
2 period begins to run shall not be included in computing the time period. The last day of a  
3 period so computed shall be included in the period unless it is a Saturday, Sunday, or legal  
4 holiday recognized by the State of Washington, in which case the period extends to the end of  
5 the next calendar day which is not a Saturday, Sunday, or legal holiday recognized by the State  
6 of Washington.

7 F. Properties: the two parcels (Parcels 22014 and 22015) located at  
8 301 Warehouse Avenue and 116 North 1st Street in Sunnyside, Washington.

9 **V. FINDINGS OF FACTS**

10 Ecology makes the following findings of fact without any express or implied  
11 admissions of such facts by the Defendants.

12 A. The Site was historically used for distribution of fertilizer and prepackaged  
13 pesticides. No pesticide formulation was conducted on the Properties, although dry fertilizers  
14 were blended onsite. Although no significant spills or leaks were reported to Ecology during  
15 operations, it is apparent based on environmental investigations that significant releases of  
16 contaminants of concern to the soil and groundwater did occur. The cleaning and rinsing of  
17 fertilizer application equipment occurred on the Properties and rinsate was discharged to the  
18 city sewer system until 1985 when a lined containment pond was constructed to receive the  
19 rinsate. The Properties, which are the source of the contamination at the Site being addressed  
20 by this matter, are currently owned by Bee-Jay Scales Inc. and Western General Land LLC.  
21 (Hickenbotton & Sons, Inc. previously owned the property now owned by Western General  
22 Land LLC.) Both companies have operating facilities on the Properties.

23 B. Groundwater in the vicinity of the Properties is generally encountered between  
24 six (6) and twelve (12) feet below ground surface. Groundwater flows in a southeasterly  
25 direction in the southern portion of the Site and northeast in the northern portion of the Site.  
26

1 The groundwater flow divide is observed present at the southern edge of Area 5 on the Bee-Jay  
2 Scales property.

3 C. Prior to Chevron Ornite Company LLC<sup>1</sup> and American Oil Company  
4 signing Agreed Order No 02-TCPCR-3932, and a companion Enforcement Order  
5 No. DE 02TCPCR-3962 being issued to Bee-Jay Scales and Hickenbottom & Sons, LLC, both  
6 dated June 5, 2002, multiple environmental assessments and limited investigations specific to  
7 property transfers and compliance with requirements related to an identified leaking  
8 underground storage tank were completed.

9 D. After execution of Agreed Order No. 02-TCPCR-3932, and after a companion  
10 Enforcement Order No. DE 02TCPCR-3962 was issued by Ecology, both dated June 5, 2002,  
11 American Oil Company and Chevron Chemical Company conducted remedial investigations,  
12 an interim action, and feasibility studies to both protect human health and the environment and  
13 further understand and delineate the Site. During this time, American Oil Company and  
14 Chevron Chemical Company conducted an interim action and remediated soils with  
15 concentrations of total petroleum hydrocarbons above levels protective of groundwater.  
16 Additionally, American Oil Company and Chevron Chemical Company conducted treatability  
17 studies to develop an effective option in treating nitrate in groundwater.

18 E. Based on data from investigations conducted at the Site by American Oil  
19 Company and Chevron Chemical Company, under the 2002 Agreed Order, Ecology has  
20 determined that groundwater downgradient of the Properties is contaminated from releases  
21 of hazardous substances at the Properties. American Oil Company's and Chevron  
22 Chemical Company's investigations have detected nitrate, nitrite, 1,2-dichloropropane,  
23 2-methylnaphthalene, 2,4-D, arsenic, benzene, chlorobenzene, dinoseb, total petroleum  
24

---

25 <sup>1</sup> Chevron Ornite Company LLC was named in error on the Agreed Order; the correct entity is Chevron  
26 Chemical Company.

1 hydrocarbons in groundwater beneath and/or downgradient of the Properties. Many of these  
2 chemicals of concern (COCs) exceeded the MTCA Method B groundwater cleanup levels.

3 F. The Site is located in an industrial/commercial corridor of the City of Sunnyside  
4 with residential properties southeast of the Site. Land uses are predominantly light industrial  
5 (e.g., manufacturing and warehousing) with some commercial businesses, occasional  
6 residences, and vacant lots.

7 G. The previous 2002 Agreed Order required Defendants to (1) develop a scope of  
8 work and work plan for a remedial investigation/feasibility study (RI/FS), including a site  
9 history report, sampling and analysis plan, site safety and health plan, and risk assessment;  
10 (2) implement the work plan and prepare a draft RI/FS; (3) submit electronic sampling data;  
11 (4) submit monthly progress reports; and (5) deliver three copies of the final RI/FS to Ecology.  
12 Ecology issued a notice of completion for the Agreed Order on November 3, 2009.

## 13 VI. WORK TO BE PERFORMED

14 This Decree contains a program designed to protect human health and the environment  
15 from the known release, or threatened release, of hazardous substances or contaminants at, on,  
16 or from the Site.

17 A. Defendants shall implement the cleanup action selected in the final CAP  
18 (Exhibit B) as set forth in the Scope of Work and Schedule (Exhibit C), which establishes the  
19 required remedial action at the Site. The recording of institutional controls on the property  
20 within the Site shall be as provided for in this section, paragraph E and Section XX (Land Use  
21 Restrictions).

22 B. The cleanup action shall include:

23 1. Excavation or treatment of soils with concentrations of nitrate exceeding  
24 the remediation levels/cleanup levels within specific areas of the Site;

25 2. Implementation of institutional controls, including Restrictive  
26 Covenants that prevent exposure to contaminated groundwater;

1           3.     Installation of a system for the treatment of groundwater;and

2           4.     Installation and sampling of groundwater monitoring wells to confirm  
3           that concentrations of the COCs are below the proposed cleanup levels in groundwater  
4           at the conditional points of compliance.

5           C.     Defendants shall perform compliance monitoring, as required in the final CAP  
6           (Exhibit B) and in accordance with WAC 173-340-410, to ensure that the cleanup standards  
7           are met.

8           D.     Defendants shall submit to Ecology for approval an Engineering Design Report,  
9           Compliance Monitoring Plan, Health and Safety Plan, and Institutional Controls Plan in  
10          accordance with the requirements of the CAP (Exhibit B). If Ecology does not approve these  
11          documents, dispute resolution pursuant to Section XIV (Resolution of Disputes) will be used if  
12          needed to resolve the matter.

13          E.     A restrictive covenant shall be recorded on property not owned or controlled by  
14          Defendants within the Site consistent with Section XX (Land Use Restrictions). Restrictive  
15          covenants shall also be recorded on property owned or controlled by Defendants within the  
16          Site consistent with Section XX (Land Use Restrictions). Access for property not owned or  
17          controlled by the Defendants shall be obtained consistent with Section IX (Access).

18          F.     Defendants shall submit the Construction Plans and Specifications, and the  
19          Operation and Maintenance Plan in accordance with the requirements of the CAP (Exhibit B).  
20          Completion of construction shall be in accordance with the approved Engineering Design  
21          Report schedule and final CAP. If Ecology does not approve these documents, dispute  
22          resolution pursuant to Section XIV (Resolution of Disputes) will be used if needed to resolve  
23          the matter.

24          G.     Ecology will review the Engineering Design Report, Compliance Monitoring  
25          Plan, Institutional Controls Plan, Construction Plans and Specifications, and the Operations  
26          and Maintenance Plan. These plans shall not be implemented, nor shall any other remedial

1 activity take place at the Site, without Ecology's written approval. Once these plans, and any  
2 required revisions, are approved by Ecology, the plans and the schedule shall become integral  
3 and enforceable elements of this Decree.

4 H. At the completion of the soil remediation activities, the engineer responsible for  
5 the oversight of construction shall prepare as-built drawings and a Construction Completion  
6 Report documenting all aspects of the soil remediation activities. At the completion of  
7 installation of the groundwater treatment system, the engineer responsible for the oversight of  
8 construction shall prepare as-built drawings and a Construction Completion Report  
9 documenting all aspects of the groundwater treatment system. Each report shall also contain  
10 an opinion from the engineer, based on testing results and inspections, as to whether the  
11 cleanup has been implemented in substantial compliance with plans and specifications and  
12 related documents. Defendants shall submit these reports to Ecology not later than ninety (90)  
13 days after completion of the construction for each remediation activity.

14 I. Defendants agree not to perform any remedial actions outside the scope of this  
15 Decree unless the Parties agree to modify the Scope of Work and Schedule (Exhibit C) to  
16 cover these actions. All work conducted by Defendants under this Decree shall be done in  
17 accordance with Chapter 173-340 WAC unless otherwise provided herein.

18 **VII. DESIGNATED PROJECT COORDINATORS**

19 The project coordinator for Ecology is:

20 Norman Hepner  
21 Washington State Department of Ecology  
22 Central Regional Office  
23 15 West Yakima Ave, Suite 200  
24 Yakima, WA 98902-3452  
25 (509) 457-7127  
26 Email: norm.hepner@ecy.wa.gov



1 The project coordinator for Defendant American Oil Company is:

2 Kyle Christie  
3 Environmental Business Manager  
4 Atlantic Richfield Company  
5 4 Centerpointe Drive  
6 La Palma, CA 90623  
7 (714) 670-5303  
8 Email: [kyle.christie@bp.com](mailto:kyle.christie@bp.com)

9 The project coordinator for Defendant Chevron Chemical Company is:

10 Caryl Weekley  
11 Project Manager  
12 Chevron Environmental Management Company  
13 6101 Bollinger Canyon Road  
14 San Ramon, CA 94583  
15 (925) 790-3876  
16 Email: [cweekley@chevron.com](mailto:cweekley@chevron.com)

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

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

## 21 VIII. PERFORMANCE

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

1 All engineering work performed pursuant to this Decree shall be under the direct  
2 supervision of a professional engineer registered in the State of Washington, except as  
3 otherwise provided for by RCW 18.43.130.

4 All construction work performed pursuant to this Decree shall be under the direct  
5 supervision of a professional engineer or a qualified technician under the direct supervision of  
6 a professional engineer. The professional engineer must be registered in the State of  
7 Washington, except as otherwise provided for by RCW 18.43.130.

8 Any documents submitted containing geologic, hydrologic, or engineering work shall  
9 be under the seal of an appropriately licensed professional as required by Chapter 18.220 RCW  
10 or RCW 18.43.130.

11 Defendants shall notify Ecology in writing of the identity of any engineer(s) and  
12 geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms  
13 of this Decree, in advance of their involvement at the Site.

#### 14 IX. ACCESS

15 Ecology or any Ecology authorized representative shall have full authority to enter and  
16 freely move about all property at the Site that Defendants either own, control, or have access  
17 rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation  
18 logs, and contracts related to the work being performed pursuant to this Decree; reviewing  
19 Defendants' progress in carrying out the terms of this Decree; conducting such tests or  
20 collecting such samples as Ecology may deem necessary; using a camera, sound recording, or  
21 other documentary type equipment to record work done pursuant to this Decree; and verifying  
22 the data submitted to Ecology by Defendants. Defendants shall make all reasonable efforts to  
23 secure access rights for those properties within the Site not owned or controlled by Defendants  
24 where remedial activities or investigations will be performed pursuant to this Decree; provided,  
25 that Ecology may make unannounced visits with the permission of the owners or tenants of the  
26

1 Site. All Parties who access the Site pursuant to this section shall comply with any applicable  
2 Health and Safety Plan(s). Ecology employees and their representatives shall not be required  
3 to sign any liability release or waiver as a condition of Site property access.

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

5 With respect to the implementation of this Decree, Defendants shall make the results of  
6 all sampling, laboratory reports, and/or test results generated by them or on their behalf  
7 available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted  
8 to Ecology in both printed and electronic formats in accordance with Section XI (Progress  
9 Reports), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements),  
10 and/or any subsequent procedures specified by Ecology for data submittal.

11 If requested by Ecology, Defendants shall allow Ecology and/or their authorized  
12 representatives to take split or duplicate samples of any samples collected by Defendants  
13 pursuant to the implementation of this Decree. Defendants shall notify Ecology seven (7) days  
14 in advance of any sample collection or work activity at the Site unless an emergency prevents  
15 such notice in which case Defendants shall notify Ecology as soon as possible of any sample  
16 collection or work activity on account of the emergency. Ecology shall, upon request, allow  
17 Defendants and/or their authorized representative to take split or duplicate samples of any  
18 samples collected by Ecology pursuant to the implementation of this Decree, provided that  
19 doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights  
20 under Section IX (Access), Ecology shall notify Defendants prior to any sample collection  
21 activity unless an emergency prevents such notice.

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

1 **XI. PROGRESS REPORTS**

2 Defendants shall submit to Ecology written Progress Reports that describe the actions  
3 taken during the previous month(s) to implement the requirements of this Decree. All Progress  
4 Reports shall be submitted by the tenth (10th) day of the month in which they are due after the  
5 effective date of this Decree. Unless otherwise specified, Progress Reports and any other  
6 documents submitted pursuant to this Decree shall be sent by the Defendants' project  
7 coordinators by certified mail, return receipt requested, to Ecology's project coordinator. After  
8 Ecology has approved a Construction Completion Report required by Section VI, paragraph H,  
9 Defendants shall submit Progress Reports, on a quarterly basis, within thirty (30) days of the  
10 end of each quarter.

11 The Progress Reports shall include the following:

- 12 A. A list of on-site activities that have taken place since the last reporting period;
- 13 B. Detailed description of any deviations from required tasks not otherwise  
14 documented in project plans or amendment requests;
- 15 C. Description of all deviations from the Scope of Work and Schedule (Exhibit C)  
16 and CAP (Exhibit B) during the current month and any planned deviations in the upcoming  
17 month;
- 18 D. For any deviations in schedule, a plan for recovering lost time and maintaining  
19 compliance with the schedule;
- 20 E. All raw data (including laboratory analyses) received by Defendants during the  
21 past month and an identification of the source of the sample; and
- 22 F. A list of deliverables for the upcoming month if different from the schedule.

23 **XII. RETENTION OF RECORDS**

24 During the pendency of this Decree, and for ten (10) years from the date this Decree is  
25 no longer in effect as provided in Section XXVIII (Duration of Decree), Defendants shall  
26 preserve all records, reports, documents, and underlying data in their possession relevant to the

1 implementation of this Decree and shall insert a similar record retention requirement into all  
2 contracts with project contractors and subcontractors. Upon request of Ecology, the  
3 Defendants shall make all records available to Ecology and allow access for review within a  
4 reasonable time.

### 5 **XIII. TRANSFER OF INTEREST IN PROPERTY**

6 The following conditions apply to the extent any Defendants hold or in the future come  
7 to hold any interest in all or any portion of the Site.

8 No voluntary conveyance or relinquishment of title, easement, leasehold, or other  
9 interest in any portion of the Site shall be consummated by a Defendant without provision for  
10 continued operation and maintenance of any treatment system and/or monitoring system  
11 installed or implemented pursuant to this Decree.

12 Prior to a Defendant's transfer of any interest in all or any portion of the Site, and  
13 during the effective period of this Decree, that specific Defendant shall provide a copy of this  
14 Decree to any prospective purchaser, lessee, transferee, assignee, or other successor in said  
15 interest; and, at least thirty (30) days prior to any transfer, the specific Defendant shall notify  
16 Ecology and the other Defendant of said transfer. Upon transfer of any interest, the Defendant  
17 shall restrict uses and activities to those consistent with this Consent Decree and notify all  
18 transferees of the restrictions on the use of the property.

### 19 **XIV. RESOLUTION OF DISPUTES**

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

24 1. Upon receipt of Ecology's project coordinator's written decision, or the  
25 itemized billing statement, any Defendant has fourteen (14) days within which to notify  
26

1 Ecology's project coordinator in writing of its objection to the decision or itemized  
2 statement.

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

6 3. Any Defendant may then request regional management review of the  
7 decision. This request shall be submitted in writing to the Central Region Toxics  
8 Cleanup Program Section Manager within fourteen (14) days of receipt of Ecology's  
9 project coordinator's written decision.

10 4. Ecology's Regional Section Manager shall conduct a review of the  
11 dispute and shall endeavor to issue a written decision regarding the dispute within thirty  
12 (30) days of a Defendant's request for review.

13 5. If any Defendant finds Ecology's Regional Section Manager's decision  
14 unacceptable, that specific Defendant may then request final management review of the  
15 decision. This request shall be submitted in writing to the Toxics Cleanup Program  
16 Manager within fourteen (14) days of receipt of the Regional Section Manager's  
17 decision.

18 6. Ecology's Toxics Cleanup Program Manager shall conduct a review of  
19 the dispute and shall endeavor to issue a written decision regarding the dispute within  
20 thirty (30) days of a Defendant's request for review of the Regional Section Manager's  
21 decision. The Toxics Cleanup Program Manager's decision shall be Ecology's final  
22 decision on the disputed matter.

23 B. If Ecology's final written decision is unacceptable to a Defendant, that specific  
24 Defendant has the right to submit the dispute to the Court for resolution. The Parties agree that  
25 one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute  
26 arising under this Decree. In the event a Defendant presents an issue to the Court for review,

1 the Court shall review the action or decision of Ecology on the basis of whether such action or  
2 decision was arbitrary or capricious and render a decision based on such standard of review.

3 C. The Parties agree to only utilize the dispute resolution process in good faith and  
4 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.  
5 Where any party utilizes the dispute resolution process in bad faith or for purposes of delay,  
6 the other parties may seek sanctions.

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

#### 10 **XV. AMENDMENT OF DECREE**

11 The project coordinators may agree to minor changes to the work to be performed  
12 without formally amending this Decree. Minor changes will be documented in writing by  
13 Ecology.

14 Substantial changes to the work to be performed shall require formal amendment of this  
15 Decree. This Decree may only be formally amended by a written stipulation among the Parties  
16 that is entered by the Court, or by order of the Court. Such amendment shall become effective  
17 upon entry by the Court. Agreement to amend the Decree shall not be unreasonably withheld  
18 by any party.

19 Defendants shall submit a written request for amendment to Ecology for approval.  
20 Ecology shall indicate its approval or disapproval in writing and in a timely manner after the  
21 written request for amendment is received. If the amendment to the Decree is a substantial  
22 change, Ecology will provide public notice and opportunity for comment. Reasons for the  
23 disapproval of a proposed amendment to the Decree shall be stated in writing. If Ecology does  
24 not agree to a proposed amendment, the disagreement may be addressed through the dispute  
25 resolution procedures described in Section XIV (Resolution of Disputes).

1                                   **XVI.    EXTENSION OF SCHEDULE**

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

- 6                   1.    The deadline that is sought to be extended;  
7                   2.    The length of the extension sought;  
8                   3.    The reason(s) for the extension; and  
9                   4.    Any related deadline or schedule that would be affected if the extension  
10 were granted.

11           B.    The burden shall be on Defendants to demonstrate to the satisfaction of Ecology  
12 that the request for such extension has been submitted in a timely fashion and that good cause  
13 exists for granting the extension. Good cause may include, but may not be limited to:

- 14                   1.    Circumstances beyond the reasonable control and despite the due  
15 diligence of Defendants including delays caused by unrelated third parties or Ecology,  
16 such as (but not limited to) delays by Ecology in reviewing, approving, or modifying  
17 documents submitted by Defendants;  
18                   2.    Acts of God, including fire, flood, blizzard, extreme temperatures,  
19 storm, or other unavoidable casualty; or  
20                   3.    Endangerment as described in Section XVII (Endangerment).

21           However, neither increased costs of performance of the terms of this Decree nor  
22 changed economic circumstances shall be considered circumstances beyond the reasonable  
23 control of the Defendants.

24           C.    Ecology shall act upon any written request for extension in a timely fashion.  
25 Ecology shall give the Defendants written notification of any extensions granted pursuant to  
26 this Decree. A requested extension shall not be effective until approved by Ecology or, if



1 required, by the Court. Unless the extension is a substantial change, it shall not be necessary to  
2 amend this Decree pursuant to Section XV (Amendment of Decree) when a schedule extension  
3 is granted.

4 D. An extension shall only be granted for such period of time as Ecology  
5 determines is reasonable under the circumstances. Ecology may grant schedule extensions  
6 exceeding ninety (90) days only as a result of:

7 1. Delays in the issuance of a necessary permit which was applied for in a  
8 timely manner;

9 2. Other circumstances deemed exceptional or extraordinary by  
10 Ecology; or

11 3. Endangerment as described in Section XVII (Endangerment).

#### 12 **XVII. ENDANGERMENT**

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

17 In the event any Defendant determines that any activity being performed at the Site is  
18 creating or has the potential to create a danger to human health or the environment, any  
19 Defendant may cease such activities. That specific Defendant shall notify Ecology's project  
20 coordinator as soon as possible, but no later than twenty-four (24) hours after making such  
21 determination or ceasing such activities. Upon Ecology's direction, Defendant shall provide  
22 Ecology with documentation of the basis for the determination or cessation of such activities.  
23 If Ecology disagrees with Defendant's cessation of activities, it may direct the Defendant to  
24 resume such activities.

25 If Ecology concurs with or orders a work stoppage pursuant to this section, the  
26 Defendants' obligations with respect to the ceased activities shall be suspended until Ecology

1 determines the danger is abated, and the time for performance of such activities, as well as the  
2 time for any other work dependent upon such activities, shall be extended, in accordance with  
3 Section XVI (Extension of Schedule), for such period of time as Ecology determines is  
4 reasonable under the circumstances.

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

### 7 **XVIII. COVENANT NOT TO SUE**

8 A. Covenant Not to Sue: In consideration of Defendants' compliance with the  
9 terms and conditions of this Decree, Ecology covenants not to institute legal or administrative  
10 actions against Defendants regarding the release or threatened release of hazardous substances  
11 covered by this Decree.

12 This Decree covers only the Site specifically identified in the Site Diagram (Exhibit A)  
13 and those hazardous substances that Ecology knows are located at the Site as of the date of  
14 entry of this Decree. This Decree does not cover any other hazardous substance or area.  
15 Ecology retains all of its authority relative to any substance or area not covered by this Decree.

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

- 17 1. Criminal liability;
- 18 2. Liability for damages to natural resources; and
- 19 3. Any Ecology action, including cost recovery, against PLPs not a party to  
20 this Decree.

21 If factors not known at the time of entry of the settlement agreement are discovered and  
22 present a previously unknown threat to human health or the environment, the Court shall  
23 amend this Covenant Not to Sue.

24 B. Reopeners: Ecology specifically reserves the right to institute legal or  
25 administrative action against Defendants to require them to perform additional remedial  
26

1 actions at the Site and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050  
2 under the following circumstances:

3 1. Upon Defendants' failure to meet the requirements of this Decree,  
4 including, but not limited to, failure of the remedial action to meet the cleanup  
5 standards identified in the CAP (Exhibit B);

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

9 3. Upon the availability of new information regarding factors previously  
10 unknown to Ecology, including the nature or quantity of hazardous substances at the  
11 Site, and Ecology's determination, in light of this information, that further remedial  
12 action is necessary at the Site to protect human health or the environment; or

13 4. Upon Ecology's determination that additional remedial actions are  
14 necessary to achieve cleanup standards within the reasonable restoration time frame set  
15 forth in the CAP.

16 C. Except in the case of an emergency, prior to instituting legal or administrative  
17 action against Defendants pursuant to this section, Ecology shall provide Defendants with  
18 fifteen (15) calendar days notice of such action.

#### 19 **XIX. CONTRIBUTION PROTECTION**

20 With regard to claims for contribution against Defendants, the Parties agree that  
21 Defendants are entitled to protection against claims for contribution for matters addressed in  
22 this Decree as provided by RCW 70.105D.040(4)(d).

#### 23 **XX. LAND USE RESTRICTIONS**

24 Defendants shall make good faith efforts to cause restrictive covenants substantially in  
25 the form of Exhibit D to be recorded with the office of the Yakima County Auditor by the  
26 current owners of Properties within the Site within one year of the date of this Decree. The

1 restrictive covenants shall restrict future uses of the Site as specified in the CAP. The  
2 Defendants shall provide Ecology with a copy of the recorded restrictive covenants within  
3 thirty (30) days of the recording date. If Defendants are unable to secure such covenants,  
4 Defendants shall provide notice to Ecology of their inability to secure such covenants within  
5 ten (10) days of the completion of the remedial action, together with a description of their good  
6 faith efforts to secure such covenants.

## 7 **XXI. FINANCIAL ASSURANCES**

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

12 Within one hundred and twenty (120) days of completion of the additional groundwater  
13 assessment described in the CAP (Exhibit B), Defendants shall submit to Ecology for review  
14 and approval an estimate of the costs that they will incur in carrying out the terms of this  
15 Decree, including operation and maintenance, and compliance monitoring. Within sixty (60)  
16 days after Ecology approves the aforementioned cost estimate, Defendants shall provide proof  
17 of financial assurances sufficient to cover all such costs in a form acceptable to Ecology,  
18 including, but not limited to, insurance or other financial assurance mechanisms listed in  
19 WAC 173-340-440(11). If Ecology does not accept the cost estimate or the proof of financial  
20 assurances, dispute resolution pursuant to Section XIV (Resolution of Disputes) will be used if  
21 needed to resolve the matter.

22 Defendants shall adjust their financial assurance coverage and provide Ecology's  
23 project coordinator with documentation of the updated financial assurance for:

24 A. Inflation, annually, within thirty (30) days of the anniversary date of the entry of  
25 this Decree; or if applicable, the modified anniversary date established in accordance with this  
26 section, or upon amendment to the financial assurance instrument, or if applicable, ninety (90)

1 days after the close of Defendants' fiscal year if the financial test or corporate guarantee is  
2 used; and

3 B. Changes in cost estimates, within thirty (30) days of issuance of Ecology's  
4 approval of a modification or revision to the CAP that results in increases to the cost or  
5 expected duration of remedial actions. Any adjustments for inflation since the most recent  
6 preceding anniversary date shall be made concurrent with adjustments for changes in cost  
7 estimates.

## 8 **XXII. INDEMNIFICATION**

9 Each Defendant agrees to indemnify and save and hold the State of Washington, its  
10 employees, and agents harmless from any and all claims or causes of action for death or  
11 injuries to persons or for loss or damage to property to the extent arising from or on account of  
12 acts or omissions of Defendant, its officers, employees, agents, or contractors in entering into  
13 and implementing this Decree. However, Defendants shall not indemnify the State of  
14 Washington nor save nor hold its employees and agents harmless from any claims or causes of  
15 action to the extent arising out of the negligent acts or omissions of the State of Washington, or  
16 the employees or agents of the State, or anyone else, in entering into or implementing this  
17 Decree.

## 18 **XXIII. COMPLIANCE WITH APPLICABLE LAWS**

19 A. All actions carried out by Defendants pursuant to this Decree shall be done in  
20 accordance with all applicable federal, state, and local requirements, including requirements to  
21 obtain necessary permits, except as provided in RCW 70.105D.090. The permits or other  
22 federal, state, or local requirements that the agency has determined are applicable and that are  
23 known at the time of entry of this Decree have been identified in Exhibit F.

24 B. Pursuant to RCW 70.105D.090(1), Defendants are exempt from the procedural  
25 requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48 as it relates to state Waste  
26 Discharge Permits, and 90.58 RCW and of any laws requiring or authorizing local government

1 permits or approvals. However, Defendants shall comply with the substantive requirements of  
2 such permits or approvals. The exempt permits or approvals and the applicable substantive  
3 requirements of those permits or approvals, as they are known at the time of entry of this  
4 Decree, have been identified in Exhibit F.

5 Defendants have a continuing obligation to determine whether additional permits or  
6 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial  
7 action under this Decree. In the event either Ecology or a Defendant determine that additional  
8 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the  
9 remedial action under this Decree, it shall promptly notify the other parties of this  
10 determination. Ecology shall determine whether Ecology or Defendants shall be responsible to  
11 contact the appropriate state and/or local agencies. If Ecology so requires, Defendants shall  
12 promptly consult with the appropriate state and/or local agencies and provide Ecology with  
13 written documentation from those agencies of the substantive requirements those agencies  
14 believe are applicable to the remedial action. Ecology shall make the final determination on  
15 the additional substantive requirements that must be met by Defendants and on how  
16 Defendants must meet those requirements. Ecology shall inform Defendants in writing of  
17 these requirements. Once established by Ecology, the additional requirements shall be  
18 enforceable requirements of this Decree. Defendants shall not begin or continue the remedial  
19 action potentially subject to the additional requirements until Ecology makes its final  
20 determination.

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

1 **XXIV. REMEDIAL ACTION COSTS**

2 Defendants shall pay to Ecology costs incurred by Ecology pursuant to this Decree and  
3 consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology  
4 or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions  
5 and Decree preparation, negotiation, oversight and administration. These costs shall include  
6 work performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall  
7 include costs of direct activities and support costs of direct activities as defined in  
8 WAC 173-340-550(2). Ecology's costs related to the Site have been paid through  
9 December 31, 2009. Since January, 1, 2010, Ecology has accumulated \$45,348.11 in  
10 remedial action costs related to this facility as of October 31, 2012. Payment for this  
11 amount shall be submitted within thirty (30) days of the effective date of this Decree. For all  
12 costs incurred subsequent to October 31, 2012, Defendants shall pay the required amount  
13 within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a  
14 summary of costs incurred, an identification of involved staff, and the amount of time spent by  
15 involved staff members on the project. A general statement of work performed will be  
16 provided upon request. Itemized statements shall be prepared quarterly. Pursuant to  
17 WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the  
18 itemized statement of costs will result in interest charges at the rate of twelve percent (12%)  
19 per annum, compounded monthly.

20 In addition to other available relief, pursuant to RCW 70.105D.055, Ecology has  
21 authority to recover unreimbursed remedial action costs by filing a lien against the real  
22 property subject to the Site remedial actions.

23 **XXV. IMPLEMENTATION OF REMEDIAL ACTION**

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

1 of the remedial action because of Defendants failure to comply with its obligations under this  
2 Decree, Defendants shall reimburse Ecology for the costs of doing such work in accordance  
3 with Section XXIV (Remedial Action Costs), provided that Defendants are not obligated under  
4 this section to reimburse Ecology for costs incurred for work inconsistent with or beyond the  
5 scope of this Decree.

6 Except where necessary to abate an emergency situation, Defendants shall not perform  
7 any remedial actions at the Site outside those remedial actions required by this Decree, unless  
8 Ecology concurs, in writing, with such additional remedial actions pursuant to Section XV  
9 (Amendment of Decree).

#### 10 **XXVI. PERIODIC REVIEW**

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

#### 21 **XXVII. PUBLIC PARTICIPATION**

22 A Public Participation Plan (Exhibit E) is required for this Site. Ecology shall review  
23 any existing Public Participation Plan to determine its continued appropriateness and whether it  
24 requires amendment, or if no plan exists, Ecology shall develop a Public Participation Plan  
25 alone or in conjunction with Defendants.  
26



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

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

8 B. Notify Ecology's project coordinator prior to the preparation of all press  
9 releases and fact sheets, and before major meetings with the interested public and local  
10 governments. Likewise, Ecology shall notify Defendants prior to the issuance of all press  
11 releases and fact sheets, and before major meetings with the interested public and local  
12 governments. For all press releases, fact sheets, meetings, and other outreach efforts by  
13 Defendants that do not receive prior Ecology approval, Defendants shall clearly indicate to its  
14 audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored  
15 or endorsed by Ecology.

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

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

- 21 1. Yakima Valley Regional Library  
22 102 N 3rd Street  
Yakima, WA 98902
- 23 2. Washington Department of Ecology  
24 Central Regional Office  
25 15 W Yakima Ave., Suite 200  
26 Yakima, WA 98902

1 At a minimum, Ecology shall promptly place copies of all public notices, fact sheets, and  
2 documents relating to public comment periods in these repositories. A copy of all documents  
3 related to this Site shall be maintained at these repositories.

4 **XXVIII. DURATION OF DECREE**

5 The remedial program required pursuant to this Decree shall be maintained and  
6 continued until Defendants have received written notification from Ecology that the  
7 requirements of this Decree have been satisfactorily completed. This Decree shall remain in  
8 effect until dismissed by the Court. When dismissed, Section XVIII (Covenant Not to Sue)  
9 and Section XIX (Contribution Protection) shall survive.

10 **XXIX. CLAIMS AGAINST THE STATE**

11 Defendants hereby agree that they will not seek to recover any costs accrued in  
12 implementing the remedial action required by this Decree from the State of Washington or any  
13 of its agencies; and further, that Defendants will make no claim against the State Toxics  
14 Control Account or any local Toxics Control Account for any costs incurred in implementing  
15 this Decree. Except as provided above, however, Defendants expressly reserve their right to  
16 seek to recover any costs incurred in implementing this Decree from any other PLP. This  
17 Section does not limit or address funding that may be provided under Chapter 173-322 WAC.

18 **XXX. EFFECTIVE DATE**

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

20 \\\

21 \\\

22 \\\

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

XXXI. WITHDRAWAL OF CONSENT

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

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

ROBERT M. MCKENNA  
Attorney General



JAMES PENDOWSKI  
Program Manager  
Toxics Cleanup Program  
(360) 407-7177

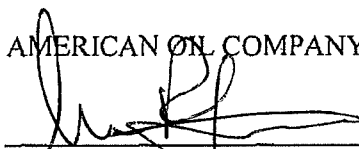
ANNE M. POWELL, WSBA #42934  
Assistant Attorney General  
(360) 586-4607

Date: 5/7/13

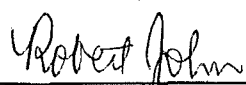
Date: \_\_\_\_\_

CHEVRON ENVIRONMENTAL  
MANAGEMENT COMPANY,  
ATTORNEY-IN FACT FOR CHEVRON  
CHEMICAL COMPANY (A Chevron  
U.S.A. Division)

AMERICAN OIL COMPANY



MARCUS FERRIES  
Portfolio Manager



Date: April 22, 2013

ROBERT JOHN  
Assistant Secretary Vice President

Date: April 28, 2013

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
JUDGE  
Yakima County Superior Court

1 **XXXI. WITHDRAWAL OF CONSENT**

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

6 STATE OF WASHINGTON  
7 DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON  
Attorney General

*Anne M. Powell*

8  
9 JAMES PENDOWSKI  
10 Program Manager  
11 Toxics Cleanup Program  
12 (360) 407-7177

ANNE M. POWELL, WSBA #42934  
Assistant Attorney General  
(360) 586-4607

11 Date: \_\_\_\_\_

Date: *May 13, 2013*

12 CHEVRON ENVIRONMENTAL  
13 MANAGEMENT COMPANY,  
14 ATTORNEY-IN FACT FOR CHEVRON  
15 CHEMICAL COMPANY (A Chevron  
U.S.A. Division)

AMERICAN OIL COMPANY

16  
17 \_\_\_\_\_  
18 MARCUS FERRIES  
19 Portfolio Manager

20 Date: \_\_\_\_\_

21 ROBERT JOHN  
22 Assistant Secretary

23 Date: \_\_\_\_\_

24 ENTERED this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

25 \_\_\_\_\_  
26 JUDGE  
Yakima County Superior Court

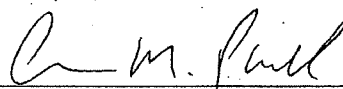
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

XXXI. WITHDRAWAL OF CONSENT

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

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON  
Attorney General



JAMES PENDOWSKI  
Program Manager  
Toxics Cleanup Program  
(360) 407-7177

ANNE M. POWELL, WSBA #42934  
Assistant Attorney General  
(360) 586-4607

Date: \_\_\_\_\_

Date: May 13, 2013

CHEVRON ENVIRONMENTAL  
MANAGEMENT COMPANY,  
ATTORNEY-IN FACT FOR CHEVRON  
CHEMICAL COMPANY (A Chevron  
U.S.A. Division)

AMERICAN OIL COMPANY

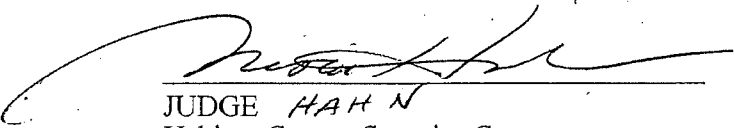
MARCUS FERRIES  
Portfolio Manager

Date: \_\_\_\_\_

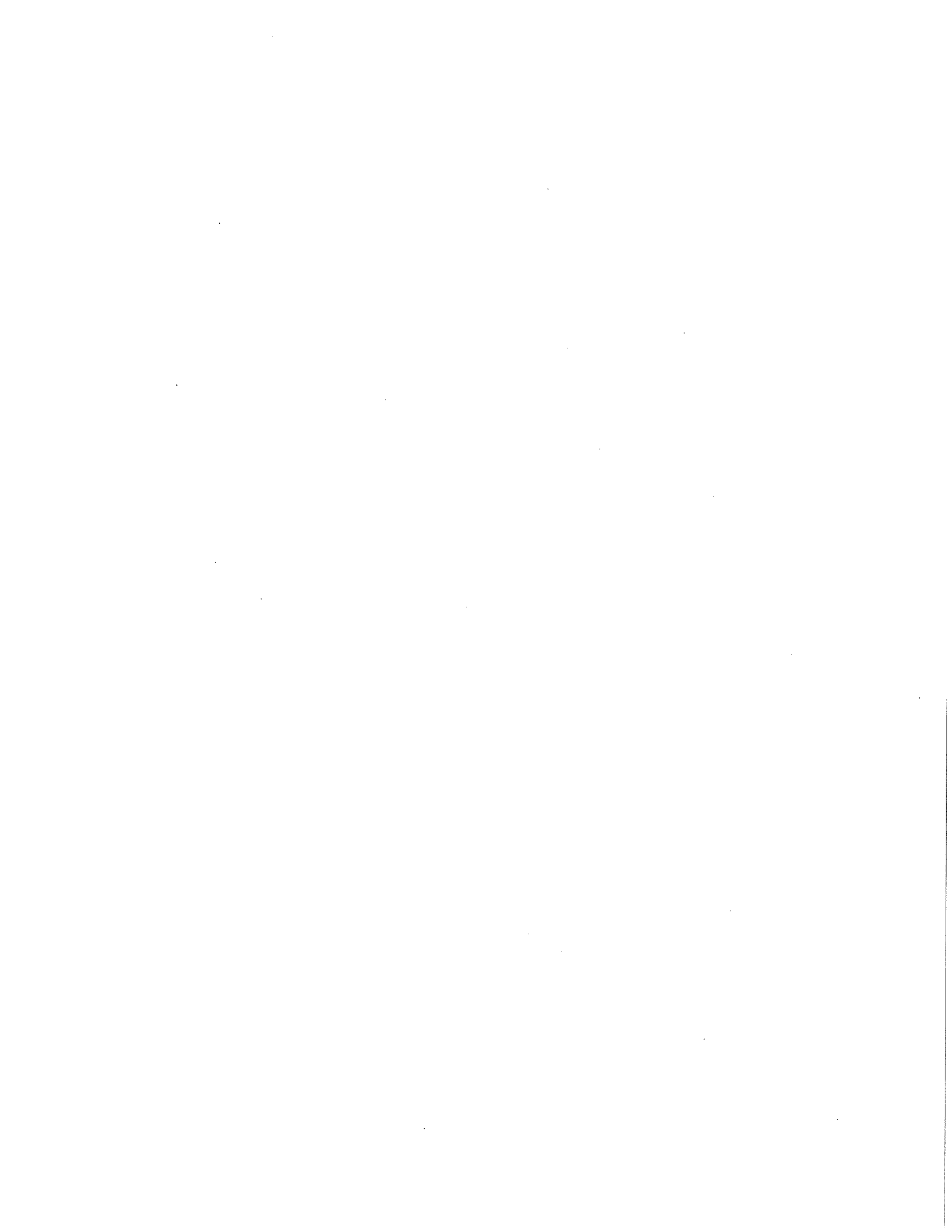
ROBERT JOHN  
Assistant Secretary

Date: \_\_\_\_\_

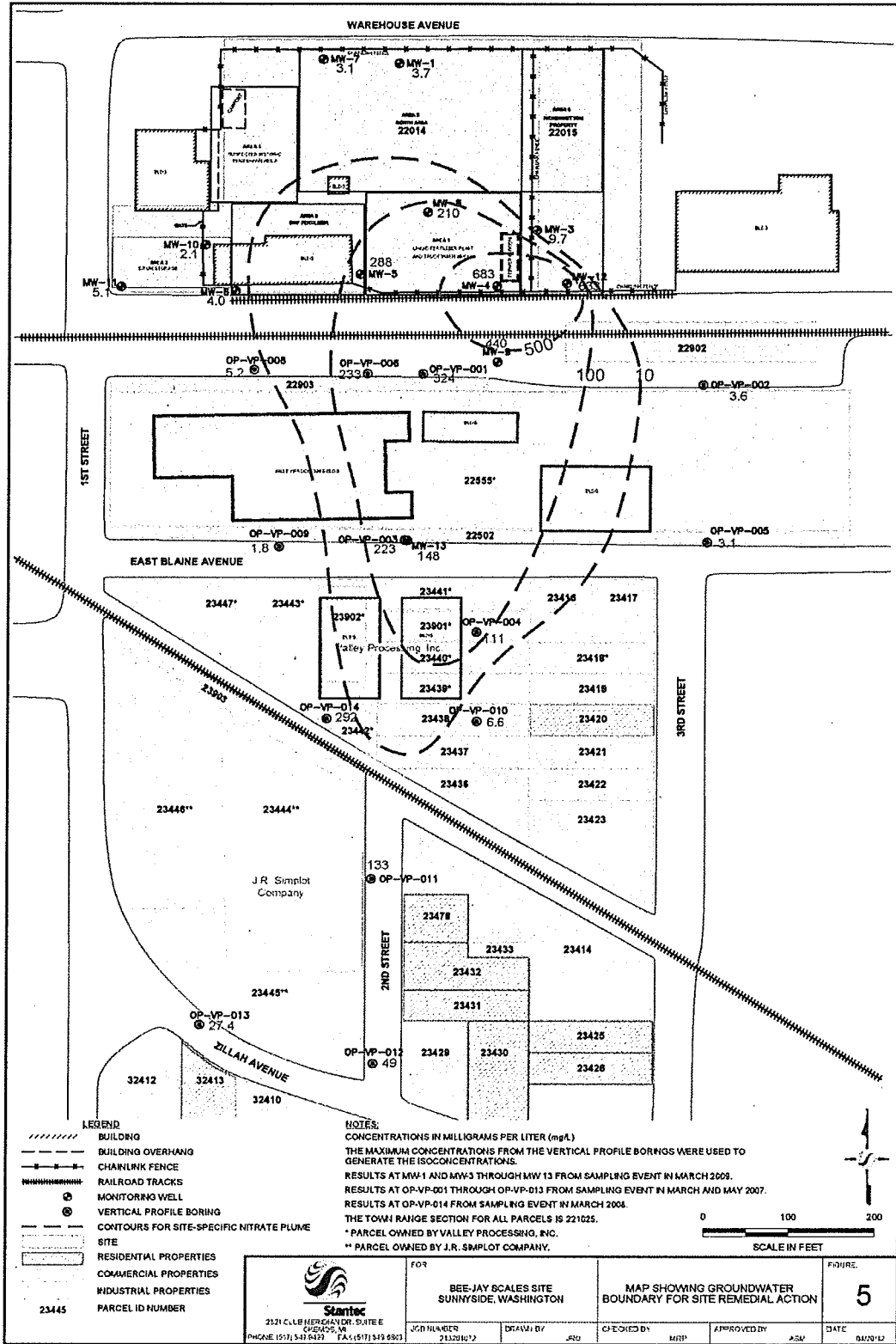
ENTERED this 28 day of may 2013.



JUDGE HAHN  
Yakima County Superior Court



# Exhibit A: Site Diagram



This diagram represents a preliminary estimate of the nitrate groundwater plume.

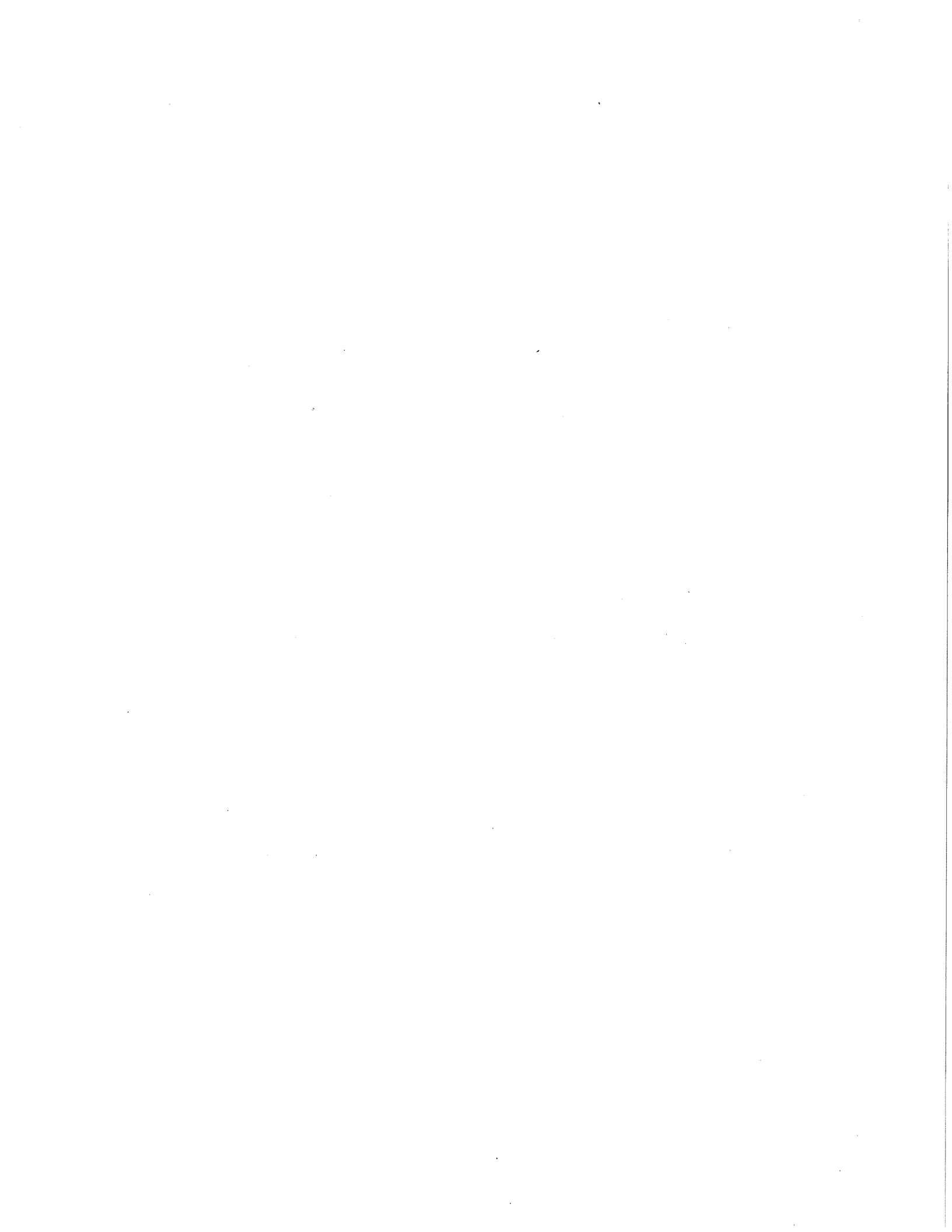




EXHIBIT B

CLEANUP ACTION PLAN

Bee Jay Scales  
Sunnyside, Washington

Prepared by

Norm Hepner  
Department of Ecology  
(509) 457-7127

March 8, 2013

## TABLE OF CONTENTS

1.0	INTRODUCTION.....	1
1.1	Purpose.....	1
1.2	Cleanup Action Plan Organization .....	1
2.0	BACKGROUND.....	3
2.1	Physiographic Setting .....	3
2.1.1	Site Location and Description.....	3
2.1.2	Geology.....	3
2.1.3	Hydrogeology.....	4
2.2	Previous Environmental Studies and Current Status.....	4
2.2.1	Pre-2003 Site Investigations.....	5
2.2.2	Phase I Remedial Investigation.....	5
2.2.3	Phase II Remedial Investigation.....	5
2.2.4	Phase III Remedial Investigation.....	5
2.2.5	Interim Remedial Measures.....	6
2.2.6	Down-Gradient Assessment .....	6
2.2.7	Human Health Risk Assessment.....	6
2.2.8	Development and Screening of Remedial Alternatives.....	6
2.2.9	Revised Feasibility Study Report.....	7
2.2.10	Groundwater Monitoring .....	7
2.2.11	Soil SPLP Study Results .....	7
2.2.12	Storm Drain Assessment.....	7
3.0	EXPOSURE ASSESSMENT .....	9
3.1	Human Health Assessment.....	9
3.2	Ammonia Vapor Human Health Evaluation Assessment.....	9
3.3	Surface Water Monitoring and Assessment.....	10
4.0	CLEANUP STANDARDS.....	11
4.1	Cleanup Levels.....	11
4.1.1	Groundwater.....	11
4.1.2	Surface Water.....	12
4.1.3	Soil.....	12
4.2	Points of Compliance.....	12
4.2.1	Groundwater.....	13
4.2.2	Surface Water.....	13
4.2.3	Soil.....	13
5.0	CLEANUP ACTION.....	14
5.1	Cleanup Action Evaluation .....	14
5.1.1	Groundwater.....	15
5.1.2	Soil.....	16
5.1.3	Feasibility Study Evaluation.....	16
5.2	Selected Cleanup Action.....	17
5.3	Restoration Time Frame.....	18
5.4	Completion of Cleanup.....	18
6.0	REMEDIAL ACTION DESCRIPTION .....	20
6.1	Draft Cleanup Alternative.....	20
6.2	Soil Removal and <i>In Situ</i> Bioremediation.....	20
6.3	Off-Property Groundwater Treatment Systems .....	21
6.4	Institutional Controls.....	22

6.5	Monitored Natural Attenuation.....	22
7.0	CLEANUP ACTION IMPLEMENTATION SCHEDULE.....	24
8.0	REFERENCES.....	25
9.0	FIGURES.....	26
Figure 1	General Site Location.....	27
Figure 2	Property Layout.....	28
Figure 3	Groundwater Contour Map.....	29
Figure 4	Site Map Showing Storm Drain Assessment Analytical Results.....	30
Figure 5	Nitrate Groundwater Plume .....	31
Figure 6	Nitrate Source Areas and Contaminant Levels .....	32
Figure 7	Ammonia Source Areas and Contaminant Levels.....	33

## 1.0 INTRODUCTION

### 1.1 PURPOSE

This document provides the Cleanup Action Plan (CAP) for the remediation of nitrate and pesticide contamination in soil and groundwater at the Bee-Jay Scales Site, located in Sunnyside, Washington (**Figure 1**). A public comment period on the Draft Cleanup Action Plan was conducted from January 30, 2013 thru March 4, 2013; no comments were received. The draft Cleanup Action Plan has been accepted without modification as the approved Cleanup Action Plan for the Site.

The Site is defined as the area located in the city of Sunnyside, within Yakima County, where contaminants released at the following two property parcels have come to be located: Parcel No. 22102522014 and Parcel No. 22102522015 as recorded by the Yakima County Department of Assessment. Parcel No. 22102522014 is located at 116 North 1st Street and is owned by Bee-Jay Scales, Inc. Parcel No. 22102522015 is located at 301 Warehouse Avenue and was formerly owned by Hickenbottom & Sons, Inc. For the purpose of this CAP, “the Site” is defined as the area located in the city of Sunnyside, within Yakima County, where contaminants released at the two parcels have come to be located, and “the Property” will be defined by the boundaries of the two parcels specified. However, off-Property parcels affected by on-Property source areas will also be addressed. The approximate Property boundary is shown on **Figure 2**. The Site groundwater plume for nitrate as currently known is shown in **Figure 5**.

The cleanup activities described in this document include: source removal by excavation of contaminated soil overlying groundwater, enhanced *in situ* groundwater treatment through bioremediation, monitored natural attenuation, and vertical barrier wall treatment system(s) or other treatment methods for the off-Property groundwater plume attributable to the Bee-Jay Scales Site.

This CAP has been developed in accordance with the Washington State Department of Ecology (Ecology) *Model Toxics Control Act Cleanup Regulation* (MTCA), Chapter 173-340 of the Washington Administrative Code (WAC). In accordance with WAC 173-340-360(2), the selected cleanup action, removal of contaminated soil overlying groundwater, *in situ* bioremediation (vertical barrier wall treatment system(s) construction or other treatment method for the off-Property groundwater plume attributable to the Bee-Jay Scales Site), and natural attenuation of nitrate and pesticide contamination in groundwater and within the soil will meet the threshold requirements at the defined points of compliance; protect human health and the environment; comply with remedial action levels; comply with applicable state and federal laws; provide for compliance monitoring; and provide a permanent solution to the maximum extent practicable.

### 1.2 CLEANUP ACTION PLAN ORGANIZATION

The CAP has been organized into the following sections:

- **Section 2.0 - Background:** Section 2.0 provides Site background information including

the location and description, geologic and hydrogeologic setting, a summary of previous subsurface assessment investigation, and RI/FS activities.

- **Section 3.0 - Exposure Assessment:** Section 3.0 provides a summary of the exposure assessment conducted during the RI/FS including a discussion of the constituents and media of potential concern, potential routes of migration, and sensitive receptors.
- **Section 4.0 - Cleanup Standards:** Cleanup levels and points of compliance are discussed in Section 4.0.
- **Section 5.0 - Cleanup Action:** Section 5.0 presents a discussion of cleanup alternatives for groundwater and soil; presents the selected cleanup alternative; and presents cleanup action levels.
- **Section 6.0 – Remedial Action Description.** Section 6.0 describes the components of the remedial action.
- **Section 7.0 – Cleanup Action Implementation & Schedule.** Section 7.0 specifies the cleanup plan implementation and schedule.
- **Section 8.0 – References**
- **Section 9.0 - Figures**

## 2.0 BACKGROUND

### 2.1 PHYSIOGRAPHIC SETTING

#### 2.1.1 Site Location and Description

The Site is located in the city of Sunnyside, within Yakima County, and is where contaminants released at the following two parcels have come to be located: Parcel No. 22102522014 and Parcel No. 22102522015 as recorded by the Yakima County Department of Assessment. Parcel No. 22102522014 is located at 116 North 1st Street and is owned by Bee-Jay Scales, Inc. Parcel No. 22102522015 is located at 301 Warehouse Avenue and was formerly owned by Hickenbottom & Sons, Inc. The Site's general location is shown on **Figure 1**. The property layout, including buildings, monitoring well locations, and area boundaries, is shown on **Figure 2**. The property is divided into six main study areas as follows:

- Area 1 - Liquid Fertilizer Plant and Truck Wash Area
- Area 2 - Dry Fertilizer Area
- Area 3 - Drum Storage Area
- Area 4 - Suspected Historic Washdown Area
- Area 5 - North Area
- Area 6 - Hickenbottom Property

The Site is located within Yakima County, an agricultural region of Washington. The Property is bordered to the north and west by Warehouse Avenue and North First Street and to the south by active railroad tracks. Properties to the north, east, and south of the Property are used for industrial/commercial facilities involved in food processing, agricultural product storage and transfer, pipe manufacturing, warehousing, tank-cleaning services, trucking, and storage. The property immediately west of the Property across North First Street is currently vacant except for paved areas along the railroad tracks. The nearest residences to the Property are located approximately 750 feet to the southeast, 450 feet to the southwest, and 200 feet to the north.

The Site is located within the Yakima River Valley, at approximately 750 feet above mean sea level [amsl]. Snipes Mountain (1,300 feet amsl) is about 1.5 miles southwest of the Site. Rattlesnake Ridge is located approximately 5 miles north of the Site, and the Yakima River is located approximately 4.5 miles southwest of the Site. There are stormwater/irrigation drains that bisect the Property. The stormwater/irrigation drains collect and carry stormwater, irrigation return flows, and potentially infiltrating groundwater and transport the water to a joint drain (JD33.4) located approximately 1,000 feet to the southwest.

#### 2.1.2 Geology

Three geologic units have been identified at the Site based on subsurface information derived from well-drilling logs. They are, from youngest to oldest, Quaternary Alluvium, the Ellensburg Formation, and Columbia River Basalt Group (CRBG).

The Quaternary Alluvium consists of sandy silt and extends to a depth of at least 24.5 feet

below the ground surface (bgs) at the Site (Hart Crowser, 1990). Bentley *et al* (1993) further divide the alluvium and indicate that the Site is underlain by silt, sand, and gravel deposited by tributaries of the Yakima River and that materials are dominantly of basaltic composition. The Ellensburg Formation, interbedded with silt, sand, gravel, and clay, underlies the alluvium and extends to a depth of approximately 450 feet bgs, based on logs for nearby City of Sunnyside water wells. The Ellensburg Formation is underlain by CRBG rocks to an unknown depth.

The near-surface lithology beneath the Site appears to consist of sandy silt with gravel to a depth of approximately 30 feet bgs, followed by trace clay or clayey silt to the maximum explored depth of 31.5 feet bgs (based on boring logs for monitoring wells and soil borings advanced at the Site during the Phase I RI).

### 2.1.3 Hydrogeology

The groundwater flow direction is generally to the northeast in the northern portion of the Property (near MW-1 and MW-7) and to the southeast throughout the remainder of the Site (**Figure 3**). In March 2011, groundwater gradients ranged from approximately 0.002 to 0.013 feet per foot, with an average hydraulic gradient of approximately 0.007 feet per foot; the depth to groundwater ranged from 5.95 to 11.21 feet below the top of casing (TOC) elevation. The flow direction and gradient measured during 2011 are generally consistent with those measured previously at the Site. Well pump tests were performed to calculate hydraulic conductivities that ranged from 2.74E-05 cm/s to 4.12E-04 cm/s. This hydraulic conductivity is characteristic of fine sands, organic and inorganic silts, and mixtures of sand, silt, and clay. The vertical permeability of the aquitard present at the Property (31.5 feet bgs) was calculated to be 5.1E-06 cm/s, which is within the typical range for a mixture of silt and clay. Manmade subsurface drains and storm water systems exist around the site (**Figure 4**).

## 2.2 PREVIOUS ENVIRONMENTAL STUDIES AND CURRENT STATUS

Significant investigations have been conducted at the Site. These investigations include:

- Pre-2003 Site Investigations
- *Bee-Jay Scales Site Phase I Remedial Investigation Report* (SECOR, 2003);
- *Phase II Remedial Investigation Report for the Bee-Jay Scales Site* (SECOR, 2005a);
- *Phase III Remedial Investigation Report for the Bee-Jay Scales Site* (SECOR, 2007a);
- *2006 Interim Remedial Measures Completion Report for the Bee-Jay Scales Site* (SECOR, 2007b);
- *Down-Gradient Assessment Documentation Report for the Bee-Jay Scales Site* (SECOR, 2008);
- *Human Health Risk Assessment* (Stantec, 2008); and
- *Development and Screening of Remedial Alternatives* (Stantec, 2009).
- *Revised Feasibility Study Report* (Stantec, 2009)
- *Groundwater Monitoring (2003-2012)*
- *SPLP Study* (Stantec, 2011)
- *Storm Drain Assessment* (Stantec, 2012)

The following subsections summarize from the record findings of each investigation and evaluation along with the groundwater monitoring that has occurred at the Site since 2003.

### **2.2.1 Pre-2003 Site Investigations**

Four studies were completed prior to the 2003 Phase I Remedial Investigation. These studies included Phase I and II environmental site assessments completed by Hart Crowser; Phase II Environmental Site Assessment conducted by White Shield, Inc; Leaking Underground Storage tank assessment and cleanup by PLSA Engineering and Surveying; and environmental media sampling by the Washington State Department of Ecology. The actions and findings from these studies have been considered in subsequent post-2003 investigations.

### **2.2.2 Phase I Remedial Investigation**

The Phase I remedial investigation (RI) activities were conducted in July 2003 and consisted of soil and groundwater investigations. SECOR collected soil samples from borings completed to depths of up to 11 feet below ground surface (bgs) throughout the Property. The soil data suggested an above-ground source of stored fertilizer that had leached nitrogen compounds to the soil. The major nitrogen source area appeared to be directly east of the Dry Fertilizer Manufacturing Building in Area 2, and two source areas appeared to be located adjacent to the lagoon.

### **2.2.3 Phase II Remedial Investigation**

The Phase II RI included soil, groundwater, and surface water/sediment investigations and pump testing for hydraulic conductivity. SECOR conducted the Phase II soil investigation in May 2004. A treatability investigation, including both a bench-scale study and field pilot study (consisting of *in situ* injection of sodium acetate into four injection wells installed around well MW-4), was conducted as part of the Phase II RI to guide potential nitrate and herbicide remediation activities. The treatability study determined the most effective treatment was denitrification using acetate as an electron donor with a radius of influence of approximately 10 feet.

### **2.2.4 Phase III Remedial Investigation**

The Phase III RI was conducted in 2007 and included additional soil and groundwater investigation to include evaluating horizontal and vertical extent of off-Property nitrate impacts down-gradient of the Bee-Jay Scales property. Based on the study, the nitrate plume extends off-Property with a probable second source of nitrate and ammonia contamination encountered off-Property. A BIOSCREEN model developed following the Phase II RI was re-calibrated using Phase III RI data and showed the effective groundwater flow velocity to be approximately 8 to 9 feet per year, and nitrate in groundwater moves approximately 15 to 16 feet per year with dispersion. Based on the BIOSCREEN model, the high concentrations of nitrate observed 600 to 800 feet down-gradient of the Property likely results from a second source.



### **2.2.5 Interim Remedial Measures**

In 2006, SECOR conducted interim remedial measures including: 1) lagoon closure activities; and 2) treatment of petroleum hydrocarbon impacts using persulfate injections. The former lagoon was removed as a potential source and safety hazard, and calcium acetate was placed into the excavation to mitigate any residual impacts remaining in the soil. *In situ* injection of sodium persulfate into four injection wells was conducted for the treatment of petroleum hydrocarbons, and favorable geochemical conditions were observed in the injection wells during and immediately after injection. Groundwater samples collected from nearby well MW-10 three months after injection showed an average percent (%) reduction in petroleum hydrocarbon concentrations of over 78%.

### **2.2.6 Down-Gradient Assessment**

SECOR conducted a down-gradient assessment in March 2008 to further evaluate: 1) the off-Property extent of nitrate concentrations down-gradient of the Property; and 2) a potential separate off-Property source of nitrate concentrations. The report concluded that the nitrate plume extends off-Property and a second nitrate source exists down-gradient of the Property.

### **2.2.7 Human Health Risk Assessment**

A *Human Health Risk Assessment* (HHRA) was completed to quantify risks associated with chemicals in the soil and groundwater at the Site (Stantec, 2008). The HHRA indicated that the groundwater ingestion exposure pathway for nitrate is potentially complete for off-Property receptors due to the lack of regulatory restrictions on installing water wells. Based on current land use (including locations of existing buildings on-Property), risks to current on-Property exposure populations are within acceptable limits. However, for hypothetical future commercial or residential land use on-Property, ingestion of groundwater containing nitrate and indoor inhalation of vapors containing 1,2,4-trimethylbenzene (from soil) and 1,2-dichloropropane (from groundwater) could result in risk that exceeds acceptable limits.

### **2.2.8 Development and Screening of Remedial Alternatives**

A *Development and Screening of Remedial Alternatives* (DSRA) was completed to determine an appropriate range of remedial alternatives warranting more detailed analysis in the FS (Stantec, 2009). In this report, remedial action objectives (RAOs) were developed for the Site to prevent unacceptable risk to current receptors (i.e., ingestion of groundwater containing nitrate in excess of the Federal MCL by off-Property residential receptors) as identified in the HHRA. The recommended RAO for soil was as follows: for the protection of human health, prevent leaching of nitrate from soil to groundwater by reducing soil concentrations at the Property to a cleanup level of 452 milligrams per kilogram (mg/kg) or otherwise preventing leaching to groundwater in excess of the Federal MCL of 10 milligrams per liter (mg/L). The recommended RAO for groundwater was as follows: for the protection of human health, prevent ingestion of groundwater with nitrate in excess of the Federal MCL of 10 mg/L by residential receptors.

### **2.2.9 Revised Feasibility Study Report**

Stantec Consulting Services Inc. (Stantec; formerly SECOR) evaluated remedial alternatives to address soil and groundwater concentrations of indicator hazardous substances (IHSs) above specified cleanup levels (CULs) at the Bee-Jay Scales Site. The remedial alternatives were evaluated with respect to threshold criteria that must be met for all cleanup actions conducted under Ecology's authority. The threshold criteria include overall protection of human health and the environment, compliance with applicable or relevant and appropriate requirements (ARARs), and opportunity for compliance monitoring. Remedial alternatives that met the threshold criteria were also evaluated for effectiveness (reasonable restoration timeframe, long-term effectiveness and permanence, short-term effectiveness), implementability (technical and administrative implementability, state and community acceptance), and cost.

### **2.2.10 Groundwater Monitoring**

Groundwater monitoring has been conducted at the Site since July 2003. Groundwater is typically encountered between approximately 6 and 10 feet bgs, and a clay aquitard exists at approximately 30 feet bgs. The groundwater flow direction is generally to the northeast in the northern portion of the Property (near MW-1 and MW-7) and to the southeast throughout the rest of the Site, with a groundwater flow divide observed at the southern edge of Area 5 on the Property. The groundwater contour map from the August 2012 groundwater monitoring event is presented as **Figure 3**. Currently, the following monitoring wells are sampled on a semi-annual basis: MW-1, MW-3, MW-4, MW-5, MW-6, MW-7, MW-8, MW-9, MW-10, MW-11, MW-12, and MW-13.

Groundwater monitoring continues to be conducted at the Site. Based on an external technical review of the historical groundwater data, additional groundwater investigations are being conducted to better delineate and define the extent of the nitrate plume directly attributable to sources from the Property. It is anticipated that the results of these further investigations will be available in the 2013 timeframe and used for final engineering of the groundwater remedial action.

### **2.2.11 Soil SPLP Study Results**

A nitrate synthetic precipitation leaching procedure (SPLP) shallow soil assessment was conducted in spring 2011 at the Bee-Jay Scales Site to determine the likely nitrate soil concentration that has the potential to contaminate groundwater above the nitrate groundwater cleanup standard (10 mg/L). Over 88 sample pair results demonstrated that the nitrate soil concentration that corresponds to a nitrate SPLP concentration of 10 mg/L is 220 mg/kg.

### **2.2.12 Storm Drain Assessment (Stantec, 2012)**

A storm drain assessment completed in 2012 concluded that any groundwater impacts originating from the Site are not adversely affecting the storm/irrigation drain network in the vicinity of the Site as the storm/irrigation drains in this area are impacted by other sources. The

assessment was not able to determine if contaminated groundwater is entering the storm/irrigation drain system above surface water cleanup standards. The 2012 storm water assessment indicated that nitrate concentrations in manholes down-gradient of the Site are similar to the nitrate concentrations in manholes up-gradient of the Site, as shown on **Figure 4**. It was also noted that the concentrations in the manholes are generally at least one to two orders of magnitude less than the nitrate and ammonia concentrations observed in the Site wells (MW-4, MW-9, MW-12, and MW-13) sampled for comparison purposes. There were no exceedances of cleanup levels or water quality standards in manhole M-21, which is the furthest down-gradient manhole.

### **3.0 EXPOSURE ASSESSMENT**

#### **3.1 Human Health Risk Assessment**

In 2008, a human health risk assessment was conducted on soil and groundwater at the Bee-Jay Scales Site. In accordance with MTCA, potential IHS were evaluated for risks to current and reasonable future exposure populations, in this case, commercial workers, residents and construction workers.

The 2008 HHRA determined that the current exposure population (commercial workers) is not exposed to unacceptable risks by IHSs in soil and groundwater via inhalation of ambient air. Additionally, the risks to future residential receptors by this pathway were also below the levels of concern. The HHRA determined that since this is a "worst-case" scenario, it is expected that construction workers, who are exposed for a much shorter frequency and duration than commercial workers or residents, would also be protected. Therefore, no further risk analysis for construction workers was required.

The vapor intrusion evaluation was conducted for hypothetical future residential or commercial structures above the impacted soil (Area 3) and groundwater (Areas 1, 3, and 6 and off-Property to well MW-9). The results showed that there may be unacceptable risks resulting from 1,2,4-trimethylbenzene in soil and 1,2-dichloropropane in groundwater. However, it is expected that quantities of these Volatile Organic Compounds (VOCs) will continue to decline over time via natural attenuation and will eventually reach concentrations below MTCA Method B CULs. Additionally, the cumulative vapor intrusion risks resulting from VOCs in groundwater were below the MTCA target Excess Carcinogenic Risk (ECR) and Hazard Index (HI). The cumulative risks to off-Property future residents and current commercial workers via indoor inhalation of fugitive emissions from VOCs in groundwater were less than the MTCA target levels.

Impacts to potable water resources by on-Property groundwater are not expected; however, there are currently no regulatory restrictions on where private wells can be installed. The IHS concentrations in groundwater currently exceed Method B CULs and in some cases Federal MCLs. The potential risks related to exposure to chemicals in tap water were not quantified as the MCL will be used as the remediation goal, which will be protective of all receptors.

Since a change in land use is not anticipated for the foreseeable future, the HHRA determined that risks to exposure populations at the Bee-Jay Scales Site are within acceptable limits. However, because there are currently no regulatory restrictions on where private wells can be installed, the groundwater exposure pathways must be considered potentially complete and will be addressed as provided in this cleanup action plan.

#### **3.2 Ammonia Vapor Human Health Evaluation Assessment**

A qualitative human health evaluation for ammonia vapor was completed during the development of the Cleanup Action Plan. Based on Ecology research, ammonia vapor may likely pose a greater acute risk to construction workers than the 'worst-case' commercial worker

studied in the 2008 HHRA. Precautions to prevent unacceptable worker exposure during construction activities during and following the cleanup may be required to protect human health.

### **3.3 Surface Water Monitoring and Assessment**

Based on a 2012 assessment of storm/irrigation drains in the vicinity of the site, there is no evidence that impacted groundwater is infiltrating the storm/irrigation drain; however, the assessment was unable to affirmatively prove that there was zero infiltration of impacted groundwater into the storm/irrigation drain. The groundwater treatment system will be designed, to the extent practicable; to reduce the potential for infiltration of impacted groundwater into storm/irrigation drains that may eventually discharge to surface waters. If during the compliance monitoring period, it is determined that contaminated groundwater above cleanup levels is infiltrating the storm/irrigation drain and adversely affecting surface water quality, Ecology and the PLPs will determine the most effective way to address the water quality impacts. This method shall prevent or remove contamination so that surface water cleanup standards are met. Potential methods may include adding wells to intercept contaminants or treating or removing the mass of contaminants contributed to the storm/irrigation drain system from the Site prior to the discharge from the Sunnyside Valley Irrigation System discharge monitoring point located near the Holaday Road bridge and known as the USBR hydromet station 'SUCW'.

## 4.0 CLEANUP STANDARDS

Cleanup standards, as defined in WAC 173-340-700, for the Site include establishing cleanup levels and points of compliance at which the cleanup levels will be attained for the Site. The cleanup standards have been established for the Site in accordance with MTCA (WAC 173-340-700 through WAC 173-340-760).

### 4.1 CLEANUP LEVELS

Cleanup levels have been developed for the soil direct contact, soil protection of groundwater, groundwater ingestion, and vapor pathways protective of human health. Because a completed pathway between impacted groundwater and surface water has not been established, surface water cleanup standards have not been established for this Site. The groundwater treatment system, which is intended to treat groundwater to be protective of human health will be designed, to the extent practicable, to reduce the potential for groundwater infiltration of storm/irrigation drains that may eventually discharge to surface waters. If during the compliance monitoring period, it is determined that contaminated groundwater above cleanup levels is infiltrating the storm/irrigation drain and adversely affecting surface water quality, Ecology and the PLPs will determine the most effective way to address the water quality impacts. This method shall prevent or remove contamination so that surface water cleanup standards are met. Potential methods may include adding wells to intercept contaminants or treating or removing the mass of contaminants contributed to the storm/irrigation drain system from the Site prior to the discharge from the Sunnyside Valley Irrigation System discharge monitoring point located near the Holaday Road bridge and known as the USBR hydromet station 'SUCW'.

#### 4.1.1 Groundwater

Site-specific CULs for groundwater have been developed from a combination of primary MCLs, standard MTCA Method A CULs, and standard and modified MTCA Method B CULs. Primary MCLs are set as the CUL for constituents for which they have been developed. If no MCL has been established, modified MTCA Method B CULs are generally used. In cases where modified MTCA Method B CULs have not been developed, standard MTCA Method A or Method B CULs are used.

A list of groundwater CULs, and the basis for the CUL, is provided below for each constituent. IHSs are shown in bold text and will be used to evaluate the effectiveness of the implemented remedial alternatives during groundwater monitoring.

Analyte*	Groundwater Cleanup Level (mg/L)	Source
1,2,3-Trichloropropane	0.00001	Modified MTCA Method B
1,2,4-Trimethylbenzene	0.4	Modified MTCA Method B
<b>1,2-Dichloropropane</b>	0.005	Primary MCL
1,3,5-Trimethylbenzene	0.4	Modified MTCA Method B
<b>2-Methylnaphthalene</b>	0.032	Modified MTCA Method B
2,4,5-T	0.16	Modified MTCA Method B

2,4,5-TP	0.05	Primary MCL
2,4-D	0.07	Primary MCL
2,4-DB	0.128	Modified MTCA Method B
Arsenic	0.01	Primary MCL
Benzene	0.005	Primary MCL
Chlorobenzene	0.1	Primary MCL
Dicamba	0.48	Modified MTCA Method B
Dinoseb	0.007	Primary MCL
Ethylbenzene	0.7	Primary MCL
Iron	11.2	Modified MTCA Method B
Manganese	2.2	Standard MTCA Method B
Naphthalene	0.16	Modified MTCA Method B
Nitrate Nitrogen	10	Primary MCL
Nitrite Nitrogen	1	Primary MCL
Pentachlorophenol	0.001	Primary MCL
Toluene	1	Primary MCL
TPH-Gx	0.8	Standard MTCA Method A
Xylenes	10	Primary MCL

**Notes:**

2,4,5-T = 2,4,5-Trichlorophenoxyacetic acid  
 2,4-D = 2,4-Dichlorophenoxyacetic acid  
 2,4-DB = 4-(2,4-Dichlorophenoxy)butyric acid  
 mg/L = milligrams per liter

**4.1.2 Surface Water**

No surface water impacts are anticipated during this cleanup action provided construction stormwater runoff associated with remedial actions being performed pursuant to this CAP is retained on-Property. Any construction stormwater runoff associated with remedial actions being performed pursuant to this CAP discharged from the Property will be sampled and treated, as required, to comply with storm water rules.

**4.1.3 Soil**

The cleanup levels for soil throughout the Property are based on the protection of groundwater and the prevention of the leaching of contaminants from soil to groundwater by reducing soil concentrations or otherwise preventing leaching to off-Property groundwater in excess of the groundwater CULs.

The nitrate soil CUL is 220 mg/kg; this soil CUL is based on the MTCA Method B CUL for the protection of groundwater. The ammonia soil CUL is 385 mg/kg; this soil CUL is based on the MTCA Method B CUL for protection against the acute vapor health effects for a construction worker.

**4.2 POINTS OF COMPLIANCE**

This CAP has established points of compliance for groundwater [WAC 173-340-720] and soil [WAC 173-340-740(6)] at the Site. The points of compliance, have been established pursuant to WAC 173-340-410(1)(b) to confirm that the cleanup action has obtained the cleanup standards defined for the Site and meets the performance standards set for the operation of the cleanup action.

#### **4.2.1 Groundwater**

A point of compliance has been defined to confirm that the cleanup standards have been met at the Site. Monitoring wells presently existing onsite and identified as MW-4, MW-5, MW-6, and MW-12 and all monitoring wells, including those to be constructed as part of the remedial action, that are located down-gradient of MW-4, MW-5, MW-6, and MW-12 shall be defined as the points of compliance. The point of compliance shall be attained in all ground waters from the point of compliance to the outer boundary of the Bee-Jay Scales plume, to be further defined by additional groundwater assessment. The selected wells are representative of Site groundwater throughout and bound the Bee-Jay Scales plume. If statistically valid analysis of groundwater in the boundary wells shows that concentrations of nitrate exceed the cleanup levels, additional groundwater monitoring wells will be constructed to bound the Bee-Jay Scales plume and sampling will be conducted as guided by a contingency plan developed as required by this CAP. The contingency plan will discuss options available to augment or increase remediation efforts, monitor natural attenuation, verify compliance, and detail a schedule for implementing the Ecology-approved contingency measures.

#### **4.2.2 Surface Water**

No surface water impacts are anticipated during this cleanup action provided construction stormwater runoff associated with remedial actions being performed pursuant to this CAP is retained on-Property. Any construction stormwater runoff associated with remedial actions being performed pursuant to this CAP discharged from the Property will be sampled and treated, as required, to comply with storm water rules.

#### **4.2.3 Soil**

The RI/FS studies indicate that the extent of concentrations of contaminants above the cleanup levels in soil exists on portions of the Property. The point of compliance defined for soil is the soil overlying groundwater throughout the Property. The soil will be considered clean if the cleanup level is met in the soil overlying groundwater (point of compliance) in accordance with the criteria set forth in WAC 173-340-740(6)(b). The cleanup levels for soil defined in Section 4.1 of this CAP will be met at the point of compliance.



## 5.0 CLEANUP ACTION

The FS included a detailed analysis of alternative cleanup actions for the Site. The objectives of the cleanup action at the Bee-Jay Scales Site are to:

1. Prevent leaching of nitrate from soil to groundwater by reducing soil concentrations at the Property to the cleanup level of 220 mg/kg thereby preventing leaching to off-Property groundwater in excess of the Federal MCL of 10 mg/L.
2. Prevent ingestion of groundwater with nitrate in excess of the Federal MCL of 10 mg/L by on-Property and off-Property receptors by reducing nitrate concentrations in groundwater to less than 10 mg/L.
3. Prevent vaporization of ammonia from soil by reducing soil concentration at the Site to 385 mg/kg thereby protecting construction workers from ammonia vapor inhalation.
4. Design the groundwater treatment system, to the extent practicable, to reduce the potential for impacted groundwater to infiltrate storm/irrigation drains that may eventually discharge to a surface water. If during the compliance monitoring period, it is determined that contaminated groundwater above cleanup levels is infiltrating the storm/irrigation drain and adversely affecting surface water quality, Ecology and the PLPs will determine the most effective way to address the water quality impacts. This method shall prevent or remove contamination so that surface water cleanup standards are met. Potential methods may include adding wells to intercept contaminants or treating or removing the mass of contaminants contributed to the storm/irrigation drain system from the Site prior to the discharge from the Sunnyside Valley Irrigation System discharge monitoring point located near the Holaday Road bridge and known as the USBR hydromet station 'SUCW'.

The alternative identified in the FS as the most technically feasible option includes removal and treatment of soil on the Property and natural attenuation of the groundwater plume attributable to the Bee-Jay Scales Site with institutional controls restricting the drilling of water wells in the area. In this draft Cleanup Action Plan, Ecology is proposing to select an alternative cleanup action for the Site.

In this section of the draft Cleanup Action Plan, Ecology identifies in more detail the components of the cleanup action and explains why this action is being selected. Cleanup levels for groundwater will be met at the defined points of compliance by source removal, treatment, and/or monitored natural attenuation. Institutional controls will be implemented to protect people from contact with impacted soil and ingestion of nitrate contaminated groundwater attributable to the Bee-Jay Scales Site.

### 5.1 CLEANUP ACTION EVALUATION

Regulatory requirements (WAC 173-340-360) for selection of cleanup actions at contaminated sites require the following: the protection of public health and the environment through

compliance with cleanup standards established in WAC 173-340-700 through WAC 173-340-760; compliance with applicable state and federal laws; and the implementation of compliance monitoring. Also, the remediation method must provide for a reasonable restoration time frame, take into consideration any concerns raised during public comment on the draft CAP, and that permanent remediation solutions be considered and implemented to the maximum extent practicable.

WAC 173-340-370 expects that natural attenuation of hazardous substances may be appropriate where source control has been conducted to the maximum extent practicable and where there is evidence that natural biodegradation or chemical degradation is occurring and will continue to occur at a reasonable rate at the site.

### 5.1.1 Groundwater

On-Property groundwater cleanup alternatives evaluated in the Feasibility Study included:

- Institutional controls (government controls, proprietary controls, and site inspection);
- Containment (hydraulic [extraction wells and extraction trenches] and vertical barriers);
- Removal (evapotranspiration, extraction wells, and extraction trenches);
- *ex situ* Treatment (biological treatment, electro dialysis, ion exchange, and reverse osmosis);
- *in situ* Treatment (bioremediation, electrokinetics, flushing, natural attenuation, permeable reactive barrier [PRB], and phytoremediation); and
- Discharge (beneficial re-use, injection or infiltration, National Pollutant Discharge Elimination System [NPDES] permit, and Publicly Owned Treatment Works [POTW]).

Remedial technologies and associated process options were screened in the Feasibility Study based on technological effectiveness with respect to addressing nitrates in groundwater (on-Property and off-Property). Process options removed from further consideration in the FS included evapotranspiration for groundwater due to the depth of impacted groundwater and the expected low removal rate via this method, and injection/infiltration for groundwater due to the potentially large volumes of groundwater and moderately low soil permeability.

Most of the process options for on-Property groundwater were screened out in the FS due to a variety of reasons including low effectiveness, implementability issues, and cost. However, the screening process presumed that the remaining option could meet the MTCA cleanup selection criteria. The FS presented monitored natural attenuation and institutional controls as the preferred alternative for the Bee-Jay Scales Site off-Property groundwater plume remediation based on a reasonable restoration timeframe. During Ecology's review, it became apparent that no technical basis existed for the restoration timeframe presented in the FS, and that, Ecology's own groundwater modeling concluded that monitored natural attenuation and institutional controls could not provide for a reasonable restoration timeframe.

Ecology reevaluated the existing reviews of technologies in the FS and evaluated an option using monitored natural attenuation, institutional controls, and vertical barrier groundwater treatment systems to effectively remediate the off property groundwater contamination plume with a

defined reasonable restoration timeframe of 30 - 40 years. The FS basis for screening out the vertical barrier/permeable reactive barrier alternative was based on the administrative complexity of acquiring access agreements and the lack of effectiveness to protect potential wells within the Bee-Jay Scales plume. The lack of effectiveness in protecting potential wells during the defined reasonable restoration timeframe can be supplemented with institutional controls to ensure protection of the public. Additionally, the administrative complexity to acquire access agreements can best be mitigated and addressed during the alternative's engineering design to limit the number of parcels and focus on those parcel owners most amenable to allowing access.

### 5.1.2 Soil

On-Property soil remedial alternatives technologies evaluated in combination with others in the FS included:

- Containment/Capping;
- Electrokinetics and Flushing;
- *in situ* Phytoremediation; and
- Soil excavation with off-site disposal and/or *ex situ* biological treatment.

Several process options for on-Property soil were screened out due to implementability issues associated with the current and anticipated use of the Property and cost:

- Implementing *in situ* phytoremediation for soil at the source areas would affect a large area, and therefore would impede current commercial activities.
- Excavation of Soil Area B, which is adjacent to and partially beneath the Dry Fertilizer Manufacturing Building in Area 2, would not be possible; therefore, options requiring removal (i.e., off-site disposal and *ex situ* treatment options) were screened out.
- High costs and low probability of success associated with the *in situ* treatment options of electrokinetics and flushing screened out these process options from further consideration.

### 5.1.3 Feasibility Study Evaluation

Remedial technologies and associated process options were screened based on technological effectiveness. The FS concluded that two options for on-Property soil and groundwater remediation met the criteria for selection of cleanup actions in WAC 173-340-360. These options are:

1. Permeable Reactive Barrier, Groundwater Monitoring, Natural Attenuation and Capping of Soil, and Institutional Controls (On-site Remedial Alternative #3) is the most costly on-Property alternative. It only partially meets the criteria for reasonable restoration timeframe and long-term effectiveness and permanence because of the passive treatment nature of PRBs and the fact that on-Property source areas would not be directly targeted for treatment.

2. *In Situ* Bioremediation, Groundwater Monitoring, Soil Excavation with Off-site Disposal and/or *Ex Situ* Biological Treatment, Institutional Controls (On-site Remedial Alternative #4) is the least costly on-Property alternative and would be designed to target areas of high soil and groundwater nitrate concentrations on-Property via a combination of *in situ* bioremediation (injection wells for delivery of sodium acetate and borings completed to the surface containing calcium acetate) and limited excavation of shallow, unsaturated residual soil source areas. Previous pilot testing of *in situ* bioremediation at the Property has demonstrated success in remediating nitrate concentrations in groundwater to below cleanup levels and reducing nitrate concentrations in saturated soils. Although there is the possibility of increased arsenic concentrations in groundwater in the short-term, pilot study results suggest that arsenic concentrations would decrease after oxidized redox conditions return. Additionally, this option would allow the most flexibility and control during design and implementation since there are several methods of delivering electron donor to the subsurface (injection wells and borings), and multiple application rounds may be implemented as needed to achieve the RAOs.

## 5.2 SELECTED CLEANUP ACTION

The proposed cleanup action includes a combination of shallow soil excavation, *in situ* bioremediation injection wells/borings (for delivery of a sodium acetate solution or calcium acetate), institutional controls, natural attenuation, and construction of vertical barrier wall treatment system(s) or other Ecology-approved treatment method following public comment for the off-Property groundwater plume attributable to the Bee-Jay Scales Site. The cleanup action meets the threshold requirement of WAC 173-340-360 [2.a]:

- (i) Protect human health and the environment;
- (ii) Comply with cleanup standards;
- (iii) Comply with applicable state and federal laws; and
- (iv) Provide for compliance monitoring

The proposed cleanup action also meets the regulatory requirements for a "permanent solution to the maximum extent practicable" (WAC 173-340-360[2.b.i]). Specifically, the proposed cleanup action includes the following components, which together meet the MTCA standard: (1) removal of the source through shallow excavation and *in situ* treatment; (2) minimization of the potential for ingestion of groundwater by institutional controls; and (3) elimination of greater overall threat to human health and the environment by treatment of impacted groundwater.

The proposed cleanup action also meets the regulatory requirements for a "permanent solution to the maximum extent practicable" (WAC 173-340-360[2.b.i]): (1) it protects human health and the environment; (2) it provides for long-term and short-term remediation effectiveness; (3) it permanently reduces the mobility and volume of hazardous substances; (4) can be implemented with consideration given to the restrictions imposed by existing structures and subsurface conditions; and (5) is practicable. The selected alternative has incorporated prevention or minimization of present or future releases by removing and treating the contaminant source in soil and groundwater, treating impacted groundwater, and monitoring the effectiveness of natural attenuation on the remaining impacted soil and groundwater.

### 5.3 RESTORATION TIME FRAME

As required by WAC 173-340-360(2.b.ii), a cleanup shall provide for a reasonable restoration time frame by considering the following factors [WAC 173-340-360(4.b)]:

- (i) Potential risks posed by the site;
- (ii) Practicability of achieving shorter restorations time frame;
- (iii) Current uses of the site;
- (iv) Potential future uses of the site;
- (v) Availability of alternative water supplies;
- (vi) Effectiveness and reliability of institutional controls;
- (vii) Ability to control and monitor migration of contamination;
- (viii) Toxicity of the hazardous substances; and
- (ix) Natural processes which reduce concentrations of the hazardous substances.

The proposed cleanup takes into consideration all of the factors listed above. Any potential risk has been addressed through the use of institutional controls to prevent ingestion of groundwater during the reasonable restoration timeframe, which has been defined as 30 to 40 years. There is no practical remediation option which would result in a shorter timeframe. The effectiveness of the institutional controls in the CAP will be evaluated, at minimum, every 5 years. A long-term monitoring plan will be developed to monitor the migration of contamination and demonstrate the effectiveness of bioremediation, natural attenuation, and vertical barrier wall treatment system(s) or other treatment method for the off-Property groundwater plume attributable to the Bee-Jay Scales Site. To evaluate the effectiveness of institutional controls, a well survey of the Site and surrounding vicinity will be conducted every 5 years to confirm the proper construction of any new well in the vicinity of the Site. The survey will be conducted using Ecology's database of well logs (<http://apps.ecy.wa.gov/welllog/>). Monitoring and evaluation of the effectiveness of institutional controls will cease when sampling results demonstrate nitrate concentrations are below the groundwater cleanup level of 10 mg/L. The toxicity of nitrate contamination is well understood, treatment system processes are effective, and combined with monitored natural attenuation will be effective in reducing concentrations of nitrate in groundwater to meet the cleanup levels.

Based on evaluation of these factors, and the specific subsurface soil and groundwater conditions existing at the Site, a combination of soil excavation, *in situ* bioremediation injection wells/borings (for delivery of a sodium acetate solution or calcium acetate), institutional controls, natural attenuation, and construction of vertical barrier wall treatment system(s) or other treatment method for the off-Property groundwater plume attributable to the Bee-Jay Scales Site is the remediation alternative which is the most permanent to the maximum extent practicable.

### 5.4 COMPLETION OF CLEANUP

This cleanup will be deemed complete when all components of the remedy, including institutional controls, are implemented and compliance with the cleanup levels have been achieved [including the monitoring of any increased arsenic concentrations to below the arsenic MCL; refer to Section 5.1.3] with a minimum of three years of confirmation samples demonstrating attainment and maintenance of selected cleanup standards at the points of compliance. Following completion of the cleanup, Ecology shall provide public notice and an

opportunity for public comment prior to removing the site from the Hazardous Sites List in accordance with WAC 173-340-330 (4), unless Ecology becomes aware of circumstances at the Site that present a previously unknown threat to human health and the environment.

## 6.0 REMEDIAL ACTION DESCRIPTION

### 6.1 Draft Cleanup Alternative

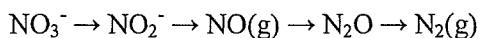
The draft cleanup alternative includes a combination of soil excavation, *in situ* bioremediation injection wells/borings (for delivering sodium acetate solution or calcium acetate), institutional controls, monitored natural attenuation, and construction of vertical barrier wall treatment system or other Ecology-approved treatment method following public comment for the off-Property groundwater plume attributable to the Bee-Jay Scales Site. Additional details regarding the design and schedule of the draft cleanup alternative are presented in the following sections. The purpose of these systems is to remove the source material that is continuing to contribute to groundwater contamination; treat the existing nitrate groundwater plume attributable to the Bee-Jay Scales Site to prevent its continued expansion and to reduce the potential for a discharge to storm/irrigation drains that may eventually discharge to surface waters; and provide for an estimated 30-40 year groundwater restoration timeframe.

### 6.2 Soil Removal and *In Situ* Bioremediation

The on-Property soils are contaminated with nitrate, ammonia, and other IHSs. Soil nitrate and ammonia concentrations exceed the soil cleanup level of 220 mg/kg and 385 mg/kg, respectively, at the Property [Figures 6 and 7]. Soil removal and *in situ* bioremediation will both be used to effectively treat Property soils to residual levels that are protective of groundwater. The quantity of soil excavation and *in situ* bioremediation will be detailed in the cleanup action engineering design following additional on-site assessment to delineate soil excavation boundaries. Generally, soil with average nitrate and ammonia contaminant levels above 220 mg/kg and 385 mg/kg, respectively, will be excavated and removed from the Property and/or treated.

Soil excavation is described as simple excavation and removal of contaminated soil from the site. Soil excavation will be performed where soil is accessible, and safe construction practices must be considered when determining areas of excavation. The soils will be either disposed or reused at agronomic rates as fertilizer, if no other contaminants are present precluding its use as fertilizer.

*In situ* bioremediation involves stimulating the natural denitrification process by introducing electron donor into the subsurface through the use of closely spaced injection wells or borings to target a particular source area. With stimulation, indigenous microorganisms transform nitrate into nitrogen gas in the multi-step denitrification process below. Microorganisms utilize the nitrate ion ( $\text{NO}_3^-$ ) as an electron acceptor and a carbon source as an electron donor during anaerobic respiration. The  $\text{NO}_3^-$  is converted to a nitrite ion ( $\text{NO}_2^-$ ), whereby anaerobic respiration continues with the formation of innocuous nitric oxide gas [ $\text{NO}(\text{g})$ ], nitrous oxide ( $\text{N}_2\text{O}$ ), and, finally, nitrogen gas [ $\text{N}_2(\text{g})$ ]. Typical carbon sources for stimulation of denitrification in groundwater include acetate, ethanol, and sugar (sucrose).



A treatability investigation, including both a bench-scale study and field pilot study (consisting of *in situ* injection of sodium acetate into four injection wells on the Property), was conducted as part of the Phase II RI to guide potential nitrate and herbicide remediation activities. The treatability study determined the most effective treatment was denitrification using acetate as an electron donor. The pilot study demonstrated that injection of acetate was successful in remediating nitrate and nitrite concentrations to below detectable limits in groundwater within a 10-foot radius of the affected well for the duration of the monitoring period and reducing concentrations of those constituents in saturated soils.

A potential consequence of creating anaerobic, reduced redox conditions in the aquifer to promote denitrification is increased dissolved arsenic, iron, and manganese concentrations in groundwater. Reduced redox conditions in the aquifer may result in enhanced solubility and resulting dissolution of ferric iron oxyhydroxide minerals that contain adsorbed arsenic, iron, and manganese. As the minerals dissolve, arsenic, iron, and manganese are released to the groundwater, resulting in elevated dissolved arsenic, iron, and manganese concentrations. However, dissolved arsenic, iron, and manganese concentrations should decrease after oxidized redox conditions return.

Application of *in situ* bioremediation at the Property would involve a combination of temporary injection wells and large diameter (e.g., 12-inch) borings to target areas of high soil and groundwater nitrate concentrations. The injection wells would deliver a sodium acetate solution through one or more rounds of injections as necessary to reduce concentrations of nitrate in on-Property groundwater to below the Federal MCL of 10 mg/L. The borings would be backfilled with a mixture of calcium acetate, which quickly dissolves into groundwater, and pea gravel, which provides structural support of the boring and prevents settling as the salt dissolves.

### **6.3 Off-Property Groundwater Treatment Systems**

The cleanup action involves constructing vertical barrier wall treatment system(s) consisting of a PRB wall (described below) and/or a series of wells/borings, backfilled with calcium acetate or injected with sodium acetate (as described above), or other Ecology-approved treatment methods following public comment. The technologies used in the vertical barrier wall treatment system(s) would rely on *in situ* bioremediation of the nitrate groundwater contamination.

PRBs are vertical barriers containing a particular type of media that remediates contaminants in groundwater as the groundwater flows through the PRB under the natural hydraulic gradient and flow direction. For application to the Site, a biologically operated PRB consisting of sand mixed with phosphate and some type of organic material (mulch, compost, wood chips) would be appropriate. The organic material would provide a source of carbon (electron donor) to stimulate the denitrification process within the PRB. As groundwater moves through the PRB and dissolves the media, an extended treatment zone will develop directly down-gradient of the PRB over time. It would be keyed into the clay aquitard located at approximately 30 feet bgs. Bench-scale testing would be required prior to implementation of this remedial alternative to determine the necessary design parameters for the PRB.



An alternative to PRBs is installation of temporary injection wells and/or large diameter (e.g., 12-inch) borings to bisect the off-Property groundwater plume attributable to the Bee-Jay Scales Site and target areas of high groundwater nitrate concentrations. The mechanisms for in situ bioremediation are discussed in Section 6.2.

Once the Bee-Jay Scales off-Property groundwater plume has been further defined, the most effective treatment method described above will be selected for that portion/area of the plume. The specific length and location of the vertical barrier wall treatment system(s), spacing and screen interval of potential injection wells, and any other design parameters will be determined during engineering design following additional nitrate groundwater investigations into the plume delineation and extent.

#### **6.4 Institutional Controls**

Ingestion of groundwater from the shallow aquifer has the potential to cause harm and require that institutional controls be established in accordance with WAC 173-340-440 to protect the public. These controls include making good faith efforts to cause restrictive covenants to be recorded with the office of the Yakima County Auditor by the current owners of properties within the Site to notify future property owners of the presence of subsurface contamination and notifying City and County planning departments and the local health department of groundwater contamination.

NOTE: Should a good faith effort to obtain restrictive covenants fail, the PLP's will be required to provide an annual educational mailing notifying affected property owners of the contaminated groundwater plume attributable to the Bee-Jay Scales Site and update them on the most recent groundwater monitoring and treatment effectiveness until cleanup levels for groundwater are achieved.

For areas of the Site impacted by the groundwater plume attributable to Bee-Jay Scales, the restrictive covenant will provide for a restriction on installing municipal or domestic drinking water wells in the shallow aquifer at the Site while nitrate concentrations in groundwater exceed the Federal MCL of 10 mg/L.

For areas at the Property where soil contamination remains in-place, a restrictive covenant will provide for a restriction on construction or relocation of buildings on-Property that would prevent proper monitoring of soil and groundwater concentrations or result in unacceptable risks from inhalation of vapors containing 1,2,4-trimethylbenzene (from soil) and 1,2-dichloropropane (from groundwater).

#### **6.5 Monitored Natural Attenuation**

Natural attenuation processes will be used to remediate the nitrate and ammonia groundwater plume attributable to the Bee-Jay Scales Site through biological degradation. A sampling program will be conducted to evaluate the performance of the natural attenuation processes using the following criteria:

- Demonstrate that natural attenuation is occurring as expected;
- Identify and monitor potential products (arsenic) resulting from biodegradation;
- Document changes in plume geometry;
- Monitor groundwater;
- Demonstrate the efficiency of institutional controls in protecting potential receptors;
- Detect changes in environmental conditions which may adversely affect the efficacy of the natural attenuation process;
- Verify that cleanup levels have been met.

## 7.0 CLEANUP ACTION IMPLEMENTATION SCHEDULE

The cleanup action shall be implemented in accordance with WAC 173-340-400. An implementation schedule showing significant milestones shall be submitted to the Department within 60 days from the effective date of the consent decree. At minimum, the implementation schedule shall include dates for document submittals to Ecology for the following: Engineering Design Report, Construction Plans and Specifications, Operations & Maintenance Plan, Compliance Monitoring Plan, Safety and Health Plan, and As-built Reports.

A draft Engineering Design Report and Construction Plans and Specifications shall be submitted for Ecology review for source removal on the Property within 3 months from the effective date of the consent decree. Construction of the source removal remedial action shall commence within 6 months of Ecology's approval of the Construction Plans and Specifications for the project and be completed no later than 12 months after Ecology's approval of the Construction Plans and Specifications for the project.

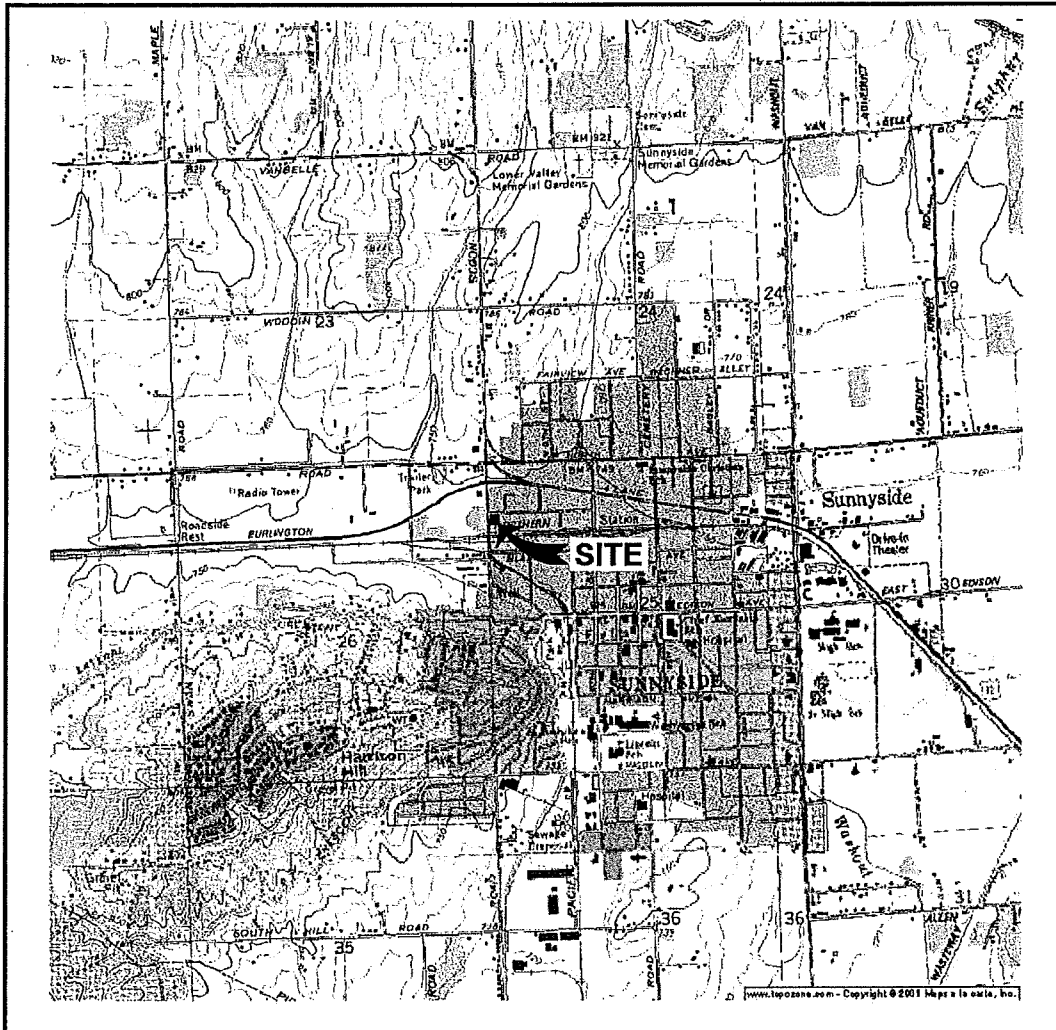
It is understood that delineation of the groundwater plume around and near the railroad may be delayed until access agreements are acquired. Delineation of the groundwater around and near the railroad is required to be completed within 12 months following the receipt of access agreements. Construction of the groundwater remedial action shall be completed no later than 3 years from the effective date of the consent decree, except for those areas in which off-Property access is unreasonably denied or not provided in a timely manner.

## 8.0 REFERENCES

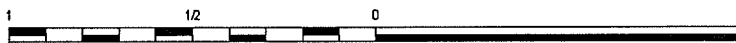
- CH2M Hill, 2003. *Remedial Investigation/Feasibility Study Work Plan*, Bee-Jay Scales Site, Sunnyside, WA, February.
- SECOR, 2003. *Bee-Jay Scales Site Phase I Remedial Investigation Report*, Sunnyside, Washington, Chevron Environmental Management Company (ChevronTexaco) and BP America, Incorporated (BP), October.
- SECOR, 2005a. *Phase II Remedial Investigation Report for the Bee-Jay Scales Site*, Chevron Environmental Management Company and BP America, Inc., May 10.
- SECOR, 2005b. *Preliminary Screening of Remedial Alternatives Technical Memorandum for the Bee-Jay Scales Site*, November 18.
- SECOR, 2007a. *Phase III Remedial Investigation Report for the Bee-Jay Scales Site*, Chevron Environmental Management Company and BP America, Inc., October 26.
- SECOR, 2007b. *2006 Interim Remedial Measures Completion Report for the Bee-Jay Scales Site*, Chevron Environmental Management Company and BP America, Inc, December 14.
- SECOR, 2008. *Down-Gradient Assessment Documentation Report for the Bee-Jay Scales Site*, Chevron Environmental Management Company and BP America, Inc., May 9.
- Stantec, 2008. *Human Health Risk Assessment*, Bee-Jay Scales Site, Chevron Environmental Management Company and Atlantic Richfield Company, December 12.
- Stantec, 2009. *Development and Screening of Remedial Alternatives*, Bee-Jay Scales Site, Chevron Environmental Management Company and Atlantic Richfield Company, March 27.
- Stantec, 2009. *Revised Feasibility Study Report*, Bee-Jay Scales Site, October 16.
- Stantec, 2011, *Nitrate Synthetic Precipitation Leaching Procedure Shallow Soil Assessment Results*, May 13.
- Stantec, 2012, *Storm Drain Assessment Results for the Bee-Jay Scales Site*, July 17.
- Stantec, various dates, *Groundwater Monitoring and Sampling Reports*

**9.0 FIGURES**

**FIGURE 1: General Site Location**



WASHINGTON



SCALE IN MILE



SCALE IN FEET

SOURCE: USGS 7.5 MINUTE QUADRANGLE; SUNNYSIDE, WASHINGTON; 1975


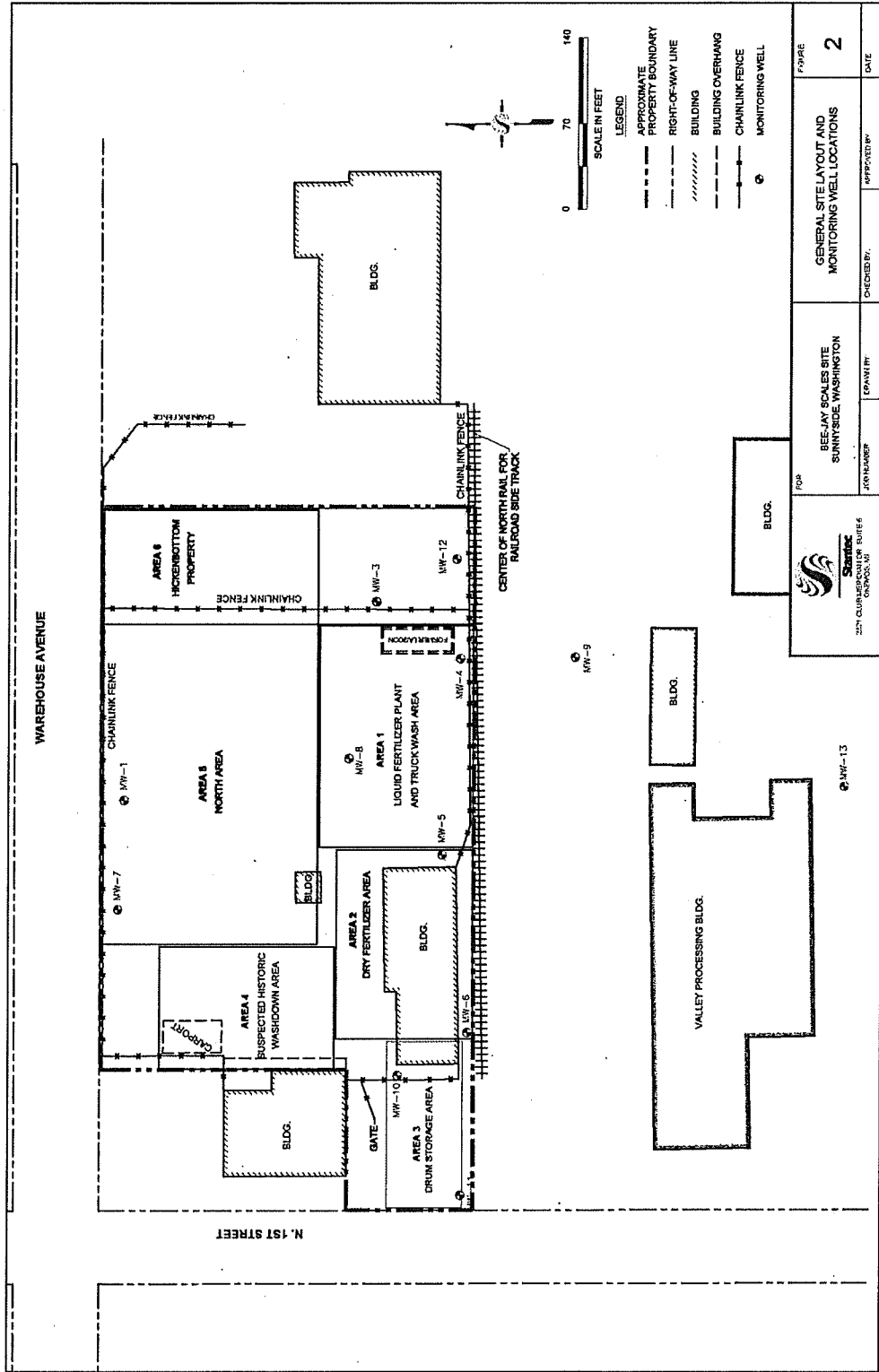
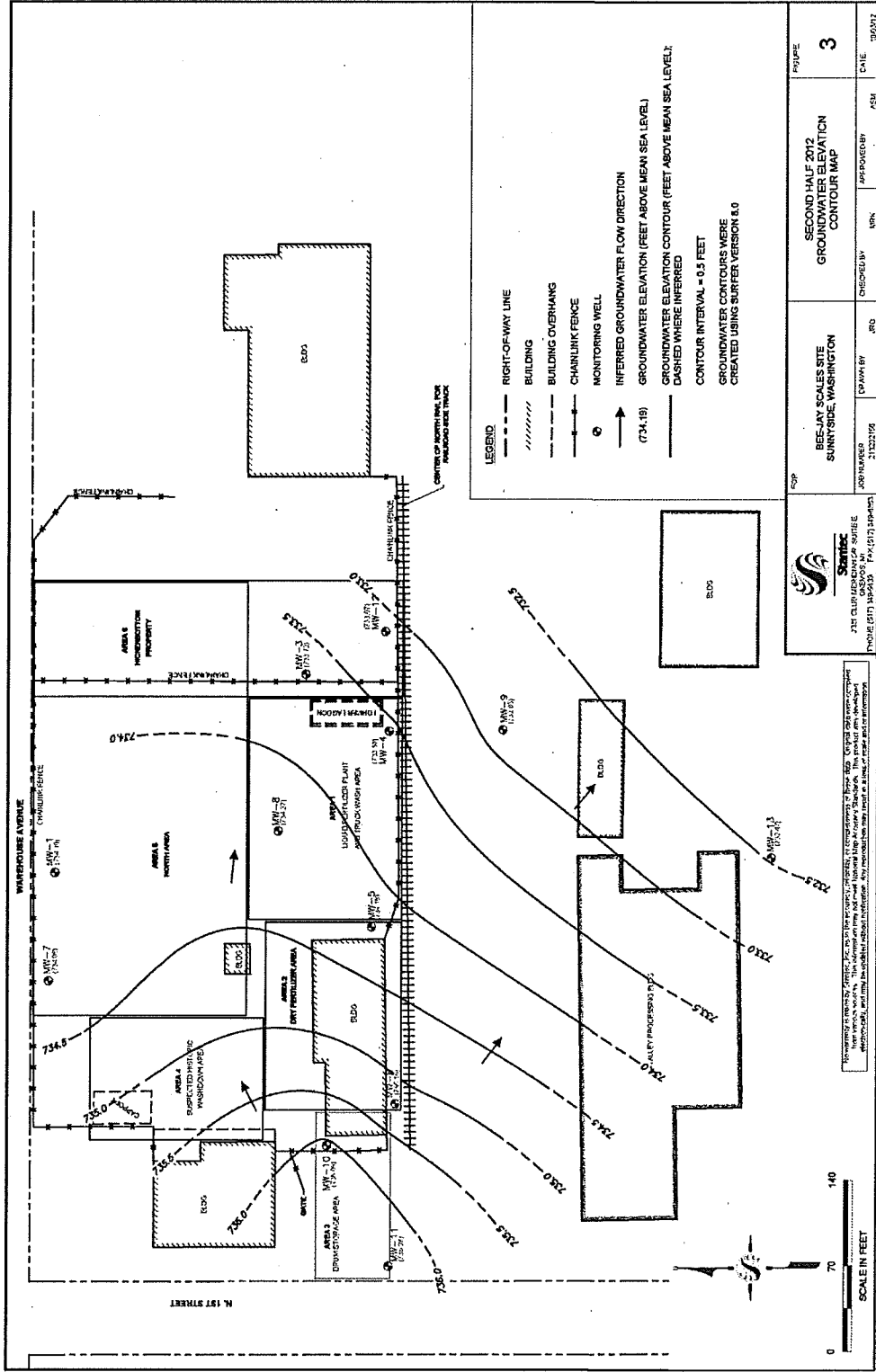
 <b>Stantec</b> 2321 CLUB MERIDIAN DR. SUITE E OKEMOS, MI PHONE (517) 349-9499 FAX: (517) 349-6863	FOR:	SITE LOCATION MAP		FIGURE:
	BEE-JAY SCALES SITE SUNNYSIDE, WASHINGTON			<b>1</b>
JOB NUMBER:	DRAWN BY:	CHECKED BY:	APPROVED BY:	DATE:
213201072	KAM	HMS	MRP	5/19/09

FIGURE 2: Property Layout



 250 GURNEY ROAD SUITE 6	FOR	DATE
	BEE-JAY SCALES SITE SUNNY-SIDE, WASHINGTON	APPROVED BY
GENERAL SITE LAYOUT AND MONITORING WELL LOCATIONS	CHECKED BY	DATE
FIGURE	LEARNER BY	DATE
2	2	2

**FIGURE 3: Groundwater Contour Map**





**FIGURE 4: Site Map Showing Storm Drain Assessment Analytical Results**

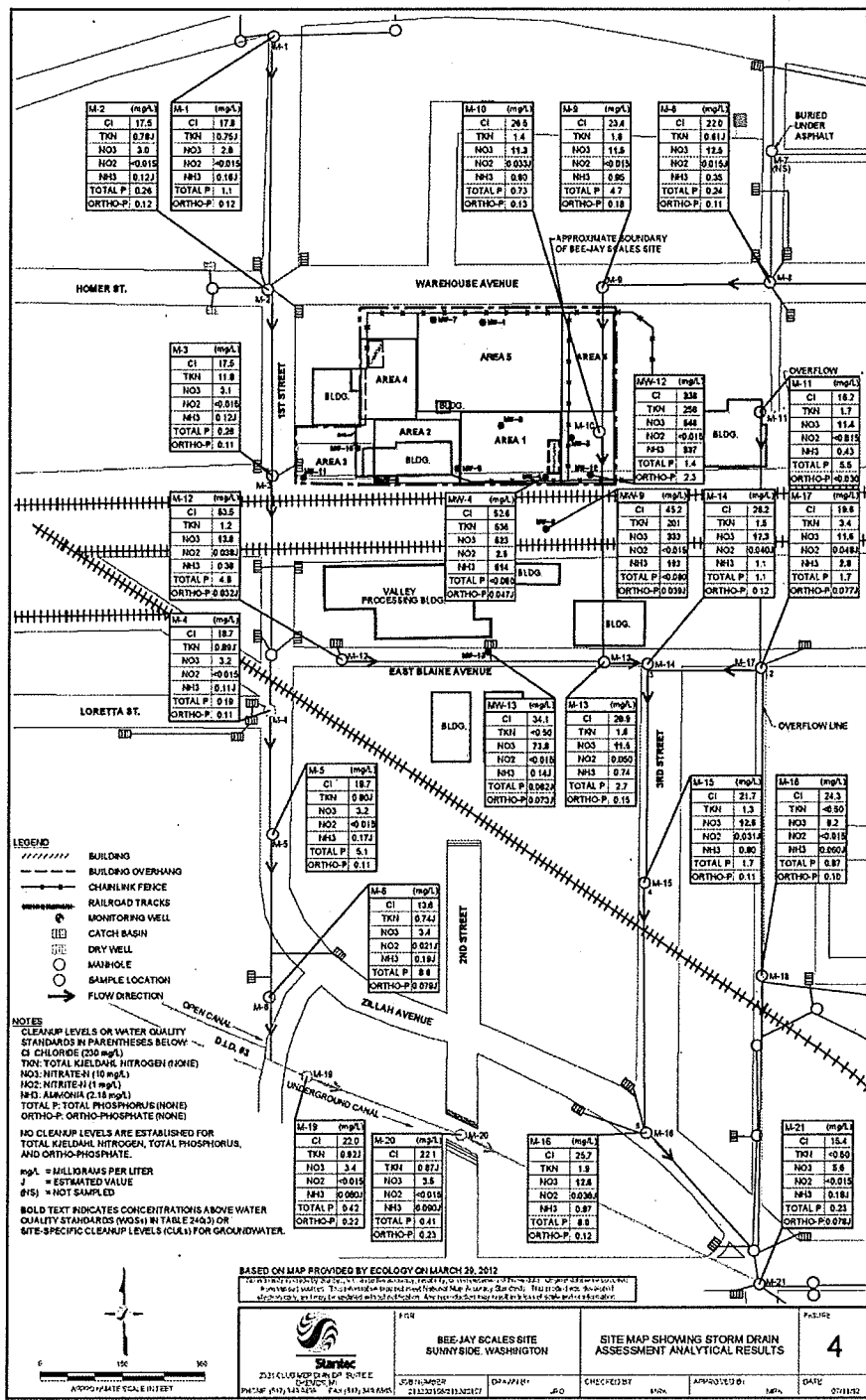


FIGURE 5: Preliminary Estimate of Nitrate Groundwater Plume

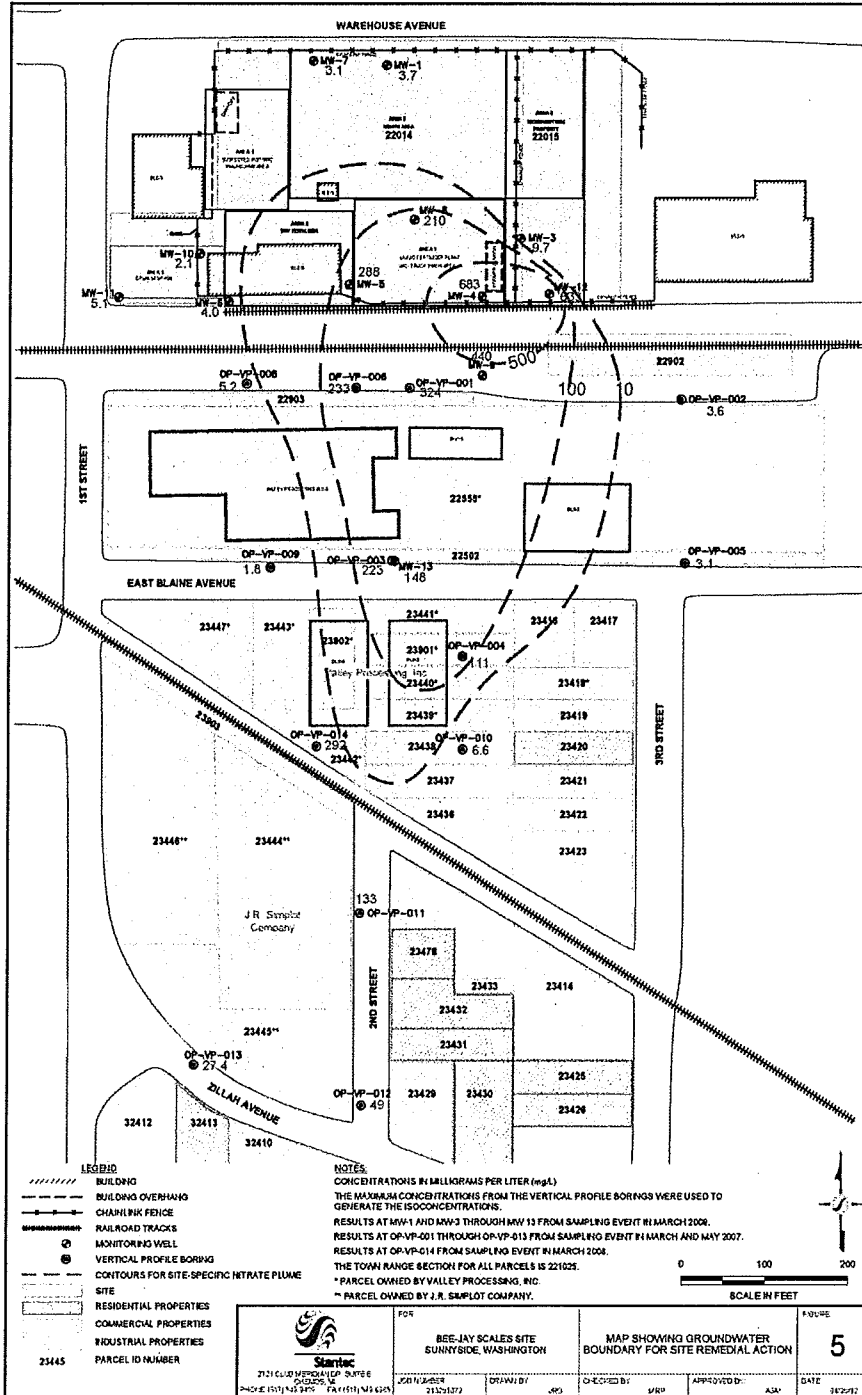


FIGURE 6: Nitrate Source Areas and Contaminant Levels

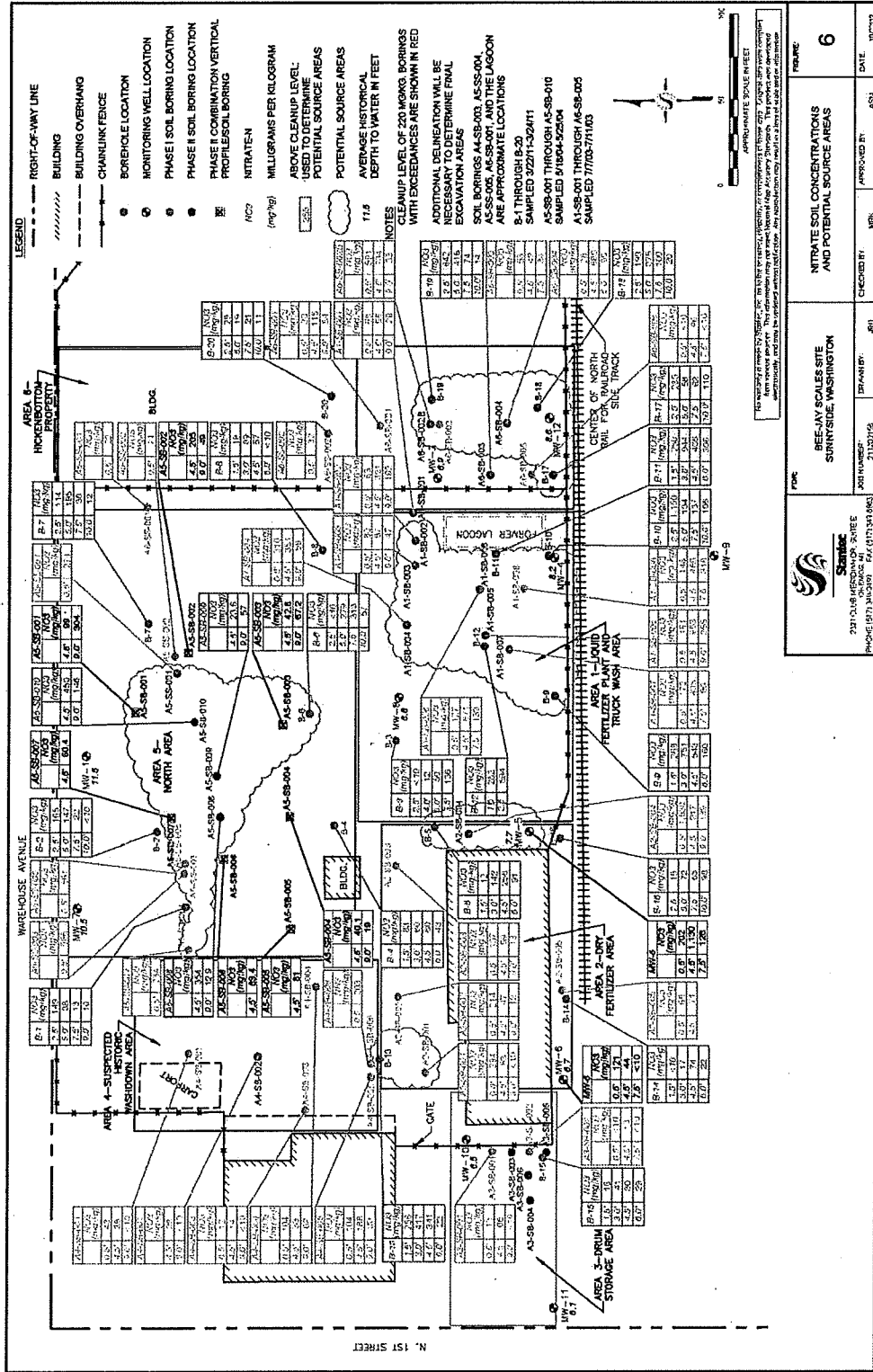
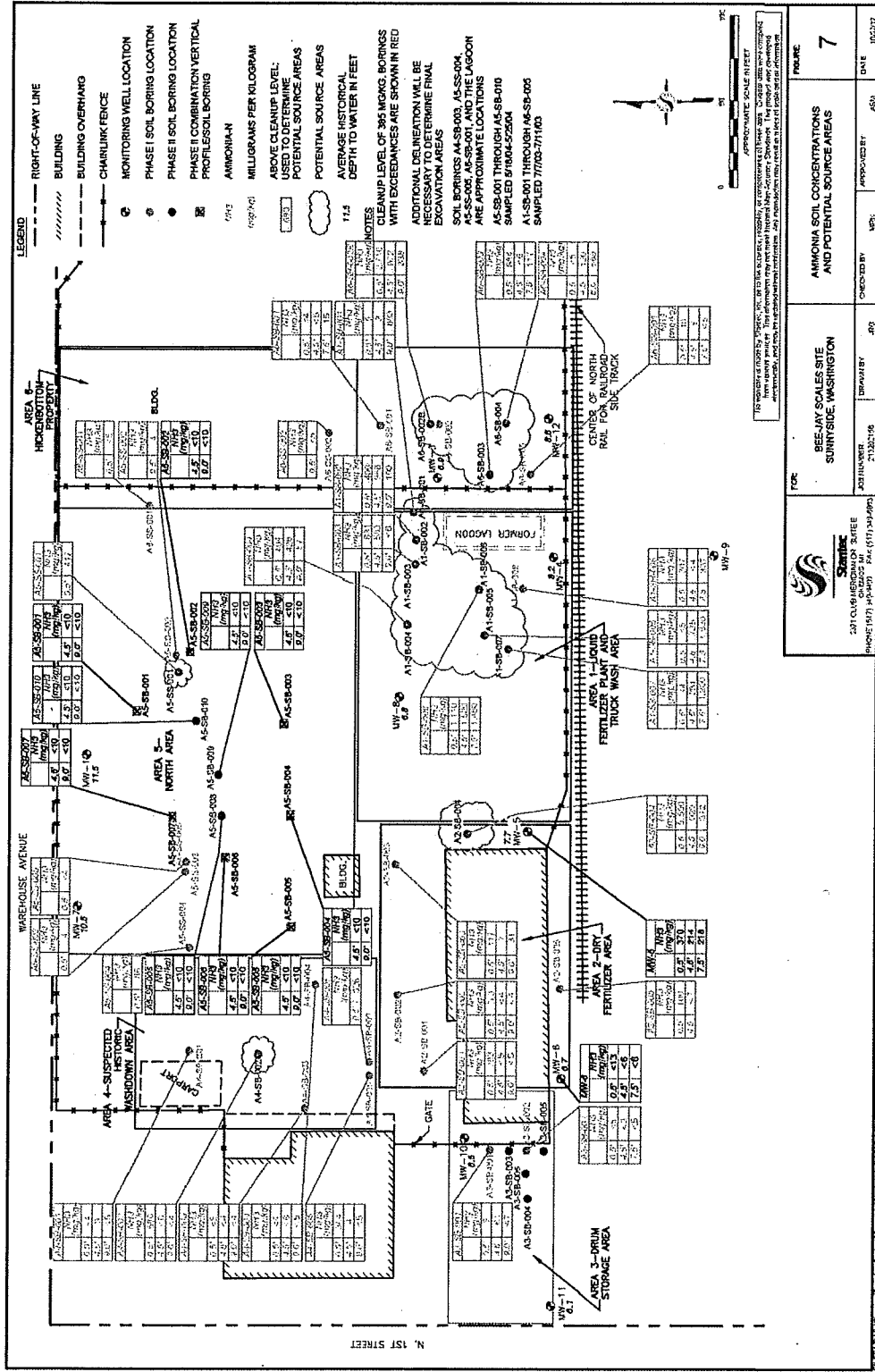


FIGURE 7: Ammonia Source Areas and Contaminant Levels



## EXHIBIT C

### Scope of Work & Schedule

**Scope of Work.** This is a summary of the Scope of Work for the remediation of the Bee-Jay Scales Site. Additional details are described in the final Cleanup Action Plan. The remediation includes a combination of soil excavation, *in situ* bioremediation injection wells/borings (for delivering sodium acetate solution or calcium acetate), institutional controls, monitored natural attenuation, and construction of vertical barrier wall treatment system or other Ecology-approved treatment method following public comment for the off-Property groundwater plume attributable to the Bee-Jay Scales Site.

*Soil Removal and In Situ Bioremediation* will both be used to effectively treat Property soils to residual levels that are protective of groundwater. The quantity of soil excavation and *in situ* bioremediation will be detailed in the cleanup action engineering design following additional on-site assessment to delineate soil excavation boundaries. Generally, soil with average nitrate and ammonia contaminant levels above 220 mg/kg and 385 mg/kg, respectively, will be excavated and removed from the Property and/or treated.

*Off-Property Groundwater Treatment Systems* will involve constructing vertical barrier wall treatment system(s) consisting of a PRB wall and/or a series of wells/borings, backfilled with calcium acetate or injected with sodium acetate, or other Ecology-approved treatment methods following public comment.

*Institutional Controls* shall be established to protect the public. These controls include making good faith efforts to cause restrictive covenants to be recorded by the current owners of properties within the Site and to notify the City, County, and the local health department of the presence of subsurface and groundwater contamination.

*Natural Attenuation* will be used to remediate nitrate and ammonia groundwater plume attributable to the Bee-Jay Scales Site thru natural biological degradation processes. A sampling program will be conducted to monitor the performance of the natural attenuation processes.

**Implementation Schedule.** The cleanup action shall be implemented in accordance with WAC 173-340-400 and the final Cleanup Action Plan. This is a summary of the implementation schedule for the Bee-Jay Scales Site:

1. Within 60 days of the effective date of the Consent Decree, the PLPs shall submit a detailed implementation schedule for the Site as described in the final Cleanup Action Plan.
2. Within 3 months of the effective date of the Consent Decree, the PLPs shall submit a draft Engineering Design Report and Construction Plans and Specifications for the source removal.

3. Within 6 months of Ecology's approval of the Construction Plans and Specifications, construction of the source removal remedial action shall commence.
4. Within 12 months of Ecology's approval of the Construction Plans and Specifications, construction of the source removal remedial action shall be completed.
5. Within 3 years from the effective date of the Consent Decree, construction of the groundwater remedial action shall be completed, except for those areas in which off-Property access is unreasonably denied or not provided in a timely manner.

## EXHIBIT D

After Recording Return to:

\_\_\_\_\_  
Department of Ecology  
15 West Yakima Ave -- Suite 200  
Yakima, WA 98902-3452

### Environmental Covenant

**Grantor:** [land owner]  
**Grantee:** State of Washington, Department of Ecology  
**Legal:** [fill in brief legal description]  
**Tax Parcel Nos.:** [fill in]

Grantor, [land owner], hereby binds Grantor, its successors and assigns to the land use restrictions identified herein and grants such other rights under this environmental covenant (hereafter "Covenant") made this \_\_\_ day of \_\_\_\_\_, 201\_\_ in favor of the State of Washington Department of Ecology (Ecology). Ecology shall have full right of enforcement of the rights conveyed under this Covenant pursuant to the Model Toxics Control Act, RCW 70.105D.030(1)(g), and the Uniform Environmental Covenants Act, RCW 64.70.

This Declaration of Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by [land owner], its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

A remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Covenant. The Remedial Action conducted at the property is described in the following document[s]:

Cleanup Action Plan, Bee Jay Scales, dated \_\_\_\_\_.

These documents are on file at Ecology's Central Regional Office located at 15 West Yakima Ave -- Suite 200, Yakima, WA 98902.

This Covenant is required because the Remedial Action resulted in residual concentrations of nitrate which exceed the Model Toxics Control Act Method A Cleanup Level(s) for groundwater established under WAC 173-340-720.

The undersigned, [land owner], is the fee owner of real property (hereafter "Property") in the County of Yakima, State of Washington, that is subject to this Covenant. The Property is legally described in **Attachment A** of this covenant which is made a part hereof by reference.

[Land owner] makes the following declaration as to limitations and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

Section 1. No groundwater may be taken for any use or purpose, except for those uses and purposes needed to support the Remedial Action as described in the Site Documents. No drinking water wells will be installed in the shallow aquifer at the Property, which extends to a depth of about 30 to 40 feet below the ground surface, while nitrate concentrations in groundwater exceed federal drinking water standards of 10 mg/l.

Section 2. Any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited.

Section 3. Any activity on the Property that will result in the release or exposure to the environment of nitrate in groundwater on the Property above federal drinking water standards, or creates a new exposure pathway to nitrate in groundwater above federal drinking water standards, is prohibited without prior written approval from Ecology.

Section 4. The Owner of the property must give thirty (30) days advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 5. The Owner must restrict leases to uses and activities consistent with the Covenant and notify lessees of the restrictions on the use of the Property.

Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Covenant. Ecology may approve any inconsistent use only after public notice and comment.



Section 7. The Owner will allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, to determine compliance with this Covenant, and to inspect records that are related to the Remedial Action.

Section 8. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

**[NAME OF GRANTOR]**

---

**[Name of Signatory]**

**[Title]**

Dated: \_\_\_\_\_

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

---

**[Name of Person Acknowledging Receipt]**

**[Title]**

Dated: \_\_\_\_\_

[INDIVIDUAL ACKNOWLEDGMENT]

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, I certify that \_\_\_\_\_ personally appeared before me, and acknowledged that **he/she** is the individual described herein and who executed the within and foregoing instrument and signed the same at **his/her** free and voluntary act and deed for the uses and purposes therein mentioned.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_  
My appointment expires \_\_\_\_\_

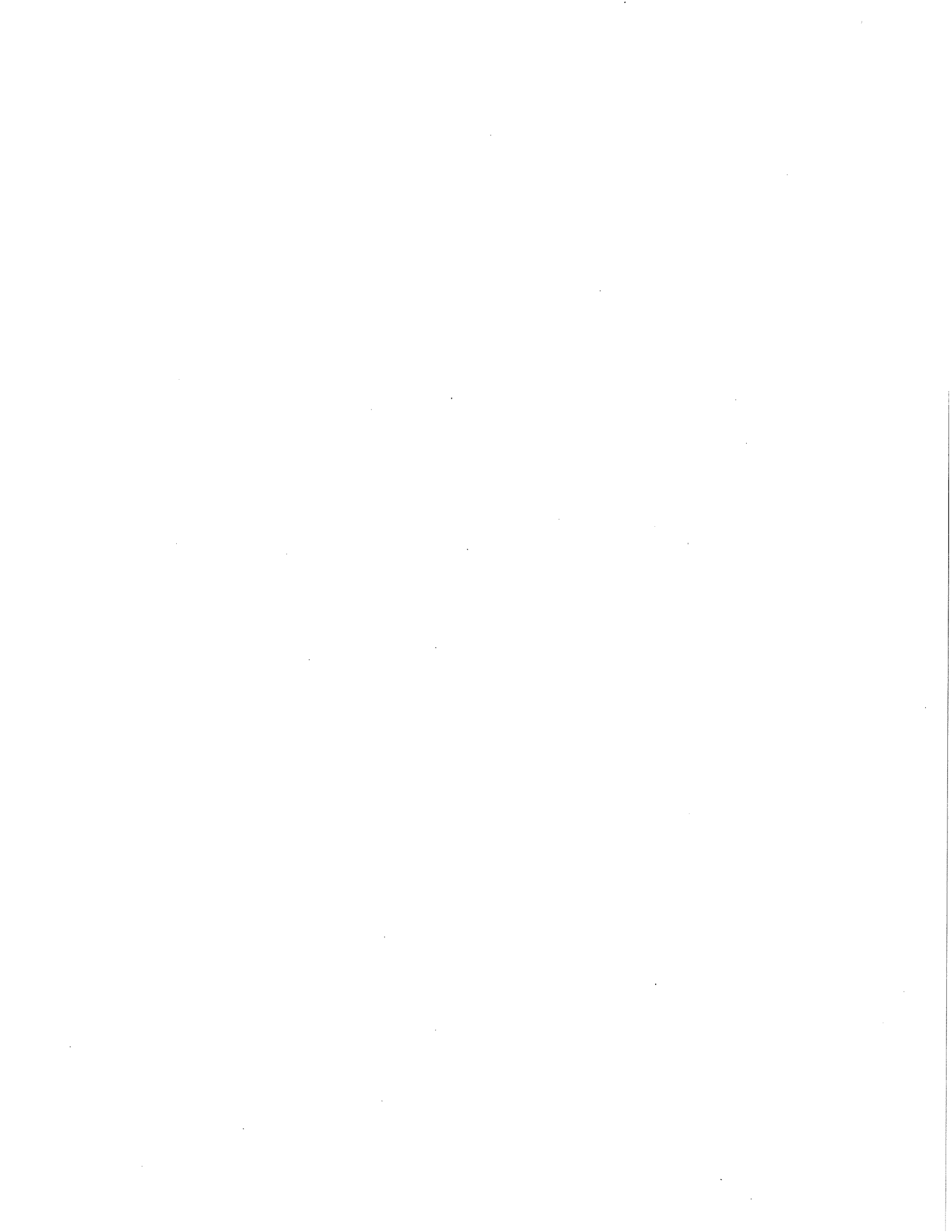
[CORPORATE ACKNOWLEDGMENT]

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, I certify that \_\_\_\_\_ personally appeared before me, acknowledged that **he/she** is the \_\_\_\_\_ of the corporation that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that **he/she** was authorized to execute said instrument for said corporation.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_  
\_\_\_\_\_  
My appointment  
expires \_\_\_\_\_

Exhibit A  
Legal Description



**EXHIBIT E**

**PUBLIC PARTICIPATION PLAN**

**Bee-Jay Scales Site  
116 N 1<sup>st</sup> Street  
Sunnyside, WA 98944**

**December 2012**

## **Table of Contents**

---

<b>1.0 INTRODUCTION .....</b>	<b>1</b>
1.1 GOALS AND OBJECTIVES .....	1

---

<b>2.0 SITE DESCRIPTION AND BACKGROUND .....</b>	<b>2</b>
--	----------

---

<b>3.0 PUBLIC INVOLVEMENT RESPONSIBILITIES AND ACTIVITIES .....</b>	<b>3</b>
3.1 POINTS OF CONTACT .....	3
3.2 FORMAL PUBLIC COMMENT PERIODS .....	3
3.3 PUBLIC MEETINGS AND HEARINGS.....	4
3.4 INFORMATION REPOSITORIES .....	4
3.5 SITE REGISTER.....	4
3.6 MAILING LIST.....	4
3.7 FACT SHEETS .....	4
3.8 ADDITIONAL ACTIVITIES .....	5
3.9 PLAN UPDATE.....	5
3.10PUBLIC PARTICIPATION GRANTS.....	5

### **FIGURES**

Figure 1	Site Location Map
Figure 2	Site Plan

## **1.0 Introduction**

---

This *Public Participation Plan* has been prepared on behalf of Chevron Chemical Company and American Oil Company. The plan was developed pursuant to the Model Toxics Control Act (MTCA) and Consent Decree No. \_\_\_\_ to promote public understanding and meaningful community involvement during the cleanup of the Bee-Jay Scales Site in Sunnyside, Washington (the Site). This plan outlines and describes the tools that the Washington State Department of Ecology (Ecology) uses to inform the public about Site activities and identifies opportunities for the community to become involved.

### **1.1 GOALS AND OBJECTIVES**

This plan is designed to achieve specific goals and satisfy the requirements of MTCA and Consent Decree No. \_\_\_\_\_. The main objectives of the *Public Participation Plan* are to:

- Open and maintain communication;
- Provide information about site cleanup that promotes public understanding of the cleanup process;
- Ensure the public's questions are answered and concerns are addressed; and
- Notify the public of opportunities to comment on and be involved in key decisions.

## **2.0 Site Description and Background**

---

The Site is located in the city of Sunnyside, within Yakima County, and is where contaminants released at the following two parcels have come to be located: Parcel No. 22102522014 and Parcel No. 22102522015 as recorded by the Yakima County Department of Assessment. Parcel No. 22102522014 is located at 116 North 1st Street and is owned by Bee-Jay Scales, Inc. Parcel No. 22102522015 is located at 301 Warehouse Avenue and is owned by Western General Land LLC. The Site's general location is shown on Figure 1. The property layout, including buildings, monitoring well locations and area boundaries, is shown on Figure 2.

The Site and adjacent areas have been used for industrial purposes since the turn of the century. An agricultural chemical distribution facility operated at the Site from the 1960s through at least 1986. Historical records indicate dry fertilizer, liquid fertilizer, and LP gas distribution operations were conducted. After 1986, operations related to the distribution of fertilizer were discontinued and the current businesses located at the Site began operations. Portions of the Site are used as an active trucking and scale operation.

The Site is bordered by N 1<sup>st</sup> Street to the west, Warehouse Avenue to the north, the remainder of the Western General Land LLC property to the east, and railroad tracks followed by Valley Processing to the south.

Stantec Consulting Services Inc. (Stantec), on behalf of Chevron Chemical Company and American Oil Company, has performed Phase I, Phase II, and Phase III Remedial Investigations that evaluated soil and groundwater impacts on-site and off-site. Stantec has also performed interim remedial measures to treat petroleum hydrocarbons in Area 3 on the Site and close the on-site lagoon. Semi-annual groundwater monitoring is currently on-going in 12 Site monitoring wells. Contaminants of potential concern include nitrate, herbicides, and select volatile organic compounds (VOCs) and metals.



## **PUBLIC PARTICIPATION PLAN**

Bee-Jay Scales Site, Sunnyside, Washington

### **3.0 Public Involvement Responsibilities and Activities**

---

The purpose of the *Public Participation Plan* is to promote public understanding and participation in the MTCA activities planned for the Site. This section of the plan addresses how Ecology will share information and receive public comments and community input on the Site activities.

Ecology uses a variety of activities to facilitate public participation in the cleanup of MTCA sites. The following is a list of the public involvement activities that Ecology will use, their purposes, and descriptions of when and how they will be used during cleanup.

#### **3.1 POINTS OF CONTACT**

If you have questions or need more information about this plan or the Bee-Jay Scales Site cleanup project, please contact the following:

Norm Hepner, Project Coordinator  
Washington State Department of Ecology  
Central Regional Office  
15 West Yakima Ave, Suite 200  
Yakima, WA 98902-3452  
Phone: (509) 457-7127  
Email: [norm.hepner@ecy.wa.gov](mailto:norm.hepner@ecy.wa.gov)

#### **3.2 FORMAL PUBLIC COMMENT PERIODS**

Comment periods are the primary method Ecology uses to get feedback from the public on proposed cleanup decisions. Comment periods usually last 30 days and are required under Washington Administrative Code (WAC) 173-340-600 at certain points during the investigation and cleanup process.

During a comment period, the public can comment in writing. Verbal comments are taken if a public hearing is held. After the formal comment period, Ecology reviews all comments received and may respond in a document called a responsiveness summary. The responsiveness summary will be sent to those who submit written comments and to the information repositories detailed in Section 3.4. Notice of the availability of the responsiveness summary will be printed in the Site Register detailed in Section 3.5.

Ecology will consider the need for changes or revisions based on input from the public. If significant changes are made, then a second comment period may be held. If no significant changes are made, then the draft document(s) will be finalized.

Public comment periods will be held for draft cleanup action plans and future consent decrees that are developed for the Site.

## **PUBLIC PARTICIPATION PLAN**

Bee-Jay Scales Site, Sunnyside, Washington

### **3.3 PUBLIC MEETINGS AND HEARINGS**

Public meetings may be held during the cleanup process as required by WAC 173-340-600. Ecology also may offer public meetings for actions expected to be of particular interest to the community. These meetings will be held at locations convenient to the community. If 10 or more people request a public meeting, one will be scheduled. Otherwise, meetings will be scheduled as needed.

### **3.4 INFORMATION REPOSITORIES**

Information repositories are places where the public may read and review Site information, including documents that are the subject of public comment. Documents available for public review and comment can be found here:

- Washington State Department of Ecology, Central Regional Office, 15 W Yakima Avenue, Suite 200, Yakima, WA 98902-3463. Please call (509) 454-7658 for an appointment.
- Sunnyside Library, 621 Grant, Sunnyside, 98944
- Ecology's website at: <https://fortress.wa.gov/ecy/gsp/Sitepage.aspx?csid=3641>.

### **3.5 SITE REGISTER**

Ecology's Toxics Cleanup Program uses its bimonthly Site Register to announce public meetings and comment periods, as well as many other activities. To receive the Site Register in electronic or hard copy format, contact Seth Preston at (360) 407-6848 or by e-mail at [Seth.Preston@ecy.wa.gov](mailto:Seth.Preston@ecy.wa.gov). It is also available on Ecology's website at: [http://www.ecy.wa.gov/programs/tcp/pub\\_inv/pub\\_inv2.html](http://www.ecy.wa.gov/programs/tcp/pub_inv/pub_inv2.html).

### **3.6 MAILING LIST**

Ecology will compile a mailing list for the Site. The list will include individuals, groups, public agencies, elected officials, private businesses, potentially affected parties, and other known interested parties. The list will be maintained at Ecology's Central Regional Office and will be updated as needed.

Please contact Norm Hepner at (509) 457-7127 or [norm.hepner@ecy.wa.gov](mailto:norm.hepner@ecy.wa.gov) if you would like to have your address added to or deleted from this mailing list.

### **3.7 FACT SHEETS**

Ecology will mail fact sheets to persons and organizations interested in the Bee-Jay Scales Site cleanup project to inform them of public meetings, comment opportunities, and important Site activities. Ecology also may mail fact sheets about the progress of Site activities.

## **PUBLIC PARTICIPATION PLAN**

Bee-Jay Scales Site, Sunnyside, Washington

### **3.8 ADDITIONAL ACTIVITIES**

As part of providing public notice of formal public comment periods, the following activities may be undertaken by either Ecology or Stantec:

- Media releases may be issued to the local newspapers or to radio and television stations.
- Public notices may be posted at the information repository and/or other public buildings.

These activities are to be coordinated with the required public notice activities.

### **3.9 PLAN UPDATE**

This *Public Participation Plan* may be updated or amended as the project proceeds. If an update is necessary, and constitutes a substantial change in the plan, it will be announced via Site Register and the website.

### **3.10 PUBLIC PARTICIPATION GRANTS**

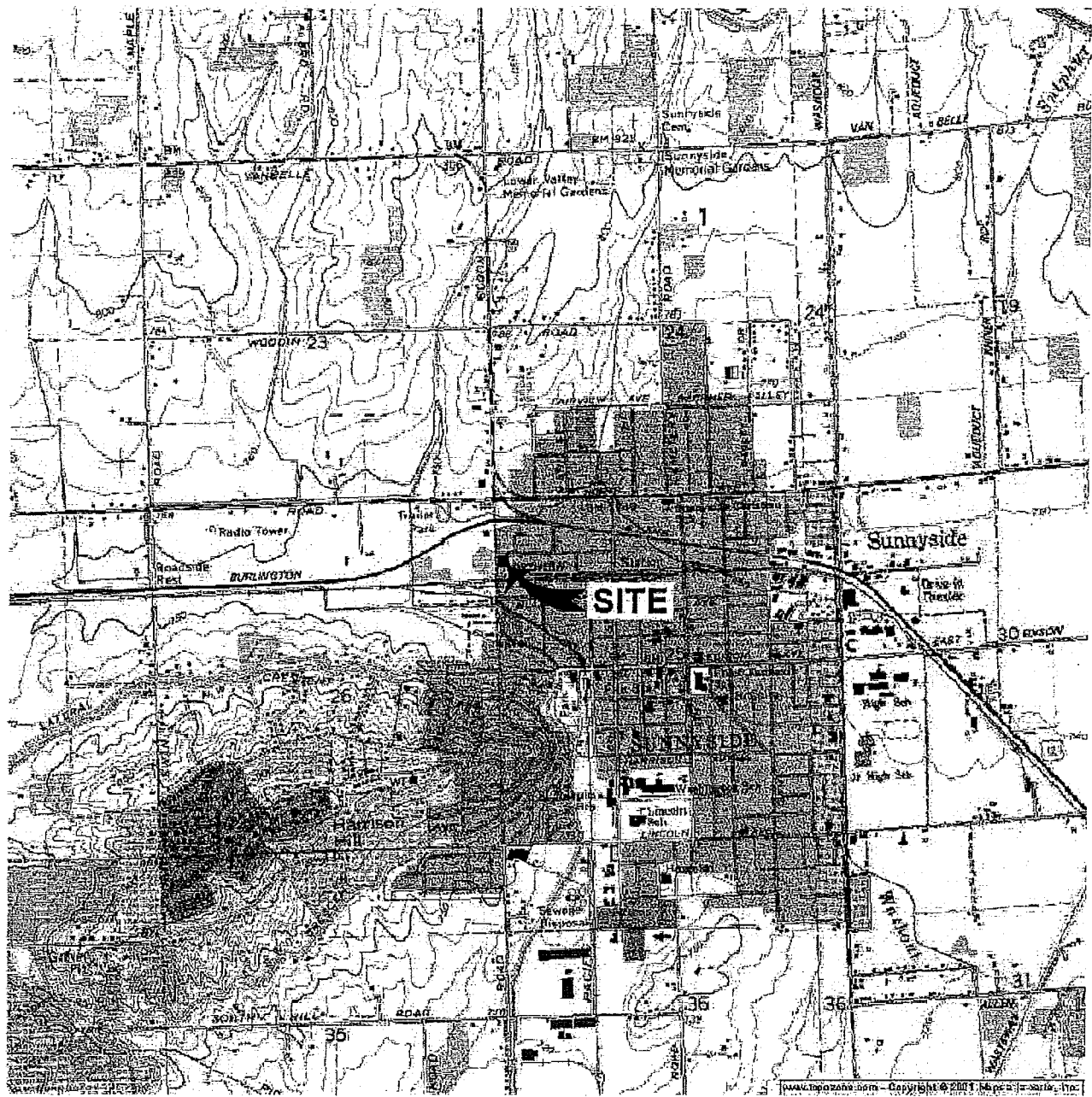
As part of MTCA, Ecology developed a public participation grant program to promote public participation during cleanups. Public Participation Grants provide funding to community groups to help involve the public in the investigation and cleanup of contaminated properties. The grants also help develop and carry out programs that promote the state's solid or hazardous waste management priorities.

For cleanup sites, non-profit groups or groups of three or more unrelated individuals can apply for grants to fund outreach and education efforts for the community that is impacted by the cleanup. Past projects have helped people understand the cleanup and how to comment on cleanup proposals during public comment periods. Grant funds may be used to pay for technical experts who help people understand cleanup issues. They can also be used to hold meetings, workshops and other events that help to inform people. In addition, printing and distribution of reports, brochures and other materials may be covered.

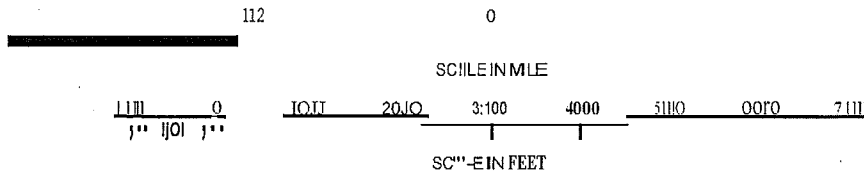
For more information about this grant program, visit:

<http://www.ecy.wa.gov/programs/swfa/grants/ppg.html>.

# Figures



WASHINGTON



SOURCE: USGS 7.5 MINUTE QUADRANGLE, SUNNYSIDE, WASHINGTON: 1975



**Stantec**

2321 CLUB ERIDANI OR SUITE

014 MOS, MI

PHONE: (517) 49-9699 FAX: (517) 34-63

FOR

BEE-JAY SCALES SITE  
SUNNYSIDE, WASHINGTON

SITE LOCATION MAP

FIGURE:

1

JOB NUMBER:

213201072

ORAV.NBY:

KAM

CHIEF/D BY:

HMS

APPROVED BY:

MRP

DATE:

WAREHOUSE AVENUE

C

MW-7

MW-1

AREAS NORTH AREA

AREAS HICKENBOTTOM PROPERTY

CHAINLINK FENCE

AREA 4 SUSPECTED HISTORIC WASHDOWN AREA

BLDG.

AREA 2 DRY FERTILIZER AREA

MW-8

AREA 1 LIQUID FERTILIZER PLANT AND TRUCK WASH AREA

MW-3

GATE

MW-10

AREA 3 DRUM STORAGE AREA

BLDG.

MW-4

MW-12

CHAINLINK FENCE

MW-11

MW-6

MW-5

CENTER OF NORTHERN RAILROAD SITE TRACK

MW-2

VALLEY PROCESSING BLDG

BLDG.

BLDG.

MW-13



3231 CLUB MERCHANT CRT. SUITE B  
OKEMOS, MI  
PHONE 18171340-4499 FAX 18171340-5063

FOR: BEE-JAY SCALES SITE  
SUNNYSIDE, WASHINGTON

JOB NUMBER: 212331072-200.003

DRAWN BY

**Exhibit F: Table F-1  
Applicable or Relevant and Appropriate Requirements and Permits  
Bee-Jay Scales Site  
Sunnyside, Washington**

REGULATION <sup>1</sup>	CODE	TYPE	SUMMARY	ADMINISTERING AGENCY	ANALYSIS
Storm Water Construction Permit Regulation	SMC 13.30.140	Action Specific	Beginning in 2010, prior to construction of any structure, grading or improvement upon real property located within City limits, a storm water plan shall be submitted and upon approval, a storm water construction permit shall be issued upon payment of the storm water construction permit fees as provided in SMC 13.30.150.	City of Sunnyside	Relevant and appropriate for alternatives such as excavation and PRB installation.
Washington Underground Injection Control Program	WAC 173-218	Action Specific	An example of Class V injection wells that are allowed in Washington are those used for remediation wells receiving fluids intended to cleanup, treat, or prevent subsurface contamination. The wells must be registered and rule authorized (WAC 173-218-070).	Washington Department of Ecology	Applicable for in situ bioremediation alternative.
Washington Clean Air Act (Ambient Air Quality Standards for Particulate Matter)	WAC 173-470	Action Specific	Establishes maximum acceptable levels for particulate matter in the ambient air.	Washington Department of Ecology	Relevant and appropriate for alternatives such as excavation and PRB installation.
Construction Dust Control Policy of the Yakima Regional Clean Air Agency	Incorporates Regulation I of Yakima County Regional Clean Air Agency Chapter 70.94 RCW and WAC 173-400	Action Specific	Requires any owner, developer, or operator engaged in construction, repair, remodeling, or demolition of any building; engaged in any road construction or repair; or construction site preparation or landscaping within the exterior boundaries of Yakima County to prepare a site-specific fugitive dust control plan to be reviewed by the Yakima Regional Clean Air Agency.	Yakima Regional Clean Air Agency	Relevant and appropriate for alternatives such as excavation and PRB installation.
Erosion and Sediment Control Permit Regulation	SMC 15.54	Action Specific	Prohibits grubbing, clearing, grading, filling, excavating, quarrying, mining and/or stockpiling of soil on any property within the City of Sunnyside or improving or developing any such property without an erosion and sedimentation control permit.	City of Sunnyside	Relevant and appropriate for alternatives such as excavation and PRB installation.

**Notes:**

<sup>1</sup> This list may not be all inclusive and additional permits/requirements may be identified during the public comment period.

APAR = Applicable or relevant and appropriate requirement

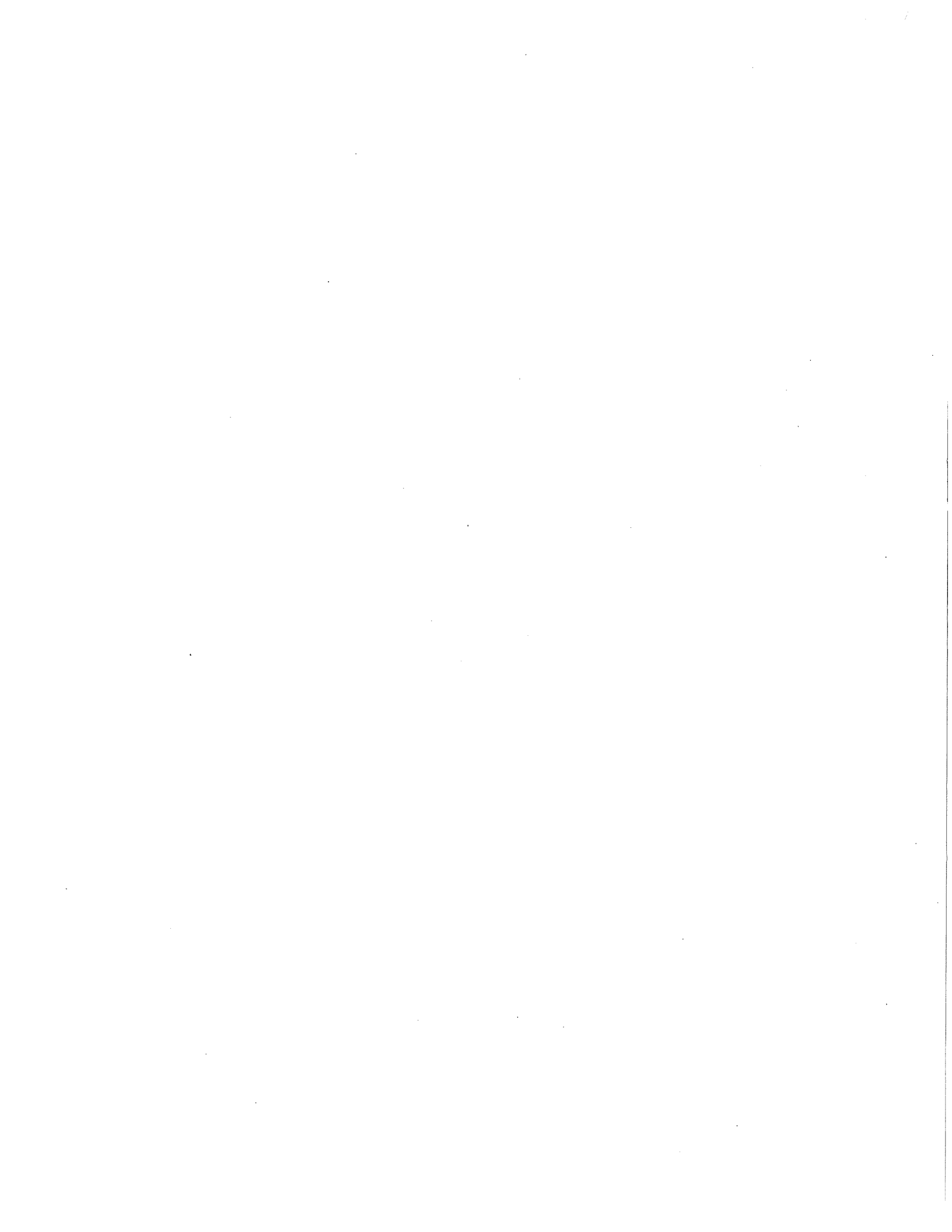
MTCA = Model Toxics Control Act

PRB = Permeable Reactive Barrier

RCW = Revised Code of Washington

SMC = Sunnyside Municipal Code

WAC = Washington Administrative Code





**FILED**  
MAY 28 2013

**RECEIVED**  
MAY 31 2013  
ATTORNEY GENERAL'S OFFICE  
Ecology Division

KIM M. EATON, YAKIMA COUNTY CLERK

STATE OF WASHINGTON  
YAKIMA COUNTY SUPERIOR COURT

13 Z 01766 0

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

NO.

Plaintiff,

JOINT MOTION FOR ENTRY OF  
CONSENT DECREE

v.

CHEVRON CHEMICAL COMPANY,  
and AMERICAN OIL COMPANY,

Defendants.

**I. INTRODUCTION**

Plaintiff, State of Washington, Department of Ecology (Ecology), and Defendants, Chevron Chemical Company and American Oil Company, bring this motion seeking entry of the attached Consent Decree (Decree). This motion is based upon the pleadings filed in this matter, including the Declaration of Norman Hepner, a Site Manager for Ecology's Toxics Cleanup Program.

**II. RELIEF REQUESTED**

The parties request that the Court approve and enter the attached Consent Decree, which governs the cleanup of contamination at the Bee-Jay Scales Site in Sunnyside, Washington, pursuant to the Model Toxics Control Act (MTCA), Chapter 70.105D RCW. The parties also request that the Court retain jurisdiction over this action until the work required by the Consent Decree is completed and the parties request a dismissal of this action.

1 **III. AUTHORITY**

2 Authority is conferred upon the Washington State Attorney General by  
3 RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if, after  
4 public notice and any required hearing, Ecology finds the proposed settlement would lead to a  
5 more expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that such  
6 a settlement be entered as a consent decree issued by a court of competent jurisdiction.

7 **IV. AGENCY DETERMINATIONS SUPPORTING ENTRY OF DECREE**

8 A. Ecology has determined that a release or threatened release of hazardous  
9 substances has occurred at the Site that is the subject of this Decree. Declaration of Norman  
10 Hepner (Hepner Decl.) ¶ 4.

11 B. Ecology has determined that contamination at the Site presents a threat to human  
12 health and the environment. Hepner Decl. ¶ 6.

13 C. Ecology has given notice separately to Chevron Chemical Company and  
14 American Oil Company of Ecology's determination that they are PLPs for the Site, as required  
15 by RCW 70.105D.020(16) and WAC 173-340-500. Hepner Decl. ¶ 7.

16 D. The actions to be taken pursuant to this Decree are necessary to protect public  
17 health and the environment. Hepner Decl. ¶ 9.

18 E. This Decree has been subject to public notice and comment. Ecology considered  
19 all comments received, and determined that no additional public comment was required. Hepner  
20 Decl. ¶¶ 10, 11.

21 F. Ecology has determined that this Decree will lead to a more expeditious cleanup  
22 of hazardous substances at the Site in compliance with cleanup standards established under RCW  
23 70.105D.030(2)(e), Chapter 173-340 WAC, and Chapter 173-204 WAC. Hepner Decl. ¶ 9.

24 **V. CONCLUSION**

25 The parties believe it is appropriate for the Court to exercise its discretion and approve  
26 the attached Consent Decree, and hereby request that the Court enter the attached Order. The

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

parties further request that the Court retain jurisdiction to enforce the terms of the Consent Decree.

DATED this \_\_\_\_ day of May 2013.

ROBERT W. FERGUSON  
Attorney General

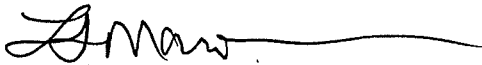
GRAHAM & DUNN PC

---

ANNE M. POWELL, WSBA #42934  
Assistant Attorney General  
  
Attorneys for Plaintiff  
State of Washington  
Department of Ecology  
(360) 586-6770

---

STEPHEN H. GOODMAN, WSBA #14973  
Attorney for Defendant  
American Oil Company  
(206) 340-9607



---

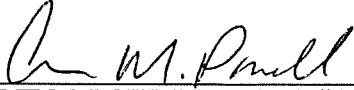
LYNN MANOLOPOULOS, WSBA #21069  
Attorney for Defendant  
Chevron Chemical Company  
(425) 646-6146

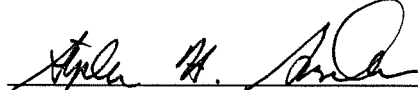
1 parties further request that the Court retain jurisdiction to enforce the terms of the Consent  
2 Decree.

3 DATED this 23 day of May 2013.

4 ROBERT W. FERGUSON  
5 Attorney General

GRAHAM & DUNN PC

6 



7 ANNE M. POWELL, WSBA #42934  
8 Assistant Attorney General

STEPHEN H. GOODMAN, WSBA #14973  
9 Attorney for Defendant  
10 American Oil Company  
11 (206) 340-9607

12 Attorneys for Plaintiff  
13 State of Washington  
14 Department of Ecology  
15 (360) 586-6770

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  

---

27 LYNN MANOLOPOULOS, WSBA #21069  
28 Attorney for Defendant  
29 Chevron Chemical Company  
30 (425) 646-6146

FILED  
MAY 28 2013

RECEIVED  
MAY 31 2013  
ATTORNEY GENERAL'S OFFICE  
Ecology Division

KIM M. EATON, YAKIMA COUNTY CLERK

STATE OF WASHINGTON  
YAKIMA COUNTY SUPERIOR COURT

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

CHEVRON CHEMICAL COMPANY,  
and AMERICAN OIL COMPANY,

Defendants.

NO. 13-2-01766-0

ORDER ENTERING  
CONSENT DECREE  
[Proposed]

Having reviewed the Joint Motion for Entry of the Consent Decree, it is hereby ORDERED AND ADJUDGED that the Consent Decree in this matter is entered and that the Court shall retain jurisdiction over the Consent Decree to enforce its terms.

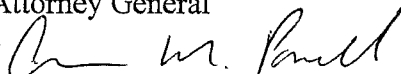
DATED this 28 day of May 2013.

**SUSAN L. HAHN**

Superior Court Judge/Commissioner

Presented by:

ROBERT W. FERGUSON  
Attorney General

  
ANNE M. POWELL, WSBA #42934  
Assistant Attorney General  
Attorneys for Plaintiff  
Washington Department of Ecology  
(360) 586-6770

**FILED**  
MAY 28 2013

RECEIVED  
MAY 31 2013  
ATTORNEY GENERAL'S OFFICE  
Ecology Division

KIM M. EATON, YAKIMA COUNTY CLERK

STATE OF WASHINGTON  
YAKIMA COUNTY SUPERIOR COURT

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

CHEVRON CHEMICAL COMPANY,  
and AMERICAN OIL COMPANY,

Defendants.

NO.

13-2-01766-0

DECLARATION OF NORMAN  
HEPNER

I, Norman Hepner, declare as follows:

1. I am over twenty-one years of age and am competent to testify herein. The facts set forth in this declaration are from my personal knowledge.

2. I am employed by the Washington State Department of Ecology as a Site Manager in the Central Regional Office of Ecology's Toxics Cleanup Program. I am the designated Site Manager for, and am therefore knowledgeable about, matters relating to the Bee-Jay Scales Site.

3. The Bee-Jay Scales Site is located in Sunnyside, Washington.

4. Ecology has determined that a release or threatened release of hazardous substances has occurred at the Site.

5. Investigations conducted at the Site indicate that nitrate and ammonia soil and groundwater contamination are present.

1           6. Ecology has determined that contamination at the Site presents a threat to  
2 human health and the environment.

3           7. Ecology has given notice to all Defendants of Ecology's determination that each  
4 Defendant is a potentially liable party (PLP) for the Site, as required by  
5 RCW 70.105D.020(16) and WAC 173-340-500.

6           8. Ecology has developed a draft Cleanup Action Plan (CAP) for the Site and  
7 negotiated a draft Consent Decree with Defendants.

8           9. Ecology has determined that the actions to be taken pursuant to the Decree are  
9 necessary to protect public health and the environment, and will lead to a more expeditious  
10 cleanup of hazardous substances at the Site in compliance with cleanup standards established  
11 under RCW 70.105D.030(2)(e), Chapter 173-340 WAC, and Chapter 173-204 WAC.

12           10. The draft Consent Decree and draft CAP were subject to public notice and  
13 comment as required by RCW 70.105D.040(4)(a) from January 30 to March 4, 2013.

14           11. Ecology received no comments during the public comment period. Ecology  
15 determined that no additional public comment was required under WAC 173-340-600.

16           12. Ecology has now issued the final CAP for the Site, and the parties have entered  
17 into the final Consent Decree. The final CAP is an integral and enforceable exhibit to the  
18 Decree.

19           I declare under penalty of perjury of the laws of the state of Washington that the  
20 foregoing is true and correct.

21           DATED this 27 day of March, 2013, in Yakima Washington.

22  
23   
24  
25  
26  
NORMAN HEPNER