

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

AGREED ORDER

City of Bothell

No. DE 9704

RE: Ultra Custom Care Cleaners
18304 Bothell Way NE
Bothell, Washington 98011

TO: Robert S. Stowe
City Manager
City of Bothell
18305 101st Avenue NE
Bothell, WA 98011

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the City of Bothell under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the City of Bothell to conduct a remedial investigation/feasibility study (RI/FS), perform an interim action, and submit a draft cleanup action plan (DCAP) for the Ultra Custom Care Cleaners Site located at and around 18304 Bothell Way NE in Bothell, Washington. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

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

III. PARTIES BOUND

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

IV. DEFINITIONS

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

A. Site: The Site is referred to as Ultra Custom Care Cleaners, located at and around 18304 Bothell Way NE in downtown Bothell, Washington. The property from which the contamination originated is known as the Case property. The Site is defined by the extent of

contamination caused by the release of hazardous substances at the Site. Based upon factors currently known to Ecology, the Site is more particularly described in the Site Diagram (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(5).

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

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

D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order. The terms “Agreed Order” or “Order” shall include all exhibits to this Order.

V. FINDINGS OF FACT

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

A. The City of Bothell owns the property located at 18304 Bothell Way NE in downtown Bothell (King County Tax Parcel No. 0726059003) as well as the adjacent right-of-way. The City of Bothell acquired the property in February 2012 in order to accommodate the renovation and expansion of City Hall and related public amenities and improvements. King County Assessor, eReal Property, Parcel No. 072605-9003, <http://info.kingcounty.gov/Assessor/eRealProperty/Dashboard.aspx?ParcelNbr=0726059003> (last visited Dec. 11, 2012).

B. The Ultra Custom Care Cleaners property is located at 18300 – 18304 Bothell Way NE (also known as the Bothell-Everett Highway), Bothell, Washington, at the northeast intersection of Bothell Way NE and NE 183rd Street. This 0.25 acre property consists of a rectangular lot and a single building housing, from north to south, the Ultra Custom Care Cleaners dry cleaning facility, Frank’s Hair Design hair salon, and the Laundry Basket Laundromat. From the early 1950s until 1967 when the current building was constructed, the Raincheck Cleaners and Laundry operated in a separate building in the southwest corner of the property.

C. Several investigations have been performed as independent remedial actions at the Site, including EHS International, Inc. (2001a, 2001b), Farallon Consulting (2002), and Environmental Partners, Inc. (2004). Sampling results indicated that soil and groundwater at the Case property contained halogenated volatile organic compounds (HVOCs), primarily the dry cleaning solvent tetrachloroethylene (a.k.a., perchloroethene or PCE), and also associated degradation compounds trichloroethylene (TCE), cis-1,2-dichloroethylene (cis-1,2-DCE), and Vinyl Chloride (VC). HVOC concentrations in soil were below MTCA Method A cleanup levels. However, PCE, TCE, and cis-1,2-DCE concentrations in groundwater exceeded the MTCA Method A cleanup levels for these compounds with the highest concentrations occurring in the southwest corner of the Site where the former Raincheck Cleaners and Laundry building was located. Surface water samples collected from stormwater catch basins on the property contained PCE concentrations above the MTCA Method A cleanup level of 5 micrograms per liter ($\mu\text{g/L}$). The results of the EHS International, Farallon Consulting, and Environmental Partners site investigations indicated that the source of the PCE and related degradation products was the former Raincheck Cleaners and Laundry facility.

D. CDM (2009) performed a Phase II Environmental Site Assessment of the City's Crossroads Redevelopment Project area, downgradient of the Case property. This assessment was an independent remedial action. To evaluate HVOC distribution in the area, CDM used a direct push rig to collect soil and groundwater samples along Bothell Way NE adjacent to and south of the Case property. CDM concluded that PCE contaminated groundwater that apparently originates at the former Raincheck Cleaners and Laundry facility is migrating south along utility corridors in Bothell Way NE. Similarly, in 2008 HWA GeoSciences found PCE in concentrations exceeding MTCA Method A cleanup levels in two groundwater samples collected in monitoring wells south of the Case property.

E. CDM (2011) performed supplemental groundwater investigations as independent remedial actions, which further defined the northern portion of the plume as being mostly along

Bothell Way NE, with limited solvents in groundwater on properties east and west of the roadway in the block south of the source.

F. The Site is listed as facility number 379891 on the Department of Ecology's Confirmed and Suspected Contaminated Sites List (CSCSL) for solvent contamination in soil and groundwater.

G. Several reports document the release of hazardous substances at the Site. These documents, and other reports relating to the Site, are available at Ecology's Northwest Regional Office Central Records.

- CDM, Phase I Environmental Site Assessment, Former Raincheck Cleaners and Laundry Site, 18304 Bothell Way NE, Bothell, Washington (prepared for King County Solid Waste Division) (Jan. 2, 2008)
- CDM, Draft Phase II Environmental Site Assessment, City of Bothell Crossroads (2009)
- Redevelopment Project, Bothell, Washington (May 2009)
- CDM, Supplemental Phase II Environmental Site Assessment, Former Raincheck Cleaners – Offsite Area, 18304 Bothell Way NE, Bothell, Washington (Aug. 17, 2011)
- Environmental Partners, Inc., Chlorinated VOC Nature and Extent Investigation Letter Report, Case Property 18300-18304 Bothell Way NE, Bothell, WA, EPI Project No. 46101.0 (Nov. 30, 2004)
- Farallon Consulting, Subsurface Investigation Report, Ultra Custom Care Cleaners Property 18300-18304 Bothell Way NE, Bothell, Washington, Farallon PN: 733-001 (Apr. 19, 2002)
- HWA GeoSciences, Draft Geotechnical Report, SR 527 – Bothell Multi-Way Boulevard Project, Bothell, Washington. HWA Project No. 2007-098-22 Task 600 (Dec. 5, 2008)
- HWA GeoSciences, New City Hall Soil & Ground Water Sampling, Bothell, Washington, HWA Project No. 2007-098-22 Task 937 (Oct. 17, 2011)
- HWA GeoSciences, Case Property Inspection And Sampling, Bothell, Washington, HWA Project No. 2007-098-22 Task 939 (Nov. 22, 2011)
- HWA GeoSciences, Bothell Way NE Drainage Improvements Soil & Ground Water Sampling Bothell, Washington, HWA Project No. 2007-098-22 Task 940 (Jan. 9, 2012)
- Parametrix, Draft City Hall Site Environmental Site Assessment (prepared for City of Bothell) (May 2010)

Two reports not in Ecology's files, but referenced in other reports above, include:

- EHS International, Phase I Environmental Site Assessment, report to Bothell Police Department (June 12, 2001)
- EHS International, Phase II Environmental Site Assessment and Limited Hazardous Materials Survey, report to Bothell Police Department (Aug. 15, 2001)

VI. ECOLOGY DETERMINATIONS

A. The City of Bothell is an "owner or operator" as defined in RCW 70.105D.020(17) of a "facility" as defined in RCW 70.105D.020(5).

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

C. Based upon credible evidence, Ecology issued a PLP status letter to the City of Bothell dated June 28, 2012, pursuant to RCW 70.105D.040, .020(21), and WAC 173-340-500. By letter dated July 3, 2012, the City of Bothell voluntarily waived its rights to notice and comment and accepted Ecology's determination that the City of Bothell is a PLP under RCW 70.105D.040.

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

E. As described in Section V (Findings of Fact), the PLP and others have previously conducted independent remedial actions in the form of remedial investigations to define the nature and extent of contamination. The PLP shall develop a remedial investigation report based on the existing data and identify any data gap in a remedial investigation data gaps work plan, which shall meet the requirements of WAC 173-340-350, to address any potential data gaps in these investigations.

F. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action. Chlorinated volatile organic compounds (VOCs); including tetrachloroethylene (PCE), and daughter products at concentrations exceeding MTCA Method A cleanup levels in groundwater samples are known to occur at and downgradient of the Ultra Custom Cleaners property. The VOC detections on the Site appear to be from a known historic source on the Ultra Custom Cleaners property. Partial site cleanup and source removal can be achieved by starting at the source property, when the City demolishes the existing building as part of its City Hall expansion project. This will provide unobstructed access in areas beneath the floor slab securing/fencing off the property and for implementing soil and groundwater cleanup as interim actions in the source area. Such circumstances may warrant an interim action consistent with WAC 173-340-430.

VII. WORK TO BE PERFORMED

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

A. The work to be performed includes the planning, implementation, and reporting of a remedial investigation and feasibility study (RI/FS), an interim action, and preparing a draft cleanup action plan (DCAP) for the Ultra Custom Care Cleaners Site. A Scope of Work is attached hereto as Exhibit B for the completion of a RI/FS and DCAP. Exhibit B is incorporated by reference as an integral and enforceable part of the Order.

B. The PLP shall complete all tasks to implement the Scope of Work (Exhibit B) and submit to Ecology for review and approval according to the Schedule of Deliverables, attached as Exhibit C.

C. Upon approval by Ecology, the PLP will proceed with field implementation of the Work Plans in accordance with an agreed upon schedule.

D. The PLP shall submit to Ecology a Work Plan and Schedule for the Interim Action(s) and shall follow the submittal requirements for an interim remedial action as per WAC 173-340-430(7). Implementation of the interim action is contingent upon formal Ecology approval of the interim action work plan.

E. The PLP shall develop a Remedial Investigation Report and Remedial Investigation Data Gap Work Plan, which shall meet the requirements of WAC 173-340-350. Implementation of the Remedial Investigation Data Gaps Work Plan is contingent upon formal approval by Ecology. Work Plans shall consist of a detailed description of site conditions, work to be performed, personnel requirements, and schedules for implementation and deliverables for the following:

- TASK I. Draft Remedial Investigation Report and Remedial Investigation Data Gaps Work Plan
- TASK II. Interim Action Work Plan
- TASK III. Implement Interim Action
- TASK IV. Draft Final Remedial Investigation Report
- TASK V. Feasibility Study and Draft Feasibility Study Report
- TASK VI. Draft Cleanup Action Plan

These tasks and work plans if applicable and each element thereof shall be designed, implemented, and completed in accordance with the MTCA (Chapter 70.105D RCW) and its implementing regulation (Chapter 173-340 WAC) as amended, and all applicable federal, state, and local laws and regulations.

F. Electronic data shall be entered into Ecology's Environmental Information Management (EIM) System.

G. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this section, Ecology may complete and issue the final deliverable.

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notice

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that this Order is inadequate or improper in any respect.

B. Remedial Action Costs

The PLP shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under MTCA, Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). The PLP shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly. Pursuant to RCW 70.105D.055, Ecology has authority to recover unreimbursed remedial action costs by filing a lien against real property subject to the remedial actions.

Ecology hereby incorporates into this Order the previous remedial actions described in Section V (Findings of Fact). Reimbursement for specific project tasks under a grant agreement with Ecology is contingent upon a determination by Ecology's Toxics Cleanup Program that the work performed complies with the substantive requirements of Chapter 173-340 WAC and is consistent with the remedial action required under this Order. The costs associated with

Ecology's determinations on the past independent remedial actions described in Section V (Findings of Fact) are recoverable under this Order.

C. Implementation of Remedial Action

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

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

D. Designated Project Coordinators

The project coordinator for Ecology is:

Sunny Becker
Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452
Phone: (425) 649-7187
Email: hlin461@ecy.wa.gov

The project coordinator for the PLP is:

Nduta Mbuthia
Project Engineer/PLP Coordinator
City of Bothell, Public Works Department
9654 NE 182nd Street
Bothell, WA 98011
Phone: (425) 486-2768, ext. 6829
Email: Nduta.mbuthia@ci.bothell.wa.us

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

To the maximum extent possible, communications between Ecology and the PLP, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed as required by this Order.

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

E. Performance

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

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

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

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

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

F. Access

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

G. Sampling, Data Submittal, and Availability

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

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

Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.F (Access), Ecology shall notify the PLP prior to any sample collection activity unless an emergency prevents such notice.

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

H. Public Participation

A public participation plan is required for this Site. Ecology shall review any existing public participation plan to determine its continued appropriateness and whether it requires amendment. If no plan exists, Ecology shall develop a public participation plan alone or in conjunction with the PLP.

Ecology shall maintain the responsibility for public participation at the Site, and the PLP shall cooperate with Ecology.

1. Ecology will develop appropriate mailing lists with input from the PLP, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, interim actions, and cleanup action plans. Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings. The PLP will be provided an opportunity to review fact sheets and public notices prior to distribution.

2. The PLP shall notify Ecology's project coordinator prior to any of the following regarding the Site: the issuance of all press releases; distribution of fact sheets; performance of other outreach activities; meetings with the interested public and/or local governments. Likewise, Ecology shall notify the PLP prior to the issuance of all press releases and fact sheets, and before meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the PLP that do not receive prior Ecology

approval, the PLP shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

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

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

- (a) King County Bothell Library
18215 98th Avenue NE
Bothell, WA 98011
- (b) Ecology's Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452

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

I. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, the PLP shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, the PLP shall make all records available to Ecology and allow access for review within a reasonable time.

J. Resolution of Disputes

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

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

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

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

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

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

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

K. Extension of Schedule

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

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

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

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

- a. Circumstances beyond the reasonable control and despite the due diligence of the PLP including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the PLP;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII. M (Endangerment).

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

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

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

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

- c. Endangerment as described in Section VIII.M (Endangerment).

L. Amendment of Order

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

Except as provided in Section VIII.N (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and the PLP. The PLP shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J (Resolution of Disputes).

M. Endangerment

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

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

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

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

N. Reservation of Rights

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

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

O. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the PLP without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

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

P. Compliance with Applicable Laws

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

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

The PLP has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the PLP determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or the PLP shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the PLP shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the

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

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

Q. Indemnification

The PLP agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property to the extent arising from or on account of acts or omissions of the PLP, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the PLP shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

IX. SATISFACTION OF ORDER

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

X. ENFORCEMENT

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

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

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

C. In the event the PLP refuses, without sufficient cause, to comply with any term of this Order, the PLP will be liable for:

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

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

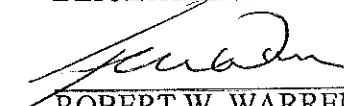
D. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: 4/18/13

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

CITY OF BOTHELL


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