

Fuel Processors
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Department of Ecology

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action at:

AGREED ORDER

Fuel Processors, Inc.

No. DE 5054

TO: Fuel Processors, Inc.
c/o Wilmer L. Briggs, President
701 Bozarth Avenue
Woodland, WA 98674

Oil Re-Refining Co.
c/o Wilmer L. Briggs, President
4150 N. Suttle Road
Portland, OR 97217

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology), Fuel Processors, Inc. (Fuel Processors), and Oil Re-Refining Co. (ORRICO) 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 Fuel Processors and ORRICO to complete a remedial investigation and feasibility study (RI/FS) and to prepare a draft cleanup action plan (CAP) for the Fuel Processors, Inc. Facility in Woodland, WA. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Order is issued pursuant to the authority of the Model Toxics Control Act (MTCA), RCW 70.105D.050(1). This Order also satisfies the requirements of WAC 173-303-646 through -64630.

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order and their successors and assigns. The undersigned representative of each Party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such Party to comply with the Order. Fuel Processors and ORRICO agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the responsibility of Fuel Processors and ORRICO under this Order. Fuel Processors and ORRICO 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, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms used in this Order.

A. 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.

B. Area of Concern (AOC): Refers to any area of the facility where a release of dangerous constituents (including dangerous waste and hazardous substances) has occurred, is occurring, is suspected to have occurred, or threatens to occur.

C. Cleanup Action Plan (CAP): Refers to the document issued by Ecology under WAC 173-340-360 which selects facility-specific corrective measures and specifies cleanup standards (cleanup levels, points of compliance, and other requirements for the corrective measures).

D. Cleanup Standards: Refers to the standards promulgated under RCW 70.105D.030(2)(e) and include (1) hazardous substance concentrations (cleanup levels) that protect human health and the environment, (2) the location at the facility where those cleanup levels must be attained (points of compliance), and (3) additional regulatory requirements that apply to a cleanup because of the type of action and/or the location of the facility.

E. Corrective Action: Refers to any activities including investigations, studies, characterizations, and corrective measures, including actions taken pursuant to Chapter 70.105D RCW and Chapter 173-340 WAC, undertaken in whole or in part to fulfill the requirements of WAC 173-303-64620.

F. Corrective Measure: Refers to any measure or action to control, prevent, or mitigate release(s) and/or potential release(s) of dangerous constituents (including dangerous waste and hazardous substances) reviewed and approved by Ecology for the facility and set forth in a facility-specific CAP prepared in compliance with the requirements of Chapter 173-340 WAC, including WAC 173-340-360. Corrective measures may include interim actions as defined by Chapter 173-340 WAC. Interim actions will not necessarily be set forth in a facility-specific CAP.

G. Dangerous Constituent or Dangerous Waste Constituent: Refers to any constituent identified in WAC 173-303-9905 or 40 C.F.R. Part 264 Appendix IX, any constituent that caused a waste to be listed or designated as dangerous under the provisions of Chapter 173-303 WAC, and any constituent defined as a hazardous substance under RCW 70.105D.020(10).

H. Dangerous Waste: Refers to any solid waste designated in WAC 173-303-070 through -100 as dangerous or extremely hazardous or mixed waste. Dangerous wastes are considered hazardous substances under RCW 70.105D.020(10).

I. Dangerous Waste Management Facility: Used interchangeably in this document with the term "Facility."

J. Dangerous Waste Management Unit (DWMU): Refers to a contiguous area of land on or in which dangerous waste is placed, or the largest area in which there is a significant likelihood of mixing dangerous waste constituents in the same area, as defined in WAC 173-303-040.

K. Facility or Site: Refers to the property owned by Fuel Processors, located at 701 Bozarth Avenue, Woodland, WA and all property, regardless of control, affected by release(s) or threatened release(s) of hazardous substances, including dangerous wastes and dangerous constituents, at and from these areas. Based upon factors currently known to Ecology, the Site is more particularly described in Exhibit A to this Order. "Facility" also includes the definition found in RCW 70.105D.020(5).

L. Feasibility Study (FS): Refers to the investigation and evaluation of potential corrective measures performed in accordance with the FS requirements of WAC 173-340-350 and the RI/FS Scope of Work attached to this Order, which includes the substantive requirements for a RCRA Corrective Measures Study, and which is undertaken in whole or in part to fulfill the corrective action requirements of WAC 173-303-64620.

M. Parties: Refers to Ecology, Fuel Processors, and ORRCO.

N. Potentially Liable Persons (PLPs): Refers to Fuel Processors and ORRCO.¹

O. Permit or Permitting Requirement: Unless otherwise specified, refers to the requirements of Chapter 173-303 WAC for applying for, obtaining, maintaining, modifying, and terminating Dangerous Waste Management Facility permits.

¹ For purposes of this Order, the definition of PLPs is limited to only those PLPs signing the Order; however, this does not affect the liability of those PLPs who have not signed the Order.

P. RCRA: Refers to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*

Q. RCRA Facility Assessment (RFA): Refers to the EPA conducted investigation(s) of release(s) and potential release(s) at the Dangerous Waste Management Facility and the information contained in the reports entitled "RCRA Facility Assessment at the Fuel Processors Facility," prepared for U.S. EPA in September, 1986 and "Resource Conservation and Recovery Act Facility Assessment, Final Report" prepared by PRC Environmental Management, Inc. in July, 1996 for U.S. EPA under Contract No. 68-W4-0004 (RFA Reports). The RFA Reports are incorporated into this Order by this reference as if fully set forth herein.

R. Release: Refers to any intentional or unintentional spilling, leaking, pouring, emitting, emptying, discharging, injecting, pumping, escaping, leaching, dumping, or disposing of dangerous waste or dangerous constituents into the environment. It also includes the abandonment or discarding of barrels, containers, and other receptacles containing dangerous waste or dangerous constituents and includes the definition of "release" in RCW 70.105D.020(25).

S. Remedial Investigation (RI): Refers to a facility-wide investigation and characterization performed in accordance with the requirements of Chapter 173-340 WAC and the RI/FS Scope of Work attached to this Order, which includes the substantive requirements for a RCRA facility investigation, undertaken in whole or in part to fulfill the corrective action requirements of WAC 173-303-64620.

T. Solid Waste Management Unit (SWMU): Refers to any discernible location at the Dangerous Waste Management Facility where solid wastes have been placed at any time, irrespective of whether the location was intended for the management of solid or dangerous waste. Such locations include any area at the Dangerous Waste Management Facility at which solid wastes, including spills, have been routinely and systematically released and include regulated units as defined by Chapter 173-303 WAC. Based upon factors currently known to Ecology, the SWMUs at the Site are more particularly described in Exhibit B 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 PLPs.

A. The Facility is located at 701 Bozarth Avenue, Woodland WA, in the southwest quarter of Section 24, Township 5 north, Range 1 west of the Willamette Meridian. The approximate geographic coordinates for the Site are 45° 54' 08" north latitude and 122° 45' 10" west longitude. The western boundary of the Site is along the Burlington Northern Railroad right-of-way. An elementary school is located less than two blocks to the north, a new residential development is situated to the north and east, and a commercial building is located south of the Site. The Site lies between the Lewis River, 3800 feet to the east and the Columbia River, 1.8 miles to the southwest. An oxbow of the Lewis River named Horseshoe Lake is located approximately 1,800 feet southeast of the Site. The surrounding terrain is level with the exception of the railway right-of-way, which is built on a 10 to 15 foot dike. The ground water table is approximately 5 to 8 feet below ground surface.

B. The Facility measures approximately 125 feet by 225 feet or approximately 0.65 acre and is surrounded by a chain link fence with three gates. The Facility consists of a main warehouse building and a concrete covered bermed area that once contained a tank farm. A diagram of the property is attached as Exhibit A. All of the tanks in the tank farm shown in Exhibit A were removed during the spring of 2007. One tank located in the warehouse was decontaminated and removed during the summer of 2007.

C. A Shell Oil Company wholesale petroleum plant was located on the Site during the 1930s. In 1979, ARRCOM, Inc. (ARRCOM), a used oil processing company owned by the Drexler family, set up a used-oil recycling operation at the Site. ARRCOM, Inc. failed financially in 1981.

D. Mr. Wilmer L. Briggs (Mr. Briggs) asserts that after Shell's ownership and prior to ARRCOM, the following entities owned and/or operated at the Site: (a) Mr. and Mrs. Deans, from 1969 to 1972; (b) Mr. Wheatley and Mr. Coover, from 1972 to 1976; and (c) Jensen and Grove, Inc., and Herbert Jensen, from 1976 to 1977. Ecology has no evidence to indicate that a

release occurred at the Site during the above periods, nor does Ecology have any information verifying these prior ownerships.

E. Mr. George W. Drexler, the owner of ARRCOM, submitted a RCRA Part A permit application to EPA Region 10 on November 19, 1980 anticipating that petroleum by-products would be regulated, however, the by-products (waste) from the used oil process were never regulated as listed waste. On February 3, 1981 ARRCOM notified EPA of its intention to store F003 and F005 waste in a revised Part A signed by Mr. Drexler. The Facility's Part A permit application was acknowledged as received by EPA, however, the R003 and F005 waste indicated on the Part A permit application was never managed at the Site. The Facility managed state-regulated waste only.

F. Based on a thorough search of Ecology's file, no records have been found, either self-reported or through inspections by Ecology or EPA, that the original applicant or subsequent owner/operators acted on the application and managed federally regulated hazardous waste. The Facility, therefore, did not have a federal interim status permit.

G. In 1982, ARRCOM sold the property to Warren Bingham. Fuel Processors, a firm owned by the Briggs family of Portland, Oregon, leased the Site from Mr. Bingham beginning in January 1985 for the purpose of using the Site for oil recycling. Mr. Briggs, as majority stockholder and president of Fuel Processors, has been responsible for environmental compliance during Fuel Processor's control and ownership of the Facility, including directing waste management activities at the Facility. In April, 1985 Fuel Processors purchased the property from Mr. Bingham. Fuel Processors used the Site from January 1985, processing up to 25,000 gallons of waste oil per month, until 1998. From 1998 to June, 2002, Fuel Processors used the Site as a used oil transfer facility.

H. From 1985 to 1998, in conducting its oil recycling business, ORRCO arranged for the transportation, disposal and/or treatment of hazardous substances at the Site. After processing and treatment, ORRCO marketed and sold the reformulated substances from a location on-site. In addition to owning Fuel Processors, Mr. Briggs is the founder, majority stockholder, and president of ORRCO.

I. In April, 1985, EPA conducted soil sampling within the uncovered portion of the tank farm. At three locations both surface and 2-foot samples were collected and at a fourth location only a surface sample was collected. Maximum concentrations of 1,1-dichloroethane (0.21 mg/kg), 1,2-trans dichloroethylene (4.09 mg/kg), 1,1,1-trichloroethane-TCA (7.75 mg/kg), trichloroethylene-TCE (7.04 mg/kg) and tetrachloroethylene-PCE (2.34 mg/kg) were detected. Concentrations of TCE and PCE exceeded the existing 1985 MTCA Method A soil cleanup levels (CULs) for unrestricted and industrial land use of 0.5 mg/kg. Concentrations of polychlorinated biphenyls were also detected, however, they did not exceed the MTCA Method A soil cleanup level of 1 mg/kg.

J. On June 30, 1985, Mr. Briggs submitted to Ecology a new Part A dangerous waste permit application. In this Part A application, Mr. Briggs stated that Fuel Processors was managing solely state-only W001 waste at the Facility. The waste was diesel fuel contaminated with PCBs at concentrations between 2 ppm and 50 ppm that were stored in the 12,500 gallon F-1 tank. The subsequent storage of this waste stream was confirmed to have occurred in writing by Mr. Briggs.

K. Under the assumption that the Facility held federal interim status, on April 2, 1986 EPA began a RFA at the Facility. The purpose of an RFA is to identify those areas where release(s) of hazardous substances, as defined in RCW 70.105D.020(10), may have occurred or may be occurring. The RFA focused primarily on the waste pile located in a surface impoundment north of the Facility boundary. Additional soil samples were collected from seven locations (three within and four outside of the tank farm). Because the intent of the RFA was to determine if releases to the environment occurred at the Site, the actively used storage tanks were not investigated. The RFA indicated that the soil beneath the Site was contaminated with chlorinated solvents. PCE concentrations in the soil ranged from 11 to 83,000 ppb at sample location 3 (north of former sump); TCA concentration at sample location 3 was 42,000 ppb, and the concentration of TCE at sample location 3 was 2,600 ppb. These concentrations exceed the current MTCA Method A soil cleanup levels for unrestricted and industrial land use.

L. In 1996, EPA conducted a second RFA that consisted of a review of records and sampling results from the Ecology sampling of the waste pile north of the Facility boundary on July 8, 1982. In 1996, EPA also reviewed the 1986 RFA sampling and subsequent correspondence, submittals and inspections conducted by Ecology and EPA.

M. Other chemicals that are required testing for petroleum releases (MTCA Table 830-1) which may be present but for which analyses were not performed during earlier RFAs and inspections, include hexane and ethylene dibromide.

N. Pursuant to the RFA Reports and other information, Ecology has identified the following SWMUs and AOCs at the Dangerous Waste Management Facility. A diagram of the location of the SWMUs and AOCs at the Facility are attached hereto as Exhibit B. All of these units were reported by Fuel Processors to be clean closed and removed from the Site (Draft Closure Report received June 25, 2007).

SWMU 1 – Tank F-1, piping and associated containment

SWMU 2 – All other tanks except F-1

SWMU 3 – Former Shaker Sludge and Tank Cleanings Pile

SWMU 4 – Former Excavated Wash Pit

SWMU 5 – Facility Sumps

SWMU 6 – Shaker

SWMU 7 – Sludge Disposal Pit

SWMU 8 – Cooker Tanks

SWMU 9 – Unwashed, Shredded Plastics Storage Area

SWMU 10 – Warehouse: Plastic Shredding Area

AOC 1 – Decommissioned UST

AOC 2 – Filter Crusher

O. Release(s) and/or potential release(s) of hazardous substances including, but not limited to, volatile and semi-volatile organic compounds, PCBs, and metals, from SWMUs and AOCs at the Dangerous Waste Management Facility are documented in the 1986 and 1996 RFA

Reports; Ecology/EPA inspection reports from March 25, 1985, April 2, 1985, and April 2, 1986; and sampling conducted by Ecology in 1982 and 1985, as described further below:

a. SWMU 1 – Tank F-1, piping and associated containment. Tank F-1 is a welded steel, vertically oriented, above ground tank with a capacity of 12,500 gallons. A variety of materials have been stored in the tank since 1973. Between 1985 and 1988 the tank stored state-only W001 wastes. Since 1988 the tank has stored only diesel fuel. Indications of previous releases from visual evidence of spills to the secondary containment area are contained in past inspection reports. Cracks in the concrete of up to 0.25 inches in width have been reported. Prior to 1985 there was no secondary containment. Previous sampling data detected PCBs at concentrations of up to 1.5 ppm in the soils at the Site.

b. SWMU 2 – All other tanks except F-1. These tanks stored used oil, on-specification fuel, process water, condensate, and light ends from petroleum distillation. All tanks are single-wall, steel construction with volumes ranging from 3,500 gallons to 25,000 gallons. Past inspection reports indicate visual evidence to spills to the containment area. Cracks in the concrete containment berm were measured to be as wide 0.25 inches. Past sample results, indicated that a release of halogenated compounds had occurred to surface and subsurface soils.

c. SWMU 3 – Former Shaker Sludge and Tank Cleanings Pile. On the Part A permit application from 1990 the size of the pile was reported to be 20 cubic yards, however, it was estimated to be less than 1 cubic yard in volume during previous compliance inspections. It existed from 1972 to 1982 and was located on bare ground directly north of the tank farm. Ecology analyzed samples from the pile for metals, sludge and paint pigments and determined that it was not hazardous waste for those constituents. The pile was never analyzed for organic compounds, however its contact with bare ground resulted in a high potential for a release to soil. Samples from a similar material collected at the Facility in 1986 contained PAHs and halogenated compounds.

d. SWMU 4 – Former Excavated Wash Pit. This unit operated in 1985 and consisted of an excavated, unlined pit of unspecified size that was located in the northwestern part of the tank farm containment area before it was paved. The Wash Pit was used to collect wash water and oil. Waste oil collected in the pit was sent to an oil-water separator for treatment. FPI claimed there was never an excavated pit at the Facility and that this unit was a cement-lined low area in the containment basin. Based on high levels of chlorinated solvents in soil samples from the vicinity of the pit the potential for a release to subsurface soil is high.

e. SWMU 5 – Facility Sumps. The sumps were installed in 1980 and operated until the Facility was shut down in 2004. Very little information on this unit is available. Fuel Processors has stated that the sumps were used primarily to collect precipitation falling on the concrete bermed area.

f. SWMU 6 – Shaker. This unit is located north of the warehouse and distillation tank in a covered room with a cement floor. The shaker was used between 1975 and 1995 to remove solids from processed oil by allowing the oil to pass through a fine (120 mesh) stainless-steel screen. Although the potential for a release to the concrete are high as indicated by the stained flooring near its location, the concrete appears to be protective of the soil below.

g. SWMU 7 – Sludge Disposal Pit. Based on an anonymous complaint this pit was reportedly located 15 to 20 feet inside the main gate and was used for the disposal of shaker sludge, tank bottoms and spent paint solvents. Neither Ecology nor EPA sampled the pit, however, if the pit exists, the potential for release is high to both soil and ground water. Mr. Briggs asserts that the sludge disposal pit was built prior to when Fuel Processors took over the Site, but was not there when Fuel Processors began leasing the Site in January 1985.

h. SWMU 8 – Cooker Tanks. This unit included tanks B-1 (inside the warehouse), B-2 and E-1 (both located outdoors). They were used as distillation vessels and operated from 1985 to Facility shutdown in 2004. Tank B-1 was a horizontally

mounted, aboveground 12,500 gallon tank with its own containment basin. It is connected to sump H-2 through a drain plug and pipe. During recent years EPA determined that tank B-2 was used to store oily process water. Past inspection reports indicate evidence of spills around the tanks. The potential for release to the soil from the tanks is low for tank B-1 and higher for tanks B-2 and E-1.

i. SWMU 9 – Unwashed, Shredded Plastics Storage Area. During the latter years of operation the eastern half of the Facility was used to store high density vinyl plastics (HDVP) with oily residue. The potential for a post-1985 release to the soil is low from this unit since the entire area was graded, leveled and paved with concrete in 1985.

j. SWMU 10 – Warehouse: Plastic Shredding Area: This unit is located in the main portion of the warehouse east of tank B-1 (distillation vessel). It was used to shred HDVP from used motor oil containers for recycling. Based on a 1992 Ecology inspection report, the wooden floor was oily and a partial concrete sub-floor was covered by 3 inches of liquid and 2 inches of sludge. Based on the fact that the concrete sub-floor did not extend completely under the plastic shredding area the potential for a release to soil is high, however, the amount of oil available for release is expected to be low.

k. AOC 1 – Decommissioned UST: This unit consists of an underground storage tank, covered by a concrete pad, that stored diesel fuel used to fire the oil heater. The tank was decommissioned in the 1985–1986 timeframe when it was pumped dry, filled with clean water, pumped again and refilled with clean water. The fill pipe was capped and the tank was replaced by an above-ground diesel fuel tank. Although the tank was not pressure tested, records of fuel levels indicated no loss of fuel; therefore, the potential for a release to the soil is low.

l. AOC 2 – Filter Crusher: The filter crusher was located in a shop building in the southeast corner of the Facility and was used between 1991 and 1993 to crush used oil filters. The unit was located on a concrete floor and had a containment mat underneath it. Due to the concrete floor and the containment mat the potential for a release to the soil from the crusher is low.

P. Chemical Properties, Toxicity and Fate and Transport Characteristics; PCE, TCE and TCA belong to a class of compounds known as halogenated aliphatic compounds (HACs). HACs are characterized by open chain structures, single, double or triple bonds and the presence of chlorine, bromine, fluorine and iodine. HACs have many applications such as solvents, degreasers, dry cleaning agents, refrigerants, organics synthesis agents and often are used in conjunction with degreasing applications that contain oils or other petroleum hydrocarbons. In general HACs have low to moderate solubilities, high volatilities, low to moderate partition coefficients, high mobilities, and densities greater than water. As a result they are relatively easily leached from the soil into ground water. Once in the subsurface the concentrations of these contaminants are generally attenuated through a process of progressive dehalogenation with the time and efficacy of attenuation for each step varying widely.

1. PCE is a non-flammable, colorless liquid that sinks in water. Its half-life in water by evaporation is 24 minutes and by chemical decomposition and photolysis its half-life is 9 months. Fifteen percent of the use of PCE is as a degreaser, typically in conjunction with oils. Routes of exposure include diet, inhalation and skin contact. Symptoms of harmful exposure initially include skin burning, and eye, nose, throat and gastro-intestinal tract irritation. At higher exposures symptoms include headache, dizziness, fatigue, abdominal pain, nausea, vomiting, diarrhea, lack of coordination, liver and kidney injury, slowing of mental ability, central nervous system depression and death. Long term effects may include fatigue, decreased muscle coordination, difficulty in concentration, loss of short-term memory, and personality changes. PCE has been determined to be a carcinogen.

PCE has a moderate capacity to move from ground water to organic carbon in the soil matrix and to desorb back to ground water. The ratio of the mass of a chemical that is absorbed in the soil per unit mass of the carbon in the soil per the equilibrium chemical concentration in the ground water is known as the organic carbon partitioning coefficient (K_{oc}). With low to moderate K_{oc} , and solubility, PCE will leach slowly from the soil and be transported to ground water with percolating water from precipitation. Other factors

that affect the degree of leaching in soil include hydrolysis, dissociation, sorption, volatility, rainfall and evaporation. These factors may also degrade a water soluble compound such as PCE as it is leached and transported to the ground water. If the rate of degradation is rapid the amount of leaching and transport to ground water will be minimal. Once in the ground water PCE will move slowly along the direction of ground water flow primarily through advective transport with spreading of the contaminant in the aquifer due to mechanical dispersion and chemical diffusion. Retardation of PCE is dependent on the fraction of organic carbon in the aquifer. With increasing organic content greater sorption and desorption of PCE with organic carbon will retard its velocity and distance traveled compared with ground water. Since the organic carbon content in the aquifer beneath the Site is unknown the distance PCE or other organic compounds will travel is difficult to predict.

2. TCE is a slightly flammable, colorless liquid with a specific gravity of 1.46. Its half-life in water due to chemical decomposition is between eleven and thirty months. TCE is used primarily as a degreaser. It is used to a lesser degree as a heat exchange fluid, dry-cleaning agent and as a chemical intermediate in the production of pesticides. It is found in the environment as a breakdown product from the reductive dechlorination of PCE.

TCE is a highly toxic substance. Harmful exposure of TCE occurs through inhalation, ingestion and dermal contact. It may cause eye, ear and throat irritation, damage to the central nervous system and kidney and liver injury. It is a probable carcinogen.

It has a higher aqueous solubility greater than PCE and a low to moderate K_{oc} that reduces its leachability in the vadose zone and mobility in ground water, if there is a high fraction of organic carbon present in the soil or aquifer. Its half life in water by chemical decomposition is approximately eleven months.

3. TCA is a non-flammable, colorless liquid with a specific gravity of 1.34 and an aqueous solubility of 300 mg/L. TCA is used as a solvent, a degreaser and as a dry-cleaning agent. Its half-life by chemical decomposition is six to nine months.

Pathways of harmful exposure include inhalation, ingestion and skin contact. Symptoms of exposure include eye irritation, inflamed skin, dizziness; difficulty breathing, central nervous system damage and death do to respiratory failure. TCA is a carcinogen in animals.

The low solubility and moderate K_{oc} make TCA less mobile in the vadose zone and in ground water. It will be significantly retarded in ground water if there is a high fraction of organic material in the aquifer.

4. Hexane is a solvent used in industry and in home and commercial use. It is a flammable, colorless liquid that is insoluble in and floats on water. It is typically contaminated with benzene. Hexane is highly toxic with harmful exposure routes that include inhalation, ingestion and skin contact. Symptoms of exposure include irritated eyes and nose, headache, nausea, and heartbeat irregularities. It is a suspected carcinogen.

Hexane's K_{oc} is unknown, but its insolubility gives hexane low mobility in the environment. If on surface water it will evaporate quickly but it does not biodegrade well.

5. Ethylene dibromide is a colorless liquid that is denser than water and has low aqueous solubility. It has been used as a gasoline additive and solvent for oils. Harmful exposure routes include inhalation, ingestion and skin contact. It is highly toxic with exposure symptoms that include headache, vomiting, acute respiratory injury, kidney and liver injury, damage to the circulatory system and central nervous system depression. It is a suspected carcinogen.

Ethylene dibromide's K_{oc} is unknown, but its low solubility gives it low mobility and high persistence in the environment. Its persistence in the soil is at least twenty years.

6. Hazardous substances may have been and might continue to be released from the Facility into the environment including surface water drainage areas; groundwater beneath and beyond the Facility; air; human work areas; and floral and faunal habitats.

VI. ECOLOGY DETERMINATIONS

- A. The PLPs are persons within the meaning of RCW 70.105D.020(19).
- B. Fuel Processors is an owner and operator of a Dangerous Waste Management Facility that has operated as a state-only facility subject to Chapter 70.105 RCW and Chapter 173-303 WAC. Fuel Processors is also an "owner or operator" as defined by RCW 70.105D.020(17) of a "facility" as defined by RCW 70.105D.020(5).
- C. ORRICO is an "arranger" as defined by RCW 70.105D.040(1)(c) who arranged for disposal or treatment of hazardous substances at a "facility" as defined by RCW 70.105D.020(5).
- D. Certain waste and constituents found at the Facility are dangerous wastes and/or dangerous constituents as defined by Chapter 173-303 WAC, and in Section IV (Definitions) of this Order.
- E. These dangerous wastes and dangerous constituents are considered hazardous substances within the meaning of RCW 70.105D.020(10).
- F. Based on the Findings of Fact and the administrative record, Ecology has determined that release(s) and potential release(s) of hazardous substances at and/or from the Facility present a threat to human health and the environment.
- G. Based on credible evidence, on February 1, 1995, Ecology issued PLP status letters to Fuel Processors and Mr. Briggs, pursuant to RCW 70.105D.040, -.020(21), and WAC 173-340-500. In a letter dated October 30, 2006, Ecology restated its determination that Mr. Briggs is a PLP. By letter dated November 11, 2006, as president of Fuel Processors, Mr. Briggs voluntarily waived the right to notice and comment and accepted Ecology's determination that Fuel Processors is a PLP under RCW 70.105D.040. In the same letter, Mr. Briggs disputed his PLP status as an individual. After reviewing the comments submitted by Mr. Briggs, and

concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that Mr. Briggs is a PLP under RCW 70.105D.040 and notified Mr. Briggs of this determination by letter dated December 28, 2007. Although Mr. Briggs does not intend on signing onto this Order as a PLP in his individual capacity, this does not affect Ecology's determination that Mr. Briggs is a PLP.

H. Based on credible evidence, Ecology issued a PLP status letter to ORCCO dated December 17, 2007, pursuant to RCW 70.105D.040, -.020(21), and WAC 173-340-500. By letter dated January 15, 2008, ORRCCO voluntarily waived its rights to notice and comment and accepted Ecology's determination that ORRCCO is a PLP under RCW 70.105D.040.

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

VII. WORK TO BE PERFORMED

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

A. Draft Remedial Investigation Work Plan

Within forty five (45) days of the effective date of this Order, the PLPs shall submit to Ecology for review and approval a draft remedial investigation (RI) work plan as outlined in WAC 173-340-350 which includes, but is not limited to:

a. Draft sampling and analysis plan, that describes field procedures, sampling methods, and quality assurance/quality control (QA/QC) activities prepared per the requirements of WAC 173-340-820. The QA/QC section shall include a description of the analytical methods, parameters and reporting limits of contaminants of concern, in addition to all quality assurance/quality control details needed as described in the most recent publication *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods*

(SW-846). All sampling data shall be submitted to Ecology according to the requirements of WAC 173-340-840(5), in printed form and in electronic form capable of being transferred into the department's data management system. The PLPs shall submit electronic data to Ecology according to the guidance and data submittal requirements provided at <http://www.ecy.wa.gov/eim>.

b. Terrestrial ecological evaluation, unless the Site meets the conditions for an exclusion from a terrestrial ecological evaluation as specified in WAC 173-340-7491.

c. Draft health and safety plan in accordance with WAC 173-340-810(2). All work performed at the Site shall be in accordance with the provisions specified in WAC 173-340-810(1). Although the health and safety plan shall be submitted to Ecology for review and comment, Ecology does not approve the plan.

d. A description of the procedures that will be used for interim contaminated soil removal in accordance with WAC 173-340-430(7).

B. Final Remedial Investigation Work Plan

Within forty five (45) days of receiving Ecology's comments on the draft work plan, the PLPs shall incorporate Ecology's comments into the final work plan and submit the final work plan to Ecology for review and approval. The final RI work plan as approved by Ecology will be an integral and enforceable part of the Order. The PLPs will implement the final RI work plan in accordance with the schedule approved in the final RI work plan or as modified, in writing, and approved by Ecology.

C. Remedial Investigation Report

Within ninety (90) days of receiving all analytical data to be developed pursuant to the RI, the PLPs shall submit a draft remedial investigation report to Ecology for review in accordance with applicable sections of WAC 173-340-350. Ecology will endeavor to provide written comments on the draft remedial investigation report within 30 days of receipt of the draft. Within thirty (30) days of receiving Ecology's comments on the draft remedial investigation report, the PLPs shall incorporate Ecology's comments into a final remedial investigation report and submit the same to Ecology for review and approval.

D. Feasibility Study

Within sixty (60) days of Ecology's approval of the final remedial investigation report, the PLPs shall submit a draft feasibility study (FS) report to Ecology per the requirements of Chapter 173-340-350 WAC. Ecology will endeavor to provide written comments on the draft FS report within thirty (30) days of receipt of the draft. Within thirty (30) days of receiving Ecology's comments on the draft FS report, the PLPs shall incorporate Ecology's comments into the final FS report and the final FS report shall be submitted to Ecology for review and approval.

E. Draft Cleanup Action Plan

Within sixty (60) days of Ecology's approval of the final FS report, the PLPs shall submit a draft cleanup action plan (CAP) to Ecology which shall meet the requirements of WAC 173-340-380.

F. Progress Reports

The PLPs shall provide a bi-monthly (every two (2) months) progress report on the work performed under this Order, which shall include the following:

Activities that happened in the past two (2) months;

Activities planned for the next two (2) months; and

A written summary of all lab data required by this Order, provided in an Ecology-approved electronic format.

The progress report frequency may be revised upon approval of Ecology's project coordinator.

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.

H. The PLPs shall notify Ecology's project coordinator in writing of any newly-identified SWMU(s), newly-discovered release(s) from known SWMU(s), and newly-discovered AOCs at the Facility no later than fifteen days after discovery, and shall investigate and report on these areas as directed by Ecology's project coordinator. The PLPs will

notify Ecology of any ground disturbing work one week prior to commencement of any such activity.

I. 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), WAC 173-340-600(11)(c), and WAC 173-303-840(3) require that, at a minimum, this Order and any permit action be subject to public notice. If public notice on the Order and any permit action are done concurrently, the notice period shall be the longer of the two time periods required in WAC 173-340-600 and WAC 173-303-840. 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 the Order is inadequate or improper in any respect.

B. Remedial Action Costs

The PLPs 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 Facility under Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). The PLPs shall pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

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

In order to assure these payments get to the proper staff as soon as possible, the address for mailing via the post office is:

Cashiering Section
P.O. Box 5128
Lacey, WA 98509-5128

If you choose to send a check by a messenger/overnight delivery service, the address to use is:

Cashiering Section
300 Desmond Drive
Lacey, WA 98503

In order to ensure that your payment is properly credited, please enclose the bottom portion of Ecology's invoice and indicate that the check is for cost recovery on the Fuel Processors Facility.

C. Implementation of Remedial Action

If Ecology determines that the PLPs have failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to the PLPs, 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 PLPs' failure to comply with its obligations under this Order, the PLPs shall reimburse Ecology for the costs of doing such work provided that the PLPs are 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 PLPs shall not perform any remedial actions at the Facility 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:

Stan Leja, L.G., L.HG, Site Manager
Hazardous Waste and Toxics Reduction Program, Southwest Regional Office

P.O. Box 47775
Olympia, WA 98504-7775
(360) 407-6345
slej461@ecy.wa.gov

The project coordinator for the PLPs is:

David G. Coles L.G., L.HG.
Coles Environmental Consulting
760 Rosemont Road
West Linn, OR 97068
(503) 636-3102
dcolesecc@comcast.net

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

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

E. Performance

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

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

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a

professional engineer. The professional engineer must be registered in the state of Washington, except as otherwise provided for by RCW 18.43.130.

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

The PLPs 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 Facility.

F. Access

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Facility that the PLPs either own, control, or have 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 PLPs' 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 PLPs. The PLPs shall make all reasonable efforts to secure access rights for those properties within the Facility not owned or controlled by the PLPs where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice upon entering any facility property owned or controlled by the PLPs unless an emergency prevents such notice. All persons who access the Facility 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 Facility property access.

G. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the PLPs 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 PLPs shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the PLPs pursuant to implementation of this Order. The PLPs shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Facility. Ecology shall, upon request, allow the PLPs and/or their 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 PLPs 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 Facility. Ecology shall review any existing Public Participation Plan to determine its continued appropriateness and whether it requires amendment, or if no plan exists, Ecology shall develop a Public Participation Plan alone or in conjunction with the PLPs.

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

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

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

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

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

Ecology's Southwest Regional Office	Woodland Public Library
Hazardous Waste and Toxics Reduction Program	770 Park Street
300 Desmond Drive	Woodland, WA 98674
Lacey, WA 98503	(360) 225-2115
P.O. Box 47775	
Olympia, WA 98504-7775	
(360) 407-6345	

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 PLPs 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 PLPs 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, 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 PLPs have 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 PLPs may then request regional management review of the decision. This request shall be submitted in writing to the Southwest Region Hazardous Waste and Toxics Reduction Section Supervisor within seven (7) days of receipt of Ecology's project coordinator's written decision.

d. The Section Supervisor shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of the PLPs' request for review. The Section Supervisor'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 PLPs 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 PLPs 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 PLPs;
- 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 PLPs.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the PLPs 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 PLPs. The PLPs 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 Facility is creating or has the potential to create a danger to human health or the environment on or surrounding the Facility, Ecology may direct the PLPs to cease such activities for such period of time as it deems necessary to abate the danger. The PLPs shall immediately comply with such direction.

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

If Ecology concurs with or orders a work stoppage pursuant to this Section, the PLPs' 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. Terms and Conditions of Order (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 PLPs 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 PLPs regarding remedial actions required by this Order, provided the PLPs comply 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 Facility 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 Facility.

O. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Facility shall be consummated by the PLPs 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 Facility, and during the effective period of this Order, the PLPs 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 PLPs shall notify Ecology of said transfer. Upon transfer of any interest, the PLPs 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 PLPs 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 70.10D.090(1), the PLPs are exempt from the procedural requirements of Chapters 70.94, 70.95, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, the PLPs 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 PLPs have 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 PLPs determine 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 PLPs shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the PLPs 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 PLPs and on how the PLPs must meet those requirements. Ecology shall inform the PLPs in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The PLPs shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

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

1. Pursuant to WAC 173-340-440(11) and consistent with WAC 173-303-64620, the PLPs shall maintain financial assurance for corrective action in the amount necessary to implement the current corrective actions at the Facility. In the absence of final regulations governing financial assurance for corrective action, the Financial Assurance for Corrective Action Proposed Rule, 51 F.R. 37853 (October 24, 1986) the financial assurance provisions of Corrective Action for Releases from Solid Waste Management Units Advance Notice of Proposed Rulemaking, 61 F.R. 19432 (May 1, 1996), and the Interim Guidance on Financial Assurance for Facilities Subject to RCRA Corrective Action (U.S. EPA, September 30, 2003), or other guidance that may be available at the time, shall be used as guidance. The financial assurance provisions of the Corrective Action for Solid Waste Management Units at Hazardous Waste Management Facilities, 55 F.R. 30798 (July, 27, 1990) may be used as secondary guidance at Ecology's discretion. Acceptable mechanisms include trust funds, surety bonds guaranteeing performance, letters of credit, insurance, the financial test, and corporate guarantee, or another instrument if the PLPs demonstrate to Ecology's satisfaction that another instrument provides an acceptable level of financial assurance. The PLPs shall provide Ecology's project

coordinator and Ecology's financial assurance officer with documentation of this financial assurance within sixty (60) days of Ecology's issuance of this Order. If the PLPs are under an existing obligation to maintain financial assurance, the PLPs shall maintain such assurance until the conditions of this paragraph are satisfied.

The date on which original financial assurance documentation is received by Ecology's financial assurance officer is the "Financial Assurance Anniversary Date" of this Order.

2. The PLPs shall adjust the financial assurance coverage and provide Ecology's project coordinator and Ecology's financial assurance officer with documentation of the updated financial assurance for:

a. Inflation, annually, within thirty (30) days of the Financial Assurance Anniversary Date, as defined above; or if applicable, the modified Financial Assurance Date, as set forth in paragraph (b) below; or if applicable, ninety (90) days after the close of the PLPs' fiscal year if the financial test or corporate guarantee is used.

b. Changes in cost estimates, which shall be submitted to Ecology within thirty (30) days of Ecology's issuance of a Modified Order. Within sixty (60) days of Ecology's approval of the change in cost estimate, the PLPs shall adjust the financial assurance coverage and provide Ecology's project coordinator and Ecology's financial assurance officer with documentation of the updated financial assurance. The receipt of the updated financial assurance documents modifies the Financial Assurance Anniversary Date accordingly.

3. The PLPs shall notify Ecology's project coordinator and Ecology's financial assurance officer by certified mail of the commencement of a voluntary or involuntary bankruptcy proceeding that names the PLPs as debtors, within ten (10) days after commencement of the proceeding. A guarantor of a corporate guarantee must make such a notification if he is named as debtor as required under the terms of the corporate guarantee.

Once the PLPs have established financial assurance for corrective action with an acceptable mechanism, as described above, the PLPs will be deemed to be without the required financial assurance:

- a. In the event of bankruptcy of the trustee or issuing institution;
- b. If the authority of the trustee institution to act as trustee has been suspended or revoked; or
- c. In the event the authority of the institution issuing the surety bond, letter of credit, or insurance policy has been suspended or revoked.

In the event of bankruptcy of the trustee or a suspension or revocation of the authority of the trustee institution to act as a trustee, the PLPs must establish financial assurance by any means specified in WAC 173-303-620 or other financial assurance instrument as approved by Ecology within sixty (60) days after such an event.

4. Ecology's financial assurance officer is:

Name: Kimberly Goetz
Address: PO Box 47600,
300 Desmond Dr.
Olympia, WA 98504-7600
Telephone: (360) 407-6754
Fax: (360) 407-6715
Email: kgoe461@ecy.wa.gov

R. Indemnification

The PLPs agree 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 arising from or on account of acts or omissions of the PLPs, or their officers, employees, agents, or contractors in entering into and implementing this Order. However, the PLPs 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 THIS ORDER

The provisions of this Order shall be deemed satisfied upon the PLPs' receipt of written notification from Ecology that the PLPs have completed the corrective actions required by this

Order, as amended by any modifications, and that the PLPs have complied with all other provisions of this 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 Facility.

C. In the event the PLPs refuse, without sufficient cause, to comply with any term of this Order, the PLPs 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.

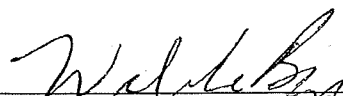
Effective date of this Order: August 18, 2008

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**



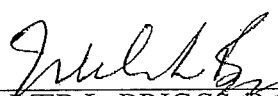
K SEILER, Section Manager
Hazardous Waste and Toxics Reduction Program
Southwest Regional Office

FUEL PROCESSORS, INC.



WILMER L. BRIGGS, President
701 Bozarth Avenue
Woodland, WA 98674

OIL RE-REFINING COMPANY



WILMER L. BRIGGS, President
4150 N. Suttle Road
Portland, OR 97217

