

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

Herman and Jacqualine Trotsky  
Industrial Container Services – WA,  
LLC

AGREED ORDER

No. DE 6720

TO: Herman and Jacqualine Trotsky  
2818 140<sup>th</sup> Avenue NE  
Bellevue, WA 98005

Calvin Lee, President  
Industrial Container Services – WA, LLC  
P. O. Box 2067  
1540 S. Greenwood Ave.  
Montebello, CA 90640

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## **I. INTRODUCTION**

The mutual objective of the State of Washington, Department of Ecology (Ecology), Herman and Jacqueline Trotsky (Trotskys) and Industrial Container Services - WA, LLC (ICS - WA) 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 Trotskys and ICS - WA (collectively, "the PLPs") to conduct a Remedial Investigation, Feasibility Study (RI/FS), and prepare a Draft Cleanup Action Plan (DCAP). 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. Parties agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the Trotskys and ICS - WA's responsibility under this Order. The Trotskys and ICS - WA 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 Industrial Container Services – WA, LLC and is generally located at 7152 1<sup>st</sup> Avenue S, Seattle, WA. 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 generally 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, Herman and Jacqueline Trotsky (Trotskys) and Industrial Container Services – WA, LLC (ICS – WA).

C. Potentially Liable Persons (PLPs): Refers to Herman and Jacqueline Trotsky (Trotskys) and Industrial Container Services - WA, LLC (ICS – WA).

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 PLPs:

A. The Site is generally located at the Industrial Container Services – WA, LLC (ICS - WA) property, 7152 1<sup>st</sup> Avenue South, Seattle, Washington approximately 2.2 miles south of Harbor Island on the Duwamish River. The Trotskys are owners of the ICS - WA property, which consists of King County Parcel Numbers 2924049108, 2924049030, and 2924049004. Certain members of the Trotsky family operated a drum reconditioning business at this Site from approximately 1953 to 1995, through Northwest Cooperage Co., Inc. Herman Trotsky became facility manager at Northwest Cooperage, Inc. in approximately 1970. Drum reconditioning activities occurred at the Site as early as the 1930s, prior to the Trotsky family’s presence at the Site.

B. ICS - WA is the current operator of the Site. ICS - WA operates a drum reconditioning business similar to that previously operated at the Site.

C. The Site has been the subject of several environmental investigations beginning in 1989. These investigations and cleanups are summarized in the following reports:

*Lower Duwamish Waterway, Early Action Area 2, Data Report, Additional Site Characterization Activities, SAIC, July 2007;*

*Summary of Existing Information and Identification of Data Gaps report by Science Applications International Corp. (SAIC), February 2007;*

*Preliminary Groundwater and Soil Quality Assessment, Northwest Cooperage Company, Inc., August 1986, and Groundwater and Soil Quality Assessment – Phase III, Northwest Cooperage Company, Inc., December 2, 1987.*

D. Environmental investigations and cleanups revealed soil, groundwater, stormwater outfall, seep and sediment samples on the Site and in the adjacent inlet to the Lower Duwamish Waterway (LDW) are contaminated with metals, polychlorinated biphenyls (PCBs), volatile organic compounds, semi-volatile organic compounds, pesticides, and petroleum hydrocarbons. These contaminants are hazardous substances under WAC 173-340-200 and are found in several samples from the Site and the adjacent inlet above the MTCA cleanup action levels and sediment management standards, WAC 173-204, and pose a threat to human health and the environment.

E. The U.S. Environmental Protection Agency (EPA) added the LDW, which is adjacent to the Site, to the federal Superfund list on September 13, 2001. Ecology listed the LDW on the Confirmed and Suspected Contaminated Sites List (CSCSL) on February 26, 2002. The LDW federal Superfund/MTCA site is undergoing a Remedial Investigation (RI) and Feasibility Study (FS) under a Joint Administrative Order on Consent.

F. On the basis of the facts set forth herein, Ecology has determined that a release or threatened release of hazardous substances at the Site requires remedial actions to protect human health and the environment. This Order sets forth the measures that need to be taken to perform a RI/FS and DCAP for the Site.



## VI. ECOLOGY DETERMINATIONS

A. The PLPs are "owners or operators" as defined in RCW 70.105D.020(17) of a "facility" as defined in RCW 70.105D.020(5). The Trotskys are currently the property owners at 7152 1<sup>st</sup> Avenue South, Seattle, and ICS - WA is the current Site operator. Mr. Herman Trotsky and certain members of the Trotsky family operated a drum reconditioning business known as Northwest Cooperage Co. Inc. at this Site from approximately 1953 to 1995.

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 PLP status letters to Herman and Jacqueline Trotsky and to ICS - WA dated January 31, 2008 pursuant to RCW 70.105D.040, -.020(21) and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that Herman and Jacqueline Trotsky and ICS - WA were each a PLP under RCW 70.105D.040 and notified the PLPs of this determination by letters dated July 22, 2008.

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. 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. Ecology, with input from the PLPs,

will determine if interim actions are warranted, including those that reduce or eliminate sources of contamination into the adjacent inlet and/or LDW.

## **VII. WORK TO BE PERFORMED**

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the PLPs 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 PLPs shall prepare a Work Plan for and conduct a Remedial Investigation/Feasibility Study (RI/FS) and prepare a Draft Cleanup Action Plan (DCAP) for the Site in accordance with WAC 173-340-350 through -390 and WAC 173-204. A scope of work for the RI/FS/DCAP is more particularly described in Exhibit B, "Scope of Work," and is incorporated by reference as an enforceable part of this Order. To plan and manage the RI/FS/DCAP, the project tasks and management strategies shall be summarized in the RI/FS/DCAP Work Plan (Work Plan) that will be developed and submitted to Ecology for review and approval in accordance with the Scope of Work.

B. The schedule of performance and list of deliverables is described in Exhibit C, "Schedule of Deliverables" and is incorporated by reference as an enforceable part of this Order.

C. Should an interim action be determined necessary under Section VI.E., the PLPs will prepare and implement a Work Plan and implement as specified in Task 3 of Exhibit B, Scope of Work. The public notice and comment period will be in accordance with the Public Participation Plan.

D. The PLPs shall submit Monthly Progress Reports. Progress Reports shall be submitted to Ecology until satisfaction of the Agreed Order (AO) in accordance with Section IX of the AO. Progress Reports shall be submitted to the Ecology project coordinator by the 15<sup>th</sup> of the month following the reporting month. If this day is a weekend or holiday, deliverables will be submitted to Ecology on the next business day. At a minimum, progress reports shall contain

the following information regarding the previous reporting period: A description of the actions which have been taken to comply with the AO.

- Summaries of sampling and testing reports and other data reports received
- Summaries of deviations from approved work plans
- Summaries of contacts with representatives of the local community, public interest groups, press, and federal, state, or tribal governments
- Summaries of problems or anticipated problems in meeting the schedule or objectives set forth in the SOW and Work Plan
- Summaries of solutions developed and implemented or planned to address any actual or anticipated problems or delays
- Changes in key personnel
- A description of work planned for the next reporting period

E. 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 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 Site 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). Ecology has accumulated \$89,635.67 in remedial action costs related to this facility as of March 31, 2009. Payment for this amount shall be submitted within thirty (30) days of the effective date of this Order. For all costs incurred subsequent to March 31, 2009, the PLPs 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.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70.105D.055, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

### **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's failure to comply with its obligations under this Order, the PLPs shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.B (Remedial Action Costs), 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 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:

Victoria Sutton  
Toxics Cleanup Program  
Northwest Regional Office  
Washington Department of Ecology  
3190 160<sup>th</sup> Avenue SE  
Bellevue, Washington 98008  
Phone: (425) 649-7219  
FAX: (425) 649-7161  
Email: [vsut461@ecy.wa.gov](mailto:vsut461@ecy.wa.gov)

The project coordinator for the PLPs is:

Matt Dalton  
Dalton, Olmstead & Fuglevand  
6034 N. Star Rd.  
Ferndale, WA 98248  
Phone: (360) 380-0862  
Email: [mdalton@dofnw.com](mailto:mdalton@dofnw.com)

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 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 Decree.

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 Site.

**F. Access**

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that the 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 Site 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 before entering any Site property owned or controlled by the PLPs unless an emergency prevents such notice. All persons who access the Site pursuant to this Section shall comply with any applicable Health and Safety Plan(s). Ecology employees

and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

**G. Sampling, Data Submittal, and Availability**

With respect to the implementation of this Order, 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 Site. Ecology shall, upon request, allow the PLPs 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 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 Site. Ecology shall review any existing Public Participation Plan to determine its continued appropriateness and whether it requires amendment, or if no plan exists, Ecology shall develop a Public Participation Plan alone or in conjunction with the PLPs.

Ecology shall maintain the responsibility for public participation at the Site. 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 Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

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

- a. Seattle Public Library - South Park Branch  
8604 Eight Ave S. Cloverdale St.  
Seattle, WA 98108
- b. Ecology's Northwest Regional Office  
3190 160<sup>th</sup> Avenue SE  
Bellevue, Washington 98008

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, 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 PLPs have fourteen (14) days within which to notify Ecology's project coordinator in writing of its objection to the decision or itemized statement.

- i. The PLPs shall include in the written objection sufficient detail to allow Ecology to evaluate the merits of the dispute.
- ii. Such detail shall include the specific Ecology determination or direction or itemized statement in dispute and shall include specific argument(s) documenting the basis for invoking the dispute resolution procedure.
- iii. Clarification of Ecology directions or determinations shall not be handled through the dispute resolution procedure. The Ecology project coordinator will make such clarifications in a manner and time they deem appropriate

to expedite to the maximum extent practicable the work performed under this order.

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 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 PLPs' 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 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 and permission for extensions shall not be unreasonably withheld. 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 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 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 Site 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 Section VIII.M (Endangerment), 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.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 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 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 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 PLPs transfer of any interest in all or any portion of the Site, 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. Federal requirements that apply include the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or federal Superfund law. State requirements that apply include the Sediment Management Standards (WAC 173-204).

2. Pursuant to RCW 70.105D.090(1), the PLPs are 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 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 any 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 parties 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. 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 to the extent arising from or on account of acts or omissions of the PLPs, its 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 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 remedial activity required by this Order, as amended by any modifications, and that the PLPs have 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 PLPs refuse, without sufficient cause, to comply with any term of this Order, the PLPs will be liable for:

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

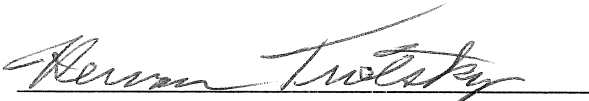
b. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

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

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

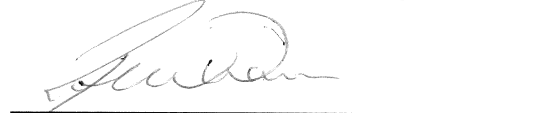
Effective date of this Order: 5/18/10

Herman and Jacqueline Trotsky



Herman Trotsky, for the marital community  
of Jacqueline and Herman Trotsky  
Seattle, Washington

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY



Robert W. Warren, P. Hg., MBA  
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Bellevue, WA 98008  
Telephone: (425) 649-7054

Industrial Container Services - WA, LLC

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Calvin Lee  
President  
Montebello, CA 90640  
(614) 860-0028



### 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.

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

Effective date of this Order: 5/18/10


Herman and Jacqueline Trotsky

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY

\_\_\_\_\_  
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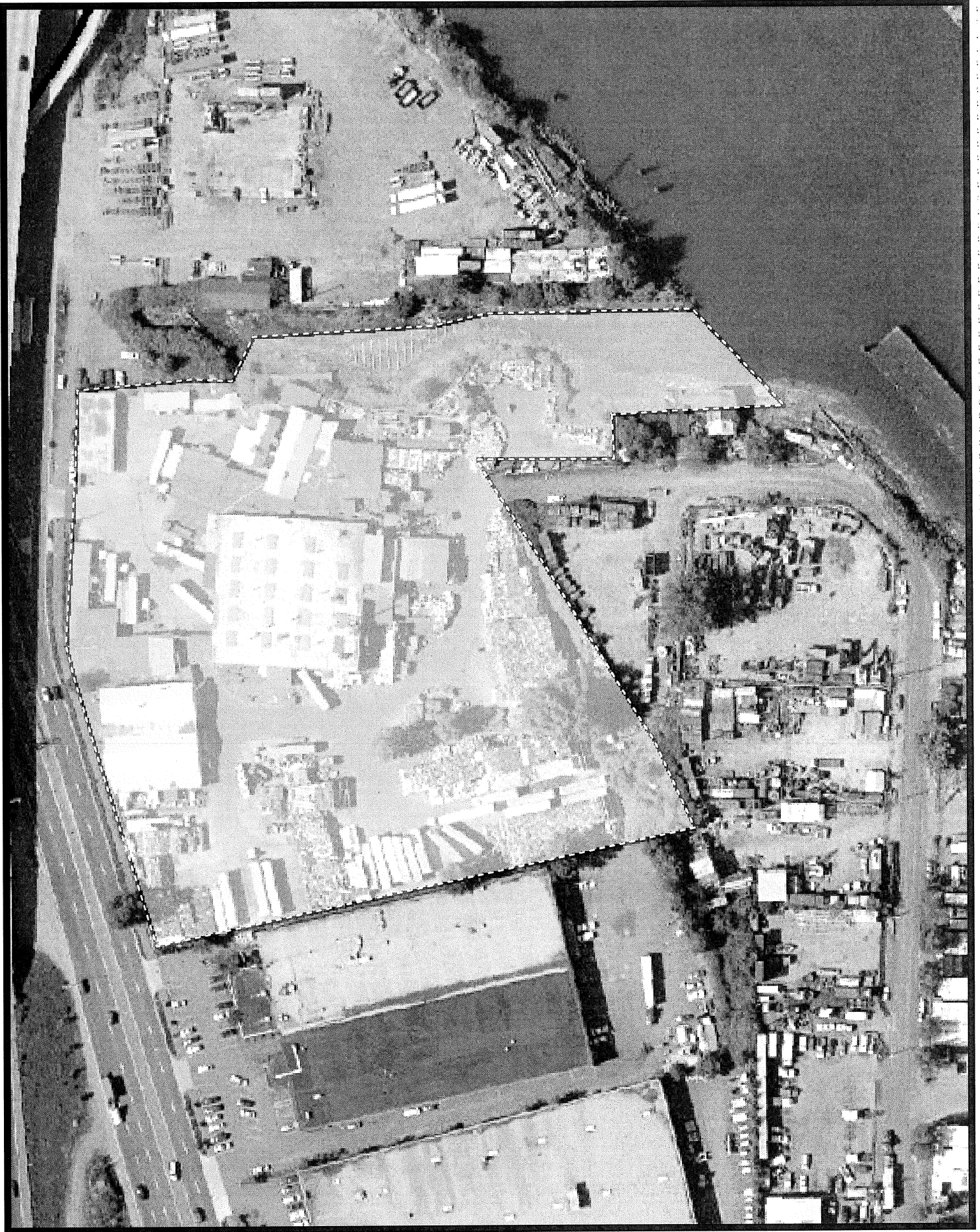
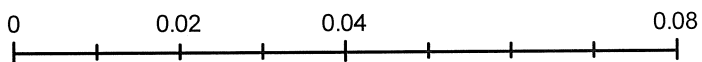


Exhibit A, Industrial Container Services WA LLC





## **EXHIBIT B – SCOPE OF WORK (SOW)**

### **PURPOSE**

The work under this Agreed Order (AO) involves conducting a remedial investigation and feasibility study (RI/FS), conducting interim actions if required or agreed to by Ecology, and preparing a Draft Cleanup Action Plan (DCAP) to select a cleanup alternative. The purpose of this RI/FS and DCAP for the Industrial Container Services – WA, LLC Site (the Site) is to provide sufficient data, analysis, and evaluations to enable Ecology to select a cleanup alternative for the Site.

The SOW is divided into six major tasks as follows:

- Task 1. RI/FS Work Plan
- Task 2. Remedial Investigation
- Task 3. Interim Actions (if required)
- Task 4. Feasibility Study, SEPA Compliance, and Public Participation
- Task 5. DCAP
- Task 6. Progress Reports

### **TASK 1: PREPARE RI/FS WORK PLAN**

The PLPs shall prepare a Draft Remedial Investigation/Feasibility Study Work Plan (Work Plan). The Work Plan shall include an overall description and schedule of all RI/FS activities. The Work Plan shall clearly describe the project management strategy for implementing and reporting on RI/FS activities. The responsibility and authority of all organizations and key personnel involved in conducting the RI/FS will be outlined.

The Work Plan shall describe general facility information; site history and conditions, including previous operations; past field investigations, including any data collection and analysis of soils, air, groundwater, surface water, and sediments; a conceptual site model showing contaminants, migration pathways in all environmental media, and potential receptors; geology and groundwater system characteristics; past, current, and future land use; identification of natural resources and ecological receptors; hazardous substances and their sources, etc., in compliance with WAC 173-340-350 and WAC 173-204-560.

As part of the project background, existing environmental data on site soil, groundwater, surface water, and sediments will be compiled and evaluated for data gaps. The data gaps will be used as the basis for conducting additional site investigations. The Draft Work Plan will also identify specific data collection procedures in a Sampling and Analysis Plan (SAP) and Quality Assurance Project Plan (QAPP) as part of the Work Plan in compliance with WAC 173-340-820 and WAC 173-204-600 for defining the nature and extent of contamination.

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The SAP identifies the proposed number and location of all environmental samples and methods, including soil borings, groundwater monitoring wells, soil, groundwater, stormwater, seep, catch basin and sediment samples, approximate depths, and includes a quality assurance project plan. The SAP will describe the sampling objectives, the rationale for the sampling approach (based upon the identified data gaps), and plans for data use, and shall provide a detailed description of sampling tasks. The SAP shall describe specifications for sample identifiers; sampling equipment; the type, number, and location of samples to be collected; the analyses to be performed; descriptions of sampling equipment and methods to be used; sample documentation; sample containers, collection and handling; data and records management; and schedule.

The Quality Assurance Project Plan (QAPP) will be prepared in accordance with the Guidance for Preparation of Quality Assurance Project Plans, EPA Region 10, Quality Data Management Program, QA/R-5 and requirements of the EPA Contract Laboratory Program. The QAPP will also follow Ecology's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies (July 2004) and Sediment Sampling and Analysis Plan Appendix (February 2008). These documents can be found at <http://www.ecy.wa.gov/biblio/0403030.html> and <http://www.ecy.wa.gov/biblio/0309043.html> respectively. Examples of completed QAPPS can be found at <http://www.ecy.wa.gov/biblio/qapp.html>. Laboratories must meet the accreditation standards established in Chapter 173-50 WAC. Data quality objectives will reflect the criteria or threshold values used for the source control evaluation.

The SAP, including the QAPP, will be submitted to Ecology for review and approval. As with all environmental work at the site, work may not begin without written approval from Ecology. The plan shall provide seven (7) days notice to Ecology prior to beginning sampling. Ecology may obtain split samples.

The PLPs or their contractors shall submit all new sampling data generated under this SAP and any other recently collected data to Ecology for entry into the Environmental Information Management System (EIM) in accordance with WAC 173-340-840(5) and Ecology's Toxics Cleanup Program Policy 840: Data Submittal Requirements. Only validated data will be entered into the EIM database.

RI/FS tasks and subtasks will include the following:

- Sampling and analysis of soil, groundwater, and seeps ;
- Sampling and analysis of surface and subsurface sediments;
- Sampling and analysis of stormwater and catch basin sediments to determine whether the stormwater system is a source of contamination to sediments;
- Evaluate the potential to contaminate or recontaminate sediments, including analysis of the following pathways:
  - Direct discharges
  - Stormwater discharges



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- Overland flow
- Groundwater discharges and seeps
- Soil erosion
- Site operations
- Spills, dumping, leaks, housekeeping, and management practices;
- Determination of whether sludges and/or contamination from an old waste discharge lagoon still exist on the Site.

The FS portion of the Work Plan will provide a detailed analysis of each remedial alternative according to the applicable requirements of WAC 173-340-350, MTCA Remedial Investigation and Feasibility Study, and WAC 173-204-560, SMS Cleanup Study. The remedial alternatives will be evaluated for compliance with the applicable requirements of WAC 173-340-360, Selection of Cleanup Actions, and WAC 173-204-560(4).

The Work Plan shall not be implemented until approved by Ecology. Once approved by Ecology, the PLPs will implement the Work Plan according to the schedule contained in Exhibit C.

The PLPs shall coordinate with Ecology throughout the development of the RI/FS and DCAP and shall keep Ecology informed of changes to the Work Plan and other project plans and of issues and problems as they develop.

The PLPs shall prepare two (2) copies of the Draft RI/FS Work Plan and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and comment. After addressing Ecology's comments on the Draft Work Plan and after Ecology approval, the PLPs shall prepare five (5) copies of the Final Work Plan and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology.

## **TASK 2. REMEDIAL INVESTIGATION**

The PLPs shall conduct an RI that meets the requirements of WAC 173-340-350(7) and WAC 173-204-560 according to the Work Plan as approved by Ecology. The RI will determine the nature and extent of contamination exceeding Model Toxics Control Act (MTCA) cleanup levels, Sediment Management Standards (SMS) cleanup standards, and other regulatory requirements. The RI must provide sufficient data and information to define the nature and extent of contamination.

Field sampling and analysis will be completed in general accordance with the SAP and QAPP. Deviation(s) from the approved SAP and QAPP must be communicated to Ecology immediately and documented as required by Ecology.

The PLPs shall provide interim data reports and updates to Ecology as new site data and information become available. Laboratory analysis data shall also be provided in

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electronic format when it has been validated. Raw laboratory data will be provided to Ecology upon request.

The PLPs shall compile the results of the Site investigation into a Draft RI Report. The PLPs shall prepare two (2) copies of the Draft RI Report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and comment.

After addressing Ecology's comments on the Draft Report, the PLPs shall prepare five (5) copies of a Final RI Report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment. Electronic survey data for monitoring locations, electronic lab data, and GIS maps of contaminant distribution shall also be provided for both the Draft and Final Reports.

If the data collected during this investigation is insufficient to define the full nature and extent of contamination, an additional phase of investigation shall be conducted to define the extent of contamination.

### **TASK 3. INTERIM ACTIONS (if required)**

Remedial actions implemented prior to completion of the RI/FS

- that are 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 correct a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed; or
- that are needed to provide for completion of the remedial investigation/feasibility study or design of the cleanup action

will be considered interim actions, will be implemented in accordance with WAC 173-340-430 and the AO, and will be designed in a manner that will not foreclose reasonable alternatives for any final cleanup action that may be required. Remedial actions for contaminated sediments will be designated partial cleanup actions and will be implemented pursuant to WAC 173-204-550(3)(d).

If required by Ecology, or if proposed by the PLPs and approved by Ecology, the PLPs will implement an interim action. Based upon information in the Draft RI report, interim action(s) may be needed to expedite control of releases to sediments or other environmental media pursuant to WAC 173-340-430.

The scope of the interim actions may include, but not be limited to, typical source control or containment elements such as:

- Soil or sediment removal
- Groundwater remediation

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- Repair, slip lining, replacement, or closure of stormwater conveyances or other structures such as conduit, vaults, catch basins, etc.
- Removal of underground storage tanks and pipes
- Removal of old drain fields or former surface impoundments
- Proper abandonment of old wells
- Removal of contaminated building or other structural material
- Construction of a treatment facility
- Shoreline stabilization such as bulkhead repair, erosion or seepage control, and grading or clearing.

If an interim action is to be performed, the PLPs will prepare and submit for Ecology approval a Draft Interim Action Work Plan (IAWP) with detail commensurate with the work to be performed. The Draft IAWP shall include, as appropriate:

- Description of the interim action including its purpose, general requirements, and relationship to the (final) cleanup action (to the extent known);
- Summary of relevant RI/FS information, including at a minimum existing site conditions and alternative interim actions considered;
- Information regarding design and construction requirements, including a proposed schedule and personnel roles and responsibilities;
- Compliance Monitoring Plan;
- SAP/QAPP.

The PLPs will also submit a copy of the Health and Safety Plan for the project.

Once approved by Ecology, the PLPs will implement the interim action according to the schedule contained in the IAWP.

The PLPs shall prepare two (2) copies of the Draft Interim Action Work Plan and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and approval. After addressing Ecology's comments on the Draft Interim Action Work Plan and after Ecology approval, the PLPs shall prepare five (5) copies of the Final Interim Action Work Plan submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats.

Upon successful completion of the work, a Draft Interim Action Report will be prepared as a separate deliverable. The PLPs shall prepare two (2) copies of the Draft Interim Action Report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and approval. After addressing Ecology's comments on the Draft Interim Action Report and after Ecology approval, the PLPs shall prepare five (5) copies of the Final Interim Action Report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology.

**TASK 4. FEASIBILITY STUDY, SEPA COMPLIANCE, AND PUBLIC PARTICIPATION**

FEASIBILITY STUDY

The PLPs shall use the information obtained in the RI to prepare a Feasibility Study (FS) that meets the applicable requirements of WAC 173-340-350(8) according to the approved Work Plan and Schedule (Exhibit C).

The Draft FS will evaluate remedial alternatives for site cleanup, consistent with MTCA and SMS requirements to ensure protection of human health and the environment by eliminating, reducing, or otherwise controlling risk posed through each exposure pathway and migration route.

The FS will provide a detailed analysis of each remedial alternative according to the applicable requirements of WAC 173-340-350, MTCA Remedial Investigation and Feasibility Study, and WAC 173-204-560, SMS Cleanup Study. The remedial alternatives will be evaluated for compliance with the applicable requirements of WAC 173-340-360, Selection of Cleanup Actions, and WAC 173-204-560(4), including a detailed evaluation of remedial alternatives relative to the following criteria:

- Compliance with Cleanup Standards and Applicable Laws
- Protection of Human Health
- Protection of the Environment
- Provision for a Reasonable Restoration Time Frame
- Use of Permanent Solutions to the Maximum Extent Practicable
- The Degree to which Recycling, Reuse, and Waste Minimization are Employed
- Short-term Effectiveness
- Long-Term Effectiveness
- Net Environmental Benefit
- Implementability
- Provision for Compliance Monitoring
- Cost-Effectiveness
- Prospective Community Acceptance

The remedial alternative that is judged to best satisfy the evaluation criteria will be identified. Justification for the selection will be provided, and the recommended remedial alternative further developed, in the FS Report.

The PLPs shall prepare two (2) copies of the Draft FS Report and submit them, including one electronic copy in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and approval.

After addressing Ecology's comments on the preliminary Draft Report and after Ecology approval, the PLPs shall prepare five (5) copies of the Draft Final FS Report and submit

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them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public approval.

#### SEPA COMPLIANCE

The PLPs shall be responsible for complying with the State Environmental Policy Act (SEPA) Rules including preparing and submitting an environmental checklist. If the result of the threshold determination is a determination of significance (DS), the PLPs shall be responsible for the preparation of Draft and final environmental impact statements. The PLPs shall assist Ecology with coordinating SEPA public involvement requirements with MTCA public involvement requirements whenever possible, such that public comment periods and meetings or hearings can be held concurrently.

#### PUBLIC PARTICIPATION

The PLPs shall support Ecology in presenting the Final RI and Draft Final FS Reports and SEPA evaluations at one public meeting or hearing. The PLPs will assist Ecology with presentations at any additional meetings or hearings that might be necessary for SEPA compliance or as part of the Public Participation Plan.

After the public comment periods are completed, the PLPs shall prepare a Draft Responsiveness Summary that addresses public comments and prepare a second Draft Final FS Report that addresses public comments. The PLPs shall prepare two (2) copies of the Draft Responsiveness Summary and second Draft Final FS Report and submit them to Ecology for review and approval, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment.

After addressing Ecology's comments, the PLPs shall prepare five (5) copies of the Final Responsiveness Summary and Final FS Report and submit them to Ecology for distribution, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats.

#### **TASK 5: PREPARE A DRAFT CLEANUP ACTION PLAN**

Upon Ecology approval of the Final Remedial Investigation and Draft Feasibility Study Report, the PLPs shall prepare a Draft Cleanup Action Plan (DCAP) in accordance with WAC 173-340-380 that provides a proposed remedial action to address the contamination present on the Site. Where contaminated sediments are included in the remedial action, the cleanup plan will comply with WAC 173-204-580, in addition to the MTCA requirements cited above. The DCAP shall include a general description of the proposed remedial actions, cleanup standards developed from the Remedial Investigation/Feasibility Study and rationale regarding their selection, a schedule for implementation, description of any institutional controls proposed, and a summary of applicable local, state, and federal laws pertinent to the proposed cleanup actions.

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The PLPs will submit a Draft Cleanup Action Plan (DCAP) for Ecology's review and approval. The DCAP will include, but not be limited to, the information listed under WAC 173-340-380. The PLPs shall prepare two (2) copies of the DCAP and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and approval.

After receiving Ecology's comments on the DCAP, if any, the PLP's shall revise the DCAP to address Ecology's comments and submit five (5) copies of the DCAP including one electronic copy each in Word (.doc) and Adobe (.pdf) formats.

### **TASK 6. PROGRESS REPORTS**

The PLPs shall submit Progress Reports monthly. Progress Reports shall be submitted to Ecology until satisfaction of the AO in accordance with Section IX of the AO. Progress Reports shall be submitted to the Ecology project coordinator by the 15<sup>th</sup> of the month following the reporting month. If this day is a weekend or holiday, deliverables will be submitted to Ecology on the next business day. At a minimum, Progress Reports shall contain the following information regarding the preceding reporting period:

- A description of the actions which have been taken to comply with the AO.
- Summaries of sampling and testing reports and other data reports received by the PLP
- Summaries of deviations from approved Work Plans
- Summaries of contacts with representatives of the local community, public interest groups, press, and federal, state, or tribal governments
- Summaries of problems or anticipated problems in meeting the schedule or objectives set forth in the SOW and Work Plan
- Summaries of solutions developed and implemented or planned to address any actual or anticipated problems or delays
- Changes in key personnel
- A description of work planned for the next reporting period

## EXHIBIT C – SCHEDULE OF DELIVERABLES

### Industrial Container Services – WA, LLC

The schedule for deliverables described in Exhibit B of this AO is presented below. If at any time during the RI/FS/DCAP process unanticipated conditions or changed circumstances are discovered which might result in a schedule delay, the PLPs shall bring such information to the attention of Ecology. Ecology will determine whether a schedule extension is warranted under the AO.

Any completion times that fall on a holiday or weekend will be extended to the next working day.

<b>RI/FS Deliverables</b>	<b>Completion Times</b>
Draft RI/FS Work Plan	60 calendar days following effective date of the agreed order
Final RI/FS Work Plan and Draft Sampling and Analysis Plan (SAP), and Quality Assurance Project Plan (QAPP)	60 calendar days following receipt of Ecology comments on draft RI/FS Work Plan
Final SAP, QAPP and HSP	45 calendar days following receipt of Ecology comments on draft SAP and QAPP
Completion of RI Field Work	12 months following completion of the Final SAP, QAPP and HSP
Draft RI Report	90 days following receipt of laboratory data
Final RI Report	45 calendar days following receipt of Ecology comments on draft RI report
Draft FS Report	90 days following completion of Final RI Report
Draft Final FS Report	45 calendar days following receipt of Ecology's review comments
2 <sup>nd</sup> Draft Final FS Report	60 calendar days following receipt of Ecology responses to public comments
Final FS Report	45 calendar days following receipt of Ecology's review comments
Draft Cleanup Action Plan (DCAP)	90 calendar days following completion of the Final FS Report
Progress Reports	15 <sup>th</sup> of every month beginning after the completion of the first full month after the effective date of the AO

