

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

FOX AVENUE BUILDING, L.L.C.
6900 Fox Avenue South
Seattle, Washington 98108

AGREED ORDER

No. DE 6486

TO: FOX AVENUE BUILDING, L.L.C.
6900 Fox Avenue South
Seattle, Washington 98108

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology), and Fox Avenue Building, L.L.C. (Fox Avenue) 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 supersedes Agreed Order No. DE TC91-N203, entered in 1991 by Ecology and Great Western Chemical (GWC), and Amendment No. 1 to Agreed Order No. DE TC91-N203, which substituted Fox Avenue for GWC in 2003.

This Order requires Fox Avenue to implement an interim action, to conduct a supplemental evaluation of remediation alternatives, to prepare and submit a supplemental feasibility study, and to prepare and submit 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. Fox Avenue agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Fox Avenue's responsibility under this Order. Fox Avenue 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 Property is referred to as Fox Avenue Building and is generally located at 6900 Fox Avenue South, Seattle, Washington, 98108. The Site is defined by the extent of contamination caused by the release of hazardous substances at or from the Property. The Site is more particularly described in the Site Diagram (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(5).

B. Parties: Refers to Ecology and Fox Avenue.

C. Potentially Liable Person (PLP): Refers to Fox Avenue.

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 Fox Avenue:

A. Fox Avenue owns the Property, Parcel # 0001800087, located at 6900 Fox Avenue South, Seattle, Washington, 98108 (Property). The Property is currently the location of an active chemical distribution warehouse (Cascade Columbia). The Property consists of approximately two and a half acres in the Duwamish industrial corridor, located approximately 400 feet from the South Myrtle Street Embayment of the Duwamish River.

B. The Site generally includes the Property and those properties located between the Property and the Duwamish River. The Site is listed on Ecology's Hazardous Sites List as "Fox Ave Bldg" with the Facility Site ID No. 2282. Its Site Hazard Assessment ranking is 1.

C. Since 1989, investigation activities at the Site have identified several contaminants in soil and groundwater at the Property and locations to its south and west. Much of this contamination is attributed to the historical handling and storage of materials by the now defunct GWC, prior to Fox Avenue ownership. The primary contaminants identified in soil and groundwater are:

- Chlorinated solvents - tetrachloroethylene (PCE), trichloroethylene (TCE), and their associated degradation products (e.g., 1,2-dichloroethene and vinyl chloride);

- Pentachlorophenol (PCP); and
- Petroleum hydrocarbons.

D. Beginning in the mid-1950s, GWC engaged in the commercial repackaging and distribution of chemical and petroleum products at the Property.

E. In 1991, Ecology and GWC signed Agreed Order No. DE TC91-N203 (1991 Agreed Order). Under the 1991 Agreed Order, GWC was required to perform a Remedial Investigation/Feasibility Study (RI/FS) at the Site. In 1993, Hart Crowser, on behalf of GWC, submitted a "Remedial Investigation/Preliminary Risk Assessment" to Ecology. In 2000, Terra Vac and Floyd Snider McCarthy, on behalf of GWC, submitted a "Supplemental Remedial Investigation and Feasibility Study" to Ecology. These documents provide information regarding activities conducted and chemicals handled by GWC at the Property.

F. In 2001, GWC filed for bankruptcy protection.

G. In 2003, Fox Avenue purchased the Property. Amendment No. 1 to Agreed Order No. DE TC91-N203 (Amendment 1) substituted Fox Avenue for GWC under the 1991 Agreed Order. Amendment 1 also directed Fox Avenue to perform remedial actions set forth in the "Work Scope Summary and Schedule," attached as Exhibit A to Amendment 1, including conducting supplemental investigation and a pilot study evaluating in situ chemical oxidation technologies, and preparing a feasibility addendum and a dCAP.

H. From 2003 to 2007, Environmental Resources Management (ERM), on behalf of Fox Avenue, conducted supplemental remedial investigation and feasibility study work at the Site, culminating in an expanded pilot study (EPS). In December 2007, ERM, on behalf of Fox Avenue, submitted to Ecology the "Draft Fox Avenue Expanded Pilot Study Phase III Memorandum" (ERM 2007). Ecology reviewed the ERM 2007 and accepted it as concluding the EPS in a letter dated January 30, 2008. In the letter, Ecology agreed that the three year long pilot test demonstrated that the in situ chemical oxidation technology was not likely to be effective in permanently reducing to the maximum extent practicable the solvent concentration and would not be selected as the permanent cleanup alternative for the site.

I. In March 2008, Ecology and Fox Avenue, with its environmental consultant Floyd|Snider, met and discussed how to proceed at the Site. Ecology agreed that Fox Avenue would proceed with a groundwater Enhanced Reductive Dechlorination (ERD) interim action and would conduct additional evaluation of source controls in a Supplemental Feasibility Study.

VI. ECOLOGY DETERMINATIONS

A. Fox Avenue is an “owner or operator” as defined in RCW 70.105D.020(17) of a “facility” as defined in RCW 70.105D.020(5).

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

C. Based upon credible evidence, Ecology issued a PLP status letter to Fox Avenue dated June 30, 2003, pursuant to RCW 70.105D.040, -.020(21), and WAC 173-340-500. By letter dated July 15, 2003, Fox Avenue voluntarily waived its rights to notice and comment and accepted Ecology’s determination that Fox Avenue is a PLP under RCW 70.105D.040. By letter dated July 16, 2003, Ecology issued a final determination of PLP status.

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. The potential

discharge of a chlorinated solvent groundwater plume from the Site to the Duwamish Waterway may warrant an interim action consistent with WAC 173-340-430.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that Fox Avenue 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. Fox Avenue shall perform the actions set forth in the "Scope of Work Fox Avenue Building LLC" (SOW), attached as Exhibit B. The SOW is incorporated by reference and forms an integral and enforceable part of this Order. These actions include:

1. Conduct Groundwater Enhanced Reductive Dechlorination (ERD) Interim Measure—Fox Avenue shall perform an interim action (IA) to control the discharge of a chlorinated solvent groundwater plume from the Site to the Duwamish Waterway. (SOW Section 2.0.)
2. Conduct Source Area Silts Data Gap Investigation—Fox Avenue shall conduct a data gaps assessment to provide critical information needed to properly assess remedial alternatives for the Site. (SOW Section 3.0.)
3. Conduct Vapor Intrusion Evaluation—Fox Avenue shall collect vapor samples to evaluate the potential of on-site exposure from PCE due to vapor intrusion into the office portion of the Fox Avenue facility. (SOW Section 4.0.)
4. Evaluate Continued Operation of Soil Vapor Extraction (SVE) System—Fox Avenue shall evaluate the merits of restarting operation of the existing SVE system if it is found that a vapor intrusion pathway into the Fox Avenue buildings still exists. (SOW Section 5.0.)
5. Prepare New Feasibility Study (FS)—Fox Avenue shall prepare and submit a New FS report that will develop and evaluate cleanup action alternatives to enable a cleanup action to be selected for the site, in accordance with the MTCA. (SOW Section 6.0.)

6. Prepare dCAP—Upon Ecology approval of the final New FS report, Fox Avenue shall prepare a dCAP in accordance with WAC 173-340-380. The dCAP shall detail the proposed cleanup action for addressing the contamination present on the Site and address the requirements for developing a cleanup action in WAC 173-340-350 through 173-340-390, including Ecology's expectations for cleanup alternatives in WAC 173-340-370.

B. Fox Avenue shall perform the actions outlined above and set forth in the SOW (Exhibit B) in accordance with the schedule set forth therein in Section 8.0. Should significant additional work be necessary based on information obtained during the supplemental investigation and/or new information that was not known at the time of the preparation of this Order, a supplemental work plan shall be submitted to Ecology for review and approval according to an agreed schedule, including an agreed revised schedule for submission of the resulting draft New FS report and dCAP. Schedule extensions are addressed in Section VIII.K.

C. Fox Avenue shall submit the dCAP to Ecology for review in accordance with the SOW Schedule. The dCAP shall meet the requirements of WAC 173-340-380, and include a general description of the proposed cleanup action, cleanup standards from the RI/FS and a rationale regarding the selection, a proposed schedule for implementation, description of any institutional controls proposed, and a summary of federal, state, and local laws that are applicable to the proposed cleanup action.

D. Prior to commencing work on the actions identified in SOW Sections 2.0-5.0 (Nos. 1-4 above), Fox Avenue shall submit action-specific work plans to Ecology for its review and approval. All sampling and analysis shall be conducted pursuant to an Ecology approved Sampling and Analysis Plan (SAP). All work shall be conducted in accordance with a Health and Safety Plan (HASP). All environmental sampling shall be conducted pursuant to an Ecology Approved Quality Assurance Project Plan (QAPP). The work plans, SAP(s), and QAPP(s), upon review and approval by Ecology, and the HASP(s) upon review by Ecology, shall be incorporated by reference, and form an integral and enforceable part of this Order.

E. During performance of all remedial actions, Fox Avenue shall maintain detailed records including photographic documentation of substantive aspects of the work performed, including construction techniques and materials used, items installed, and tests and measurements performed. The Fox Avenue project coordinator or designee shall provide progress reports to the Ecology project coordinator on a quarterly basis, unless an alternate schedule is requested by Fox Avenue and agreed to by Ecology in writing. Each progress report shall identify accomplishments for the prior quarter and expected accomplishments for the upcoming quarter.

F. 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

Fox Avenue 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, including work performed by Fox Avenue pursuant to the 1991 Agreed Order and Amendment 1 prior to the execution 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). For all costs incurred subsequent to the effective

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

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

D. Designated Project Coordinators

The project coordinator for Ecology is:

Sunny Becker
Department of Ecology/Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008
(425) 649-7187

The project coordinator for Fox Avenue is:

Teri Floyd
Floyd|Snider
601 Union Street, Suite 600
Seattle, WA 98101
(206) 292-2078

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

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

E. Performance

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

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

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

Any documents submitted containing geologic, hydrologic, or engineering work shall be under the seal of an appropriately licensed professional as required by Chapters 18.220 and 18.43 RCW.

Fox Avenue 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 Fox Avenue either owns, controls, or has access rights to at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing Fox Avenue's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by Fox Avenue. Fox Avenue shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by Fox Avenue 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 Fox Avenue 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, Fox Avenue 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, Fox Avenue shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by Fox Avenue

pursuant to implementation of this Order. Fox Avenue shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow Fox Avenue 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 Fox Avenue 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 Fox Avenue.

Ecology shall maintain the responsibility for public participation at the Site. However, Fox Avenue shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing lists and 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 Fox Avenue 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 Fox Avenue that do not

receive prior Ecology approval, Fox Avenue 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. South Park Branch Public Library
8604 Eighth Avenue South
Seattle, WA 98108
(206) 615-1688
- b. Ecology's Northwest Regional Office
3190 160 Avenue NE
Bellevue, WA 98008
(425) 649-7190

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, Fox Avenue shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order, the 1991 Agreed Order, and Amendment 1, and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, Fox Avenue shall make all records available to Ecology and allow access for review within a reasonable time. Nothing in this Order is intended by Fox Avenue to waive any right it may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If Fox Avenue withholds any requested records based on an assertion of privilege, it shall provide Ecology with a privilege log

specifying the records withheld and the applicable privilege. No actual data collected on Site pursuant to this Order shall be considered privileged.

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, Fox Avenue has fourteen (14) days within which to notify Ecology's project coordinator in writing of its objection to the decision or itemized statement and seven (7) days thereafter to provide Ecology specific reasons for its objection.

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within twenty one (21) days, Ecology's project coordinator shall issue a written decision responding to Fox Avenue's objection.

c. Fox Avenue 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 fourteen (14) days of receipt of Ecology's project coordinators 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 Fox Avenue's request for review. The Section Managers 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 Fox Avenue 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 Fox Avenue 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 Fox Avenue;
- 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 Fox Avenue.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give Fox Avenue 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 Fox Avenue. Fox Avenue 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 Fox Avenue to cease such activities for such period of time as it deems necessary to abate the danger. Fox Avenue shall immediately comply with such direction.

In the event Fox Avenue 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, Fox Avenue may cease such activities. Fox Avenue 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 Fox Avenue shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Fox Avenue's cessation of activities, it may direct Fox Avenue to resume such activities.

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

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

N. Reservation of Rights

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

additional enforcement actions against Fox Avenue regarding remedial actions required by this Order, provided Fox Avenue complies with this Order.

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

O. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by Fox Avenue 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 Fox Avenue's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, Fox Avenue 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, Fox Avenue shall notify Ecology of said transfer. Upon transfer of any interest, Fox Avenue 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 Fox Avenue 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. The permits or specific federal, state, or local requirements that the agency has determined are applicable and that are known at the time of entry of this Order have been identified in Exhibit C.

2. Pursuant to RCW 70.105D.090(1), Fox Avenue is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws

requiring or authorizing local government permits or approvals. However, Fox Avenue 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.

Fox Avenue has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or Fox Avenue determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or Fox Avenue shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Fox Avenue 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 Fox Avenue and on how Fox Avenue must meet those requirements. Ecology shall inform Fox Avenue in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Fox Avenue 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 Fox Avenue 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

Fox Avenue agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property to the extent arising from or on account of acts or omissions of Fox Avenue, its officers, employees, agents, or contractors in entering into and implementing this Order. However, Fox Avenue 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 Fox Avenue's receipt of written notification from Ecology that Fox Avenue has completed the remedial activity required by this Order, as amended by any modifications, and that Fox Avenue has 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 Site.

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

1. Up to three 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.

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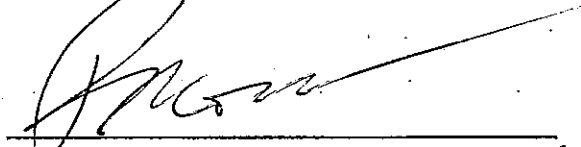
D. This Order is not appealable to the Washington Pollution Control Hearings Board.

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

Effective date of this Order: MAY 6 2009

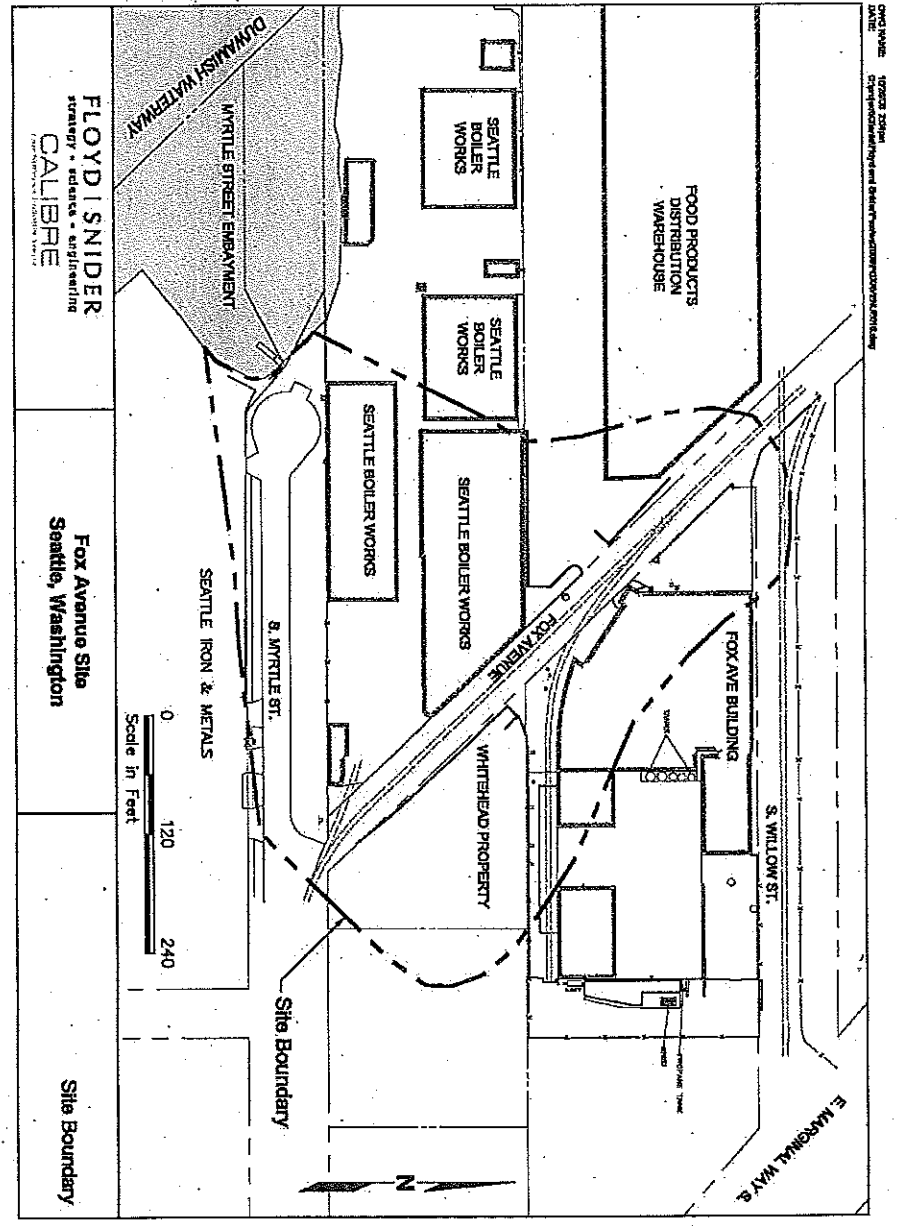
FOX AVENUE BUILDING, L.L.C.

**STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY**



Robert Code
Member
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Northwest Regional Office
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DATE: 10/23/2008
 DRAWN BY: [Name]
 CHECKED BY: [Name]

FLOYD SNIDER
 strategy • science • engineering
CALIBRE
 CONSULTANTS

Fox Avenue Site
 Seattle, Washington

Site Boundary

Fox Ave Building Site November 2008

Exhibit B Scope of Work Fox Avenue Building LLC

1.0 INTRODUCTION

Fox Avenue Building LLC (Fox Avenue) intends to initiate an Interim Action (IA) to control the discharge of a chlorinated solvent groundwater plume to the Duwamish Waterway. The technology to be used is Enhanced Reductive Dechlorination (ERD), which stimulates the natural biodegradation process that is already occurring at the Fox Avenue Site (Site).

The IA will be implemented in conjunction with a data gaps assessment, vapor intrusion evaluation, an evaluation of continuing operation of the existing soil vapor extraction (SVE) system, and an evaluation of alternatives to remediate source area silts that continue to be a source of solvent contamination to groundwater. The evaluation of remediation alternatives for the source area silts will be documented in a new Feasibility Study. The Feasibility Study will include consideration of technologies that were not originally considered in the 2000 Feasibility Study.

2.0 GROUNDWATER ERD INTERIM MEASURE

The IA will involve the installation of a series of downgradient injection wells to implement ERD. The injection wells will be used to inject a sugar solution into the contaminated groundwater zone. Natural fermentation processes caused by the sugar will stimulate the natural solvent-degrading bacteria present at the Site to fully degrade the existing contamination in groundwater (i.e., tetrachloroethylene [PCE], trichloroethylene [TCE], and vinyl chloride). This technology was selected for the Site based on specific site conditions, results of a bench scale test, and its successful implementation by the project team members in a nearby site with similar conditions. A work plan will be prepared for review and approval by the Washington State Department of Ecology (Ecology) that describes the IA and its specific application to the Site. Injection of the sugar solution will occur at regular intervals to allow effective treatment of the groundwater plume until the remedy for the source area silts is completed. The majority of this work will occur off property in City of Seattle right-of-way and on downgradient properties; although some will also occur in the Northwest Corner of the Fox Avenue property. Groundwater treatment will focus on both the primary "Fox Avenue" plume emanating from the source area silts as well as the secondary plume emanating from the Northwest Corner of the Site. The anticipated scope of work for this task includes or assumes the following:

- Preparation and submittal of an Underground Injection Control permit package.
- Preparation of a Work Plan for ERD application including performance monitoring and evaluation criteria.
- Resampling of selected site wells.
- Collection of groundwater screening samples to define the base of contamination in the 2nd Water Bearing Zone.

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- Construction of the ERD well injection network (including bidding, utility clearing, coring, drilling, and well installation, development, and protection).
- Injection of the substrate.
- Optimization of the design for the ERD application and refinement of the ERD network by adding additional injection wells.
- Performance of ERD substrate injections every 4 to 6 months until the issuance of the cleanup action plan.
- Collection of performance monitoring samples to demonstrate complete reductive dechlorination of the chlorinated ethenes.

3.0 SOURCE AREA SILTS DATA GAP INVESTIGATION

Floyd|Snider will conduct a data gaps investigation to provide critical information needed to properly assess remedial alternatives for the Site.

The source area silts adjacent to and under the Fox Avenue warehouse building will be the subject of the data gaps investigation. The objective of the data gap investigation will be to define the current location, distribution, and mass of solvent contamination within and in the general area of the source area silts. Specific data gaps include estimation of the mass and location of residual source area contamination, the depth and lateral extent of such contamination, especially under the warehouse, and the presence and form of any DNAPL within or on top of the first silt horizon. In addition, the depth of groundwater contamination in the 2nd water bearing zone (WBZ) will be better delineated.

These data will allow a clearer definition of the current source area. Without such information, the evaluation of remedy practicability, effectiveness, cost, restoration time frame, and permanence in the Feasibility Study becomes much more difficult and subjective. Specific scope items include the following:

- Preparation of a Work Plan for Ecology approval.
- Field investigation by direct push sample and laboratory analysis (of both soil and water) intended to fill the data gaps identified above.
- Installation of new wells, as necessary, to define the depth of groundwater contamination in the 2nd WBZ.
- Report findings in a Technical Memorandum.

4.0 VAPOR INTRUSION EVALUATION

Vapor samples will be collected to evaluate the potential of on-site exposure from PCE due to vapor intrusion into the office portion of the Fox Avenue facility. Data collected prior to the operation of the SVE system indicated soil vapor concentrations in the office portion of the warehouse exceeded risk-based concentrations. Current conditions may be significantly different due to the removal of a large mass of solvents from the unsaturated zone under the warehouse by the SVE system.

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The planned vapor intrusion evaluation will include indoor air sampling in an office area on two weekend days when the facility is closed and personnel ingress/egress from work areas is limited. The first sampling will occur while the SVE system is shutdown; the second indoor air sampling will occur while the SVE system is operating. The scope of this task will include preparation of a work plan, data collection, evaluation, validation, and reporting to Ecology.

5.0 EVALUATION OF THE CONTINUED OPERATION OF SVE SYSTEM

Floyd|Snider will evaluate the merits of restarting the operation of the existing SVE system if it is found that a vapor intrusion pathway into the Fox Avenue warehouse still exists. Operating the SVE system will have the added advantage of continuing to remove additional mass in the vadose zone. An engineering evaluation of the SVE system will be performed to determine whether it is cost-effective to operate the SVE system in a pulsed (i.e., intermittent) mode. Recommendations for restarting operation of the SVE system will be included in a technical memo to Ecology.

6.0 PREPARE NEW FEASIBILITY STUDY

The original Feasibility Study prepared in 2000 did not consider several technologies that have the potential to clean up the Site. These include thermal heating of soil, permeable reactive barriers, and ERD—both for source soils and groundwater. The new Feasibility Study will evaluate these technologies and also assess excavation of source soils. The new Feasibility Study will include the results of the ongoing groundwater IA ERD, the source area soils investigation, and the results of the vapor survey in evaluating remedial alternatives.

The new Feasibility Study will also document ongoing discussions with Ecology regarding applicable or relevant and appropriate requirements, cleanup levels, remediation levels, point of compliance, long-term monitoring requirements, and other key elements necessary to perform a remedial action at the Site in conformance with applicable requirements under the Model Toxics Control Act.

7.0 DRAFT CLEANUP ACTION PLAN AND PUBLIC PARTICIPATION ASSISTANCE

Floyd|Snider will be responsible for preparation of a draft cleanup action plan for Ecology review and public comment. The cleanup action plan will describe and justify selection of the final remedy for the Site. Fox Avenue and Floyd|Snider will also provide assistance to Ecology in the preparation of a public participation plan and fact sheets and will participate, as requested by Ecology, in public meetings.

8.0 SCHEDULE

The project schedule for the major project elements is as follows:

ITEM	DATE
Work Plan for Groundwater Interim Measure	Mid-September 2008
Work Plan for Source Area Silts Investigation and ERD Pilot Test	Mid-October 2008
Implement Ground Water Interim Measure	Early November 2008–March 2010
Work Plan for SVE/Vapor Pathway Evaluation	Mid-November 2008
Implement Source Area Silts Investigation	Early December 2008
Source Area Silts Technical Memo	April 2009
SVE/Vapor Pathway Evaluation Technical Memo	June 2009
Draft Feasibility Study Report	August 2009
Draft Cleanup Action Plan	November 2009

9.0 LIST OF DELIVERABLES

The list of deliverables to be submitted to Ecology for their review and comment are as follows:

- Work Plan for Groundwater Interim Measure (includes Sampling and Analysis Plan, Quality Assurance Project Plan and Health and Safety Plan)
- Work Plan for the Data Gaps Investigation of the Source Area Silts
- Work Plan for Evaluation of the SVE System (including evaluation of Indoor Air Quality)
- Technical Memorandum for the Source Area Silts Investigation
- Technical Memorandum for the Evaluation of the SVE System
- Quarterly Reports on the Groundwater IA
- Updated Draft and Final Feasibility Study

Exhibit C

List of Permits and/or specific federal, state, or local requirements that are known to be applicable at this time

The execution of the scope of work for the Agreed Order will require the following permits/approvals:

- 1) *Ecology Underground Injection Well Registration:* Approximately 25 injection wells will be used to inject fluids into groundwater for the purposes of groundwater remediation. The injection wells are classified by Ecology as Class V underground injection wells.

Class V injection wells do not need a permit but Floyd|Snider will register them with the UIC program as authorized under a MTCA Agreed Order.

- 2) *City of Seattle Street Use Permit:* Approximately 14 injection wells will be drilled within the Fox Ave and S. Myrtle Street right of ways. Floyd|Snider will obtain a street use permit which is required when drilling wells in City of Seattle public streets and right-of-ways.

