

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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In the Matter of Remedial Investigation by:

AGREED ORDER

ULTRA Corporation
Pace National Corporation Facility
Kirkland, WA 98033

No. 6221

TO: ULTRA Corporation
1700 Westlake Avenue N, Suite 700
Seattle, WA 98109

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INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the ULTRA Corporation (ULTRA) under this Agreed Order (Order) is to provide for a Draft Remedial Investigation Report (Draft RI Report), supplemental Remedial Investigation Work Plan (Supplemental RIWP), Draft Feasibility Study (Draft FS), and preparation of a Draft Cleanup Action Plan (Draft CAP) for a facility where there has been a release or threatened release of hazardous substances. The investigation, evaluation, and design will be performed in anticipation of a remedial action. This Order requires ULTRA, the current owner of the former Pace National Corporation Facility property (the Property), to prepare the Work Plan (Work Plan) including preparation of a Remedial Investigation and Feasibility Study (RI and FS) reports pursuant to WAC 173-340-350 and a Draft CAP pursuant to WAC 173-340-380. The Work Plan will outline the content of the Draft Remedial Investigation Report (Draft RI Report) and includes a Pilot Test Work Plan for conducting a study of remedial technologies (Pilot Test). Ecology believes the actions required by this Order are in the public interest.

I. JURISDICTION

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

II. 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. ULTRA agrees to undertake all actions required by the terms and conditions of this Order. ULTRA 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.

III. 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 Pace National Corporation Facility (Pace National), a.k.a. former Pace International Facility, and is generally located at 500 7th Avenue South in Kirkland, Washington. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. The Site is more particularly described in the Site Diagram in Exhibit A of this Order. The Site constitutes a Facility under RCW 70.105D.020(4).

B. Parties: Refers to Ecology and ULTRA.

C. Potentially Liable Person (PLP): Refers to ULTRA.

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.

IV. FINDINGS OF FACT

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

A. The Pace National Site subject to the Work to be Performed in this order is generally located at 500 7th Avenue South, approximately 0.5 mile south of downtown Kirkland. The 5-acre Ultra Property is bounded to the north by 7th Avenue South, to the east by Burlington Northern Santa Fe Railway tracks, to the south by the Lakeview Elementary School, and to the west by residential properties.

B. Based on a Phase I Environmental Site Assessment Update completed by Hart Crowser (dated November 14, 2003), the Property was occupied by several residential dwellings from the early 1900s until the early 1960s when the Property was converted to commercial/industrial applications. The Seattle Door Company built an office building in the northeastern corner of the Property in 1963. The Tye Lumber Company stored wood products

for builders in the northern portion of the Property until PACE National (PACE) purchased the Property in 1969.

C. PACE operated a specialty chemical mixing and packaging facility on the northern portion of the Property from 1971 to approximately 1990. In addition to a large former industrial/warehouse and office building, the PACE facility had 14 underground storage tanks (USTs) containing regulated and unregulated substances such as alcohols, oils, and proprietary mixtures used to formulate products. Between 1990 and 2006 (when the PACE building was demolished) the Property was used for retail storage. The southern half of the Property has remained largely undeveloped and consists of trees and dense shrubs.

D. Numerous environmental investigations and independent remedial actions have been completed at the Property over the last 20 years. In 1990 and 1991, Hart Crowser conducted environmental investigations to evaluate soil quality in areas of potential concern including the Railroad Unloading Area (RUA), Underground Tank Storage Area (UST), Above ground Storage Tank with Oil/Water Separator (AST) Area, and Drum Storage Yard Area. Petroleum hydrocarbons, n-nitrosodiphenylamine, and several chlorinated solvents (including chloroethane, methylene chloride, cis-1,2-dichloroethene, trans-1,2-dichloroethene, trichloroethene, and tetrachloroethene) were detected in at least one RUA soil sample.

In 1990 in the Underground Storage Tank Area, the 14 USTs and associated piping were removed by SRH Environmental Management (SRH) and were observed to be in generally good condition. No obvious leaks were observed and approximately 300 cubic yards of soil apparently impacted from overfills was excavated from around the tanks and removed and verification samples were collected. Petroleum hydrocarbons were detected in 2 of the 14 samples analyzed at concentrations ranging from 27 to 61 mg/kg. Benzene, Toluene, Ethylbenzene, and Xylenes (BTEX) were not detected. Isopropanol was detected in 2 of the 8 soil samples analyzed at concentrations ranging from 4 to 320 mg/kg. Diphenylamine was detected in one sample, at a concentration of 21.4 mg/kg. SRH also collected two groundwater samples from the bottom of the UST excavation. Xylenes and toluene were detected at concentrations ranging from 4.8 to 19 µg/L. Methanol and isopropanol were also detected at concentrations ranging from 33 to 12,000

mg/L. Ecology reviewed the UST closure report and concurred that proper procedures were followed.

E. As an independent remedial action conducted in 1999, an Above ground Storage Tank (AST), oil/water separator, and 1,000 gallon underground flow-through Ecology tank were removed from the Former Ecology Tank Area (FETA) located along the northwestern corner of the PACE property. PSCI Environmental (PSCI) submitted five samples from the tank excavation for chemical analysis. A summary table provided by PSCI indicates that several pesticides (including chlorodane, pentachlorophenol, heptachlor, 4,4-DDD, 4,4-DDE, and delta-BHC) were detected in at least one of the tank excavation soil samples. Subsequently, Galloway Environmental, Inc. (GEI) directed the excavation and treatment of impacted soil from the FETA. GEI also excavated and removed 45 tons of petroleum-impacted soil in May 2000 from the Railroad Unloading Area (RUA) located in the northeastern corner of the Property. GEI noted that concentrations of target compounds in the final excavation sidewall and bottom samples did not exceed MTCA Method A residential cleanup levels. In December 2000, GEI installed a hand auger boring adjacent to the former RUA USTs and encountered diesel- and oil-range hydrocarbons in a grab groundwater sample collected from the boring.

F. As an independent remedial action, based on an environmental assessment conducted by Hart Crowser in July/August 2003 under Ecology's Voluntary Cleanup Program (VCP), an additional 105 tons of petroleum- and chlorinated solvent-impacted soils were excavated from the RUA and FETA. Prior to backfilling, 210 pounds of Hydrogen Reducing Compound (HRC) was placed in the excavation to enhance natural *in situ* biological degradation of residual chlorinated solvents present in shallow groundwater.

G. As part of ULTRA's pursuit of a No Further Action (NFA) determination from Ecology under the Voluntary Cleanup Program, Hart Crowser conducted an extensive supplemental environmental investigation in 2004 and 2005 to assess environmental conditions following completion of the previous cleanup actions. Approximately 40 direct push borings and 16 monitoring wells were installed on the Property. Isolated pockets of solvents, specifically, tetrachloroethene (PCE) were identified in soil and groundwater at the northeastern corner of the

Property particularly near sewer lines located adjacent to the Pace building. Elevated concentrations of gasoline-range petroleum hydrocarbons (including ethylbenzene, toluene, xylenes, trimethylbenzene, butylbenzene, isopropyl toluene, and naphthalene), and organic compounds including acenaphthene, fluorene, diphenylamine, chloromethane and dichloroethane were detected in several shallow wells located in this same area. However, PCE sister products trichloroethene (TCE), dichloroethene (DCE), and vinyl chloride (VC) were observed in a number of wells located downgradient (west) of this source area. Several metals including lead (0.0024 mg/L), mercury (0.0002 mg/L), nickel (0.054 mg/L), zinc (0.001 to 0.035 mg/L), and arsenic (0.022 to 0.043 mg/L) were detected in at least one groundwater sample collected as part of these investigations.

H. In order to facilitate an additional source removal action in the northeastern corner of the Property, the PACE building was demolished in 2006. As an independent remedial action, approximately 6,500 cubic yards of soil was excavated from this area and approximately 5,800 tons of petroleum- and chlorinated solvent-containing soil was transported to an off-site disposal facility. The excavation was backfilled with clean fill material and six new wells (MW-19 through MW-24) were installed in the area as part of the post-remediation performance monitoring program.

I. An extensive amount of groundwater sampling has been collected and analyzed for chlorinated solvents including and not limited to tetrachloroethene, also called perchloroethene (PCE) and vinyl chloride (VC) over the past three years. Chlorinated solvents (PCE and VC) concentrations in the northeastern corner source area have decreased over the past 5 years. For example, vinyl chloride concentrations in this area have decreased from a maximum concentration of 240 µg/L in 2003 (well MW-2) to not detected during the most recent sampling event (February 2008). However, VC is still being detected in site groundwater downgradient of the former source area with concentrations typically ranging from less than 1 µg/L to 51 µg/L and above the MTCA method A residential cleanup level. The highest groundwater VC concentrations are typically detected in well HC-MW-11 located west of the former Pace

building location. PCE is generally not detected except in wells located in the northeastern corner of the Property.

J. To address the chlorinated solvents in groundwater issue, Hart Crowser installed an Oxygen Release Compound (ORC) barrier wall in the western part of the property in early 2006 as an independent remedial action because a groundwater plume containing chlorinated solvents was possibly migrating off Property. The ORC barrier wall consisted of injecting ORC into two rows of direct push borings installed near the western Property boundary. Results of post-injection groundwater monitoring did not indicate that the barrier wall significantly reduced vinyl chloride concentrations. Accordingly, no additional ORC injections were proposed.

K. As an independent remedial action to contain a chlorinated solvent plume on the Property, Hart Crowser attempted to install a pilot groundwater interceptor trench along the western property boundary in the fall of 2006. However the presence of unstable gravel fill in portions of the excavation and wet season conditions prevented construction to the designed depth and complete the pilot test.

L. The latest testing of the groundwater wells in the northwest corner of the Property indicate continuing VC concentrations in groundwater above the MTCA Method A cleanup level.

V. ECOLOGY DETERMINATIONS

A. ULTRA is an "owner or operator" as defined in RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4).

B. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(20) and RCW 70.105D.020(7), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to ULTRA dated July 15, 2008, pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500. By letter dated July 23, 2008, ULTRA voluntarily waived its rights to notice and comment and accepted Ecology's determination that ULTRA is a PLP under RCW 70.105D.040.

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

VI. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that ULTRA perform the following tasks:

- (a) Prepare a Work Plan that outlines the content of Remedial Investigation (RI) Report and includes a Pilot Test Work Plan for conducting the Pilot Test. The Pilot Test work plan is to test for remedial technology in a shallow groundwater chlorinated solvent plume on the Property;
- (b) Prepare a Draft RI Report;
- (c) Conduct a Pilot Test of a technology that may be considered as part of the Draft Feasibility Study (FS);
- (d) Prepare a Supplemental RI Work Plan if data gaps are identified by Ecology during their review of the Draft RI Report and Pilot Test results;
- (e) Prepare a Draft FS Report;
- (f) Prepare a Draft CAP after Ecology approval of the RI, Pilot Test, FS and Supplemental RI Work Plan results if required; and
- (g) Finalize the Draft RI/FS/CAP that is accepted by Ecology for Public Review at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein. The work tasks to be performed and schedule for implementation are listed on Exhibit B.

A. Extensive independent investigations have already been performed at the Site; however, supplemental investigation is necessary to complete an RI and FS and identify any data

gaps or issues related to remedy selection. As of the effective date of this Agreed Order, ULTRA shall perform the remedial investigation work necessary to meet the requirements for an RI under WAC 173-340-350 for the Site. Within 30 days from the effective date of this Order, ULTRA shall submit a draft Work Plan that outlines the content of Draft RI Report and includes a Pilot Test Work Plan for pilot testing of a potential remedial technology consisting of a reactive iron wall. Ultra shall implement the Pilot Test upon approval of the Work Plan. The results of Pilot Test shall be submitted with all pertinent Quality Assurance/Quality Control (QA/QC) data of all analytical data from the investigation conducted pursuant to the Work Plan.

B. Within 30 days of receipt of all analytical data from investigations but no later than 115 days from Ecology's approval of the Work Plan, ULTRA shall prepare and submit to Ecology a draft RI report that meets the requirements of WAC 173-340-350.

C. Within 60 days of receipt of Ecology's comments on the draft RI report and pilot test results, ULTRA shall prepare a Supplemental remedial investigation work plan, if data gaps are identified during the draft RI report and/or pilot test results.

D. Within 60 days of receipt of all analytical data from the pilot test and evaluation of pilot test results, but no later than 90 days from Ecology's approval of draft RI report, ULTRA shall prepare and submit to Ecology a draft FS report that meets the requirements of WAC 173-340-350 and proposes a preferred alternative for cleanup of the Site.

E. Concurrent with submission of the draft FS report, ULTRA shall prepare a Draft CAP to Ecology that is based on implementation of the preferred alternative in the draft FS report. This will be submitted within 30 days from receipt of Ecology's comments and approval of the draft RI and FS reports.

F. Ecology will endeavor to provide comments on the draft Work Plan, RI report, Supplemental RI Work Plan if required, draft FS report and draft CAP within a reasonable time frame. Upon Ecology's approval, the final drafts will be considered the Public Review Draft RI and FS reports and Public Review Draft CAP.

G. Should significant additional work be necessary based on information obtained during the remedial 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 RI and FS reports.

VII. 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

ULTRA 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). ULTRA shall pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

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

C. Implementation of Remedial Action

If Ecology determines that ULTRA has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to ULTRA, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of ULTRA's failure to comply with its obligations under this Order, ULTRA shall reimburse Ecology for the costs of doing such work in accordance with Section VII B. ___ (Remedial Action Costs), provided that ULTRA 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, ULTRA 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:

Maura S. O'Brien, PG/HG #869
Professional Geologist and Hydrogeologist and Site Manager
Ecology Northwest Regional Office
3190 160th Avenue S.E.
Bellevue, WA 98008-5452
(425) 649-7249
mobr461@ecy.wa.gov

The project coordinator for ULTRA is:

John R. Funderburk, MSPH
Sound Environmental Strategies Corporation
2400 Airport Way South, Suite 200
Seattle, WA 98134
(206) 306-1900

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 ULTRA, 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.

ULTRA 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 ULTRA 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 ULTRA'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 ULTRA. ULTRA shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by ULTRA 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 ULTRA 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, ULTRA 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 VI. (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, ULTRA shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by ULTRA pursuant to implementation of this Order. ULTRA shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow ULTRA 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 VII F. ___ (Access), Ecology shall notify ULTRA 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

Ecology shall maintain the responsibility for public participation at the Site. However, ULTRA 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 ULTRA 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 ULTRA that do not receive prior Ecology approval, ULTRA 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. **King County Library – Kirkland**
308 Kirkland Avenue
Kirkland, WA 98033
(425) 822-2459
- b. **Ecology's Northwest Regional Office**
3190 160th Avenue S.E.

Bellevue, WA 98008-5452
(425) 649-7190

- c. **Ecology's Toxics Cleanup Website:**
<http://www.ecy.wa.gov/programs/tcp/sites/pace/pace_hp.html>

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

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

c. ULTRA 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 ULTRA's request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

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

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

K. Extension of Schedule

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

- a. The deadline that is sought to be extended;
- b. The length of the extension sought;
- c. The reason(s) for the extension; and
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on ULTRA 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 ULTRA 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 ULTRA;

b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or

c. Endangerment as described in Section VII 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 ULTRA.

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

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

If Ecology concurs with or orders a work stoppage pursuant to Section VII M. (Endangerment), ULTRA'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 VII 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 ULTRA to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against ULTRA regarding remedial actions required by this Order, provided ULTRA 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 ULTRA 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 ULTRA's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, ULTRA 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, ULTRA shall notify Ecology of said transfer. Upon transfer of any interest, ULTRA 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 ULTRA pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. At this time, no federal, state

or local requirements have been identified as being applicable to the actions required by this Order.

2. Pursuant to RCW 70.105D.090(1), ULTRA 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, ULTRA 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.

ULTRA 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 ULTRA 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 ULTRA shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, ULTRA 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 ULTRA and on how ULTRA must meet those requirements. Ecology shall inform ULTRA in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. ULTRA 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 ULTRA

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. Periodic Review

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

R. Indemnification

ULTRA 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 ULTRA, its officers, employees, agents, or contractors in entering into and implementing this Order. However, ULTRA 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.

VIII. SATISFACTION OF ORDER

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

IX. 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 ULTRA refuses, without sufficient cause, to comply with any term of this Order, ULTRA 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: December 18, 2008.

ULTRA Corporation



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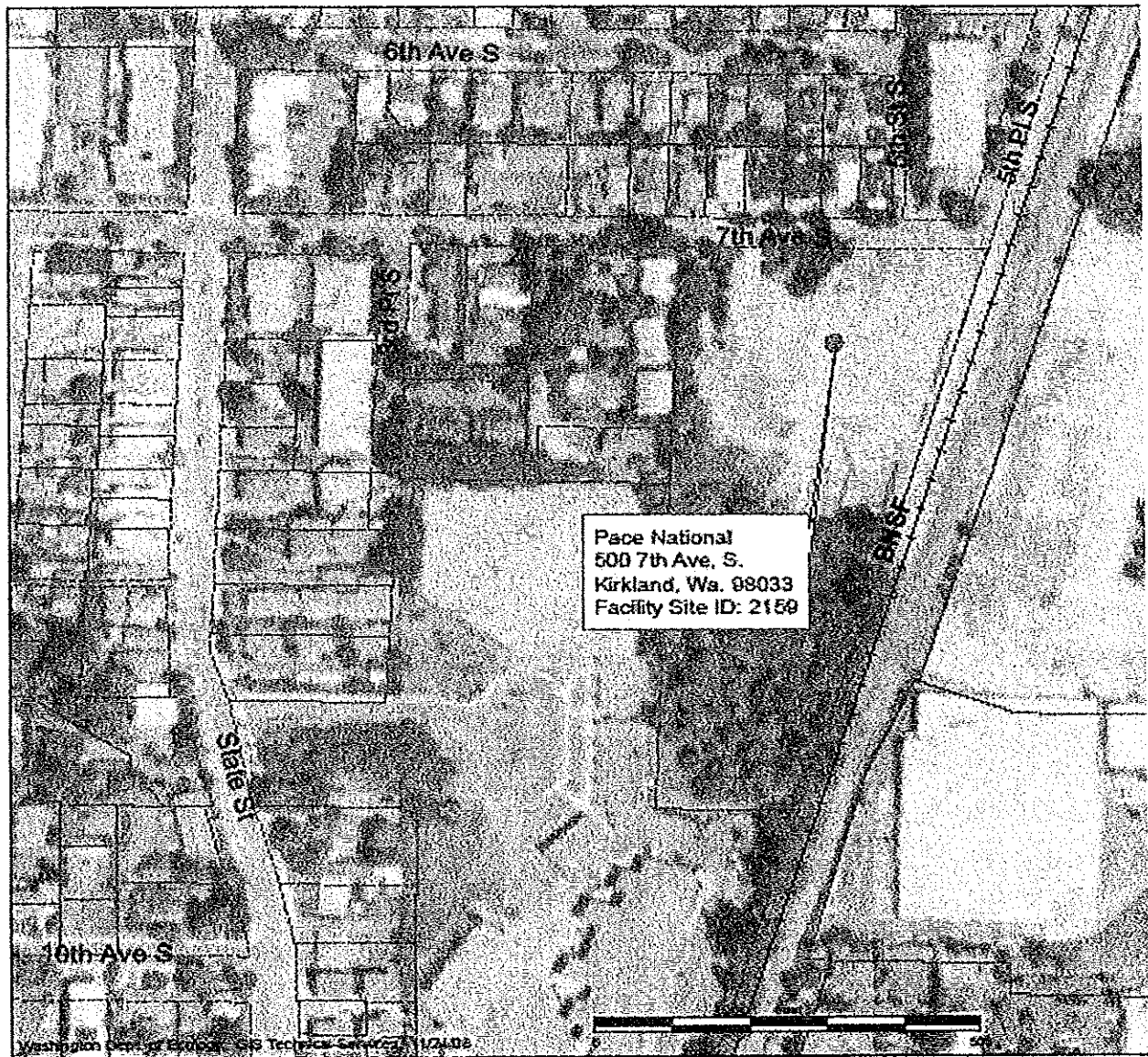
**STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY**



Robert W. Warren
Section Manager
Toxics Cleanup Program
Northwest Regional Office
3190 - 160th Avenue SE
Bellevue, WA 98008
Tele (425) 649-7054

Exhibit A

Site Location



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Exhibit B

Schedule for Implementation of Work to be Performed

Work to be Performed	Due Dates in Calendar Days
Work Plan	30 Days from effective date of this Order.
Draft RI Report	Within 30 days of receipt of all analytical data from investigations but no later than 115 days from Ecology's approval of the Work Plan.
Supplemental RI Work Plan, if data gaps are identified during Draft RI Report and/or Pilot Test results	Within 60 days of receipt of Ecology's comments on Draft RI Report and Pilot Test results.
Draft FS Report	Within 60 days of receipt of all analytical data from the pilot test and evaluation of pilot test results, but no later than 90 days from Ecology's approval of Draft RI Report.
Draft CAP	60 days from receipt of Ecology's approval of the Draft RI and FS Reports.
Public Review Draft RI/FS/CAP	60 days from receipt of Ecology's approval on the Draft CAP.