

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

Bremerton School District
134 Marion Avenue
Bremerton, WA 98312

AGREED ORDER

No. DE _____

TO: Bremerton School District
Attn: Ron Carpenter
Facilities Director
Bremerton, WA 98312

TABLE OF CONTENTS

I. INTRODUCTION

II. JURISDICTION

III. PARTIES BOUND.....

IV. DEFINITIONS

V. FINDINGS OF FACT

VI. ECOLOGY DETERMINATIONS.....

VII. WORK TO BE PERFORMED

VIII. TERMS AND CONDITIONS.....

 A. Remedial Action Costs

 B. Implementation of Remedial Action.....

 C. Designated Project Coordinators

 D. Performance

 E. Access

 F. Sampling, Data Submittal, and Availability

 G. Public Participation.....

 H. Retention of Records.....

 I. Resolution of Disputes.....

 J. Extension of Schedule.....

 K. Amendment of Order

 L. Endangerment

 M. Reservation of Rights.....

 N. Transfer of Interest in Property.....

 O. Compliance with Applicable Laws

 P. Land Use Restrictions

 Q. Financial Assurances

 R. Periodic Review

 S. Indemnification

IX. SATISFACTION OF ORDER.....

X. ENFORCEMENT

EXHIBIT A Site Diagram
EXHIBIT B Legal Description
EXHIBIT C Public Participation Plan

EXHIBIT D	Applicable Permits and Substantive Requirements
EXHIBIT E	Restrictive Environmental Covenants
EXHIBIT F	Bremerton School District Crownhill Elementary School Site Remedial Design and Cleanup Action Scope of Work
EXHIBIT G	Final CAP

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Bremerton School District (BSD) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires BSD to implement a final cleanup action plan in accordance with WAC 173-340 with respect to contamination associated with a former Kitsap County landfill in the Bremerton School District Crownhill Elementary School Site (as defined below). 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. BSD agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter BSD's responsibility under this Order. BSD shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

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

A. Site: The Site is referred to as the Bremerton School District Crownhill Elementary School Site, and is generally located at 1500 Rocky Point Road in the City of Bremerton, Kitsap County, Washington. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. The Site includes property owned by

the Bremerton School District (“School Property”) and the Bremerton United Methodist Church (“Church Property”) and is defined by the extent of contamination caused by the release of hazardous substances at the Site, which may extend to adjacent properties. Such releases occurred when the Site was operated as a landfill by Kitsap County and utilized for disposal of waste products and debris by the United States Navy and other parties. Based upon factors currently known to Ecology, the Site is more particularly described in Exhibit A to this Order, which includes a detailed Site diagram. The Site constitutes a Facility under RCW 70.105D.020(5).

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

C. Potentially Liable Person (PLP): Refers to the signatory Parties that have been notified of PLP status, which includes BSD. Ecology may identify additional parties, not currently identified in this Order, as PLPs in the future based upon credible evidence.

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 BSD:

A. In the 1930s, the School Property was owned by Robert and Viola Barlow and other individuals. Successive title documents of properties at the site consisted of right-of-way and warranty deeds between private individuals. Portions of the School Property were progressively deeded to Kitsap County by various individuals between 1941 and 1948. Kitsap County and several individuals deeded the School Property to the BSD on February 15, 1954. First Methodist Church is the current owner of property to the south, the Church Property. Adjacent properties on other sides of the School Property and Church Property are primarily residential.

B. The Site was originally used for the mining of sand and gravel during the 1930's. The resulting mining excavations or "Borrow Pits" were used as a landfill for various materials including municipal and industrial wastes. Some of the industrial wastes were reported to be imported from the Puget Sound Naval Shipyard by the United States Navy, including sandblast grit, scrap metal, asbestos insulation material, metal shavings, and fire bricks. Some of the borrow pits at the Site were filled by the time the School Property was deeded to BSD in 1954.

C. The original Crownhill Elementary School was constructed on the School Property in 1956 and partially burned down in 1993. The burned sections and remaining portions of the school were demolished after the fire in 1993.

D. In 1994, site work for a new Crownhill Elementary School was started on the School Property. During site preparation and utility excavation work, soils were identified as known or suspected contaminated soils. BSD notified the Kitsap County Health Department (Health Department) and Ecology of the suspected contaminated soils. After consultation with the Health Department and Ecology, known or suspected contaminated soils were segregated and stockpiled for additional characterization work. Following analytical characterization, soils were disposed of at an appropriate landfill consistent with applicable state or local regulations. Construction of the new school was completed in 1996.

E. Between 1994 and 2009, a number of investigations (Parametrix 1994, AGRA 1995, Terracon 2010) confirmed the presence of elevated concentrations of metals, volatile organic compounds (VOCs), polycyclic aromatic hydrocarbons (PAHs) and petroleum hydrocarbons in subsurface soil at the Site. However, sampling of shallow soil conducted by the Kitsap County Health Department in April 2009 did not detect concentrations of arsenic, cadmium, chromium, lead, and mercury above applicable cleanup levels. On behalf of BSD,

Terracon submitted to Ecology a Limited Site Investigation Report dated December 17, 2009 and a draft Remedial Investigation Report dated May 4, 2010 that summarized the investigations. The May 2010 draft Remedial Investigation detected concentrations of lead (8,500 mg/kg), Arsenic (33.6 mg/kg), and diesel range petroleum products (10,000 mg/kg) above MTCA cleanup levels at depth.

F. Groundwater at the Site is at least 85 feet below ground surface and is not known to be used for drinking water. Groundwater sampling results between 1995 and 2004 indicated that contaminants from landfill materials do not appear to have impacted groundwater above applicable cleanup levels.

G. The School Property currently consists of a two-story elementary school, one portable classroom, paved parking areas, landscaping, and grass/gravel/soil play areas. Ground surface covering the majority of the School Property consists of grass in the playfield areas, asphalt and concrete in the parking areas, and the school building.

H. The Site has not received a Site Hazard Assessment Ranking.

I. On September 20, 2010, BSD and Ecology signed Agreed Order DE 7916 to develop and conduct a Remedial Investigation/Feasibility Study (“RI/FS”) at the Site. Ecology approved the RI Work Plan and Sampling and Analysis Plan (“SAP”) for the RI on March 22, 2011. BSD conducted field investigations in 2011 and 2012 to assess soil and groundwater quality on the School Property, the Church Property, and residential areas to the east and west. Sampling was performed using a grid-based approach. Sampling results were compared to screening levels based on unrestricted land use, protection of groundwater, and terrestrial ecological exposure (“TEE”) (except that screening levels for soil below 15 feet below ground surface were based on protection of groundwater).

J. The field investigations confirmed the existence of landfill materials at depth in two general areas of the Site: the north landfill area is on the School Property and the south landfill area extends from the School Property onto the Church Property. The size of the combined landfill areas is approximately 6 acres. The north landfill materials typically extend to a depth of about 15 feet but areas extend to depths of about 30 feet and 40 feet. The south landfill materials were typically less than 10 feet in thickness. Landfill materials are highly variable and contain a fragmented mixture of glass, wood, metal, brick, charcoal, fabric, wire, and ceramics. Soil sampling confirmed that contaminant impacts at the Site are generally limited to the two landfill areas and do not extend to residential areas.

- a. The primary constituents of concern in landfill material are lead, arsenic, and diesel/oil-range petroleum hydrocarbons.
- b. The primary arsenic exceedances were clustered in the central portion of the north landfill area at depths ranging from 3 to 15 feet. The maximum arsenic concentration exceeded the screening level by 3 times.
- c. The primary lead exceedances were generally co-located with arsenic exceedances except that lead exceedances extend about 5 feet beneath landfill materials. The maximum lead concentration exceeded the screening level by 105 times.
- d. A localized diesel/oil range petroleum hot spot in the north landfill area extends from the base of the landfill material (at a depth of approximately 40 feet) to the regional water table (at a depth of approximately 115 feet) where a 1-foot-thick layer of free product has accumulated.

K. The groundwater monitoring program included collecting samples from 3 existing monitoring wells and 8 new monitoring wells installed during the RI. The primary impact to

groundwater at the Site is the accumulation of petroleum product beneath the north landfill area at a depth of about 115 feet below ground surface. In October and November 2012, BSD conducted an additional investigation to estimate the total volume of petroleum product and petroleum hydrocarbon mass in soils beneath the north landfill area.

L. BSD also conducted sub-slab soil vapor sampling in August and November 2010 to assess the potential for vapor intrusion inside the Crownhill Elementary School. The November 2010 sampling was conducted during the school day with the building's HVAC system operating. The results showed that indoor air concentrations were below levels of concern.

M. BSD implemented a second grid-based sampling approach in two areas where original sampling showed the potential for contaminants in soil near the ground surface exceeding cleanup levels for unrestricted land use. BSD conducted an Interim Action in March and April 2012 to remove surficial soil (*i.e.*, down to 1 foot below ground surface) with contaminants above cleanup levels for unrestricted land use. BSD removed approximately 342 tons of soil from the southern portion of the School Property and extending onto the Church Property. BSD collected samples from excavation sidewalls and confirmed that soil above cleanup levels had been removed down to 1 foot below ground surface. The contaminated soil was transported to a permitted landfill for disposal. BSD constructed a clean surficial contact barrier in the excavated area. A second interim action was conducted at two locations on the school property where soil was observed above lead cleanup levels at a depth of 1-3 feet. In the summer of 2013, these two areas were covered with a geotextile fabric placed directly on the undisturbed ground surface and covered with a foot of clean imported soil and hydroseeded to form a clean soil cover of more than two feet.

N. BSD conducted a survey of upland water wells in the vicinity of the Site. Four

domestic wells were found within one mile of the Site. Based on the locations of the wells relative to groundwater flow at the Site, it is unlikely that contaminants from the Site would impact these wells.

O. As a result of the TEE, BSD determined that hazardous substances do not pose a risk to plants and animals at the Site.

P. BSD provided a draft RI report dated October 2013 that summarized the above findings. The RI Report was approved by Ecology on April 8, 2014.

Q. BSD provided a draft FS report and a draft Cleanup Action Plan (“DCAP”), both dated December 2013, that identified remedial action objectives (“RAOs”), summarized BSD’s evaluation of remediation alternatives to achieve the RAOs, and identified the preferred alternative. A subsequent revision of the draft FS, dated March 7, 2014, was approved by Ecology on April 8, 2014. A subsequent revision of the DCAP, dated September 3, 2014, was approved by Ecology on September 16, 2014.

R. Ecology issued the RI/FS and DCAP for public comment on September 26, 2014. Ecology prepared a Final CAP on [insert date]. The Final CAP is fully incorporated herein as Exhibit G.

VI. ECOLOGY DETERMINATIONS

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by BSD.

A. BSD is the owner of the referenced Property and is an “owner or operator” under RCW 70.105D.020(17) of a “facility” as defined in RCW 70.105D.020(5). The facility, including adjacent properties where releases of hazardous substances from the facility may have come to be located, is known as the Bremerton School District Crownhill Elementary School Site (the Site).

B. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(32) and (13), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to the BSD dated June 17, 2010, pursuant to RCW 70.105D.040, -.020(21) and WAC 173-340-500. By letter dated June 30, 2010, the BSD voluntarily waived its rights to notice and comment and accepted Ecology’s determination that the BSD is a PLP under RCW 70.105D.040, without admitting liability. Ecology issued a determination that the BSD is a PLP under RCW 70.105D.040 by letter dated July 19, 2010.

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.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that BSD 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. The purpose of this work is to implement the Final Cleanup Action Plan issued by Ecology for the Site. The Remedial Design and Cleanup Action Scope of Work (Scope of Work), attached as Exhibit F and fully incorporated herein, sets out the schedule for performance and the required deliverables. Each deliverable required by this Order, once approved by Ecology, becomes an integral and enforceable part of this Order. The Scope of Work consists of the following elements:

A. BSD shall prepare and submit quarterly progress reports to Ecology throughout the duration of this Order.

B. BSD shall implement the cleanup remedy selected in the Final Cleanup Action Plan by developing and complying with a Groundwater/LNAPL Monitoring and Contingency Plan, a LNAPL Removal Work Plan, and a Cover System Inspection and Maintenance Plan (I&M Plan), subject to Ecology approval.

C. Following Ecology approval of the Groundwater/LNAPL Monitoring and Contingency Plan and LNAPL Removal Work Plan, BSD shall report results of the cleanup remedy monitoring to Ecology in accordance with the Ecology-approved schedule in the Groundwater/LNAPL Monitoring and Contingency Plan, and the I&M Plan.

D. Future activity on the site will be governed by this Agreement, the Groundwater/LNAPL Monitoring and Contingency Plan and LNAPL Removal Work Plan, the Restrictive Covenants (See § VIII.P) and requirements of the I&M Plan.

E. If Ecology determines an interim action is warranted under Section VI.D, BSD shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). The PLP shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and BSD is required to conduct the interim action in accordance with the approved Interim Action Work Plan.

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 after notice to BSD, Ecology may complete and issue the final deliverable.

VIII. TERMS AND CONDITIONS

A. Remedial Action Costs

BSD shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and

Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Ecology has accumulated \$26,768.43 in remedial action costs related to this Site as of June 30, 2014 which has been paid. For all costs incurred subsequent to July 1, 2014, BSD 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.

B. Implementation of Remedial Action

If Ecology determines that BSD has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to BSD, perform any or all portions of the remedial action that remain incomplete. Except in emergency situations, Ecology shall endeavor, where practicable, to provide BSD this notice in writing, and a thirty (30) day opportunity to cure. If Ecology performs all or portions of the remedial action because of BSD's failure to comply with its obligations under this Order, BSD shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Remedial Action Costs), provided that BSD 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, BSD 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.

C. Designated Project Coordinators

The project coordinator for Ecology is:

Libby Goldstein
Department of Ecology
Northwest Regional Office
3190 – 160th Avenue SE
Bellevue, WA 98008
425-649-7242
ligo461@ecy.wa.gov

The project coordinator for BSD is:

Ron Carpenter
Bremerton School District
200 Bruenn Avenue
Bremerton, WA 98312
360-473-0502
ron.carpenter@bremertonschools.org

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

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

D. Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct supervision of an engineer registered by 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 by 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 by 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.

BSD 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.

E. Access

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that BSD 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 BSD'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 BSD. Except in emergency situations, Ecology shall use reasonable efforts to coordinate its access to

the Site with BSD's school schedule. BSD shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by BSD 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 BSD 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.

F. Sampling, Data Submittal, and Availability

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

G. Public Participation

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 this 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.

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 BSD.

Ecology shall maintain the responsibility for public participation at the Site. However, BSD 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 BSD 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 BSD that do not receive prior Ecology approval, BSD 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) Department of Ecology
Northwest Regional Office
3190 – 160th Avenue SE
Bellevue, WA 98008
425-649-7190
- b) Bremerton School District
134 Marion Avenue Bremerton,
WA 98312-3542
360-473-1003
- c) Kitsap Regional Library
612 5th Street N
Bremerton, WA 98337-1416
360-377-3955

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Site shall be maintained in the repository at Ecology's Northwest Regional Office in Bellevue, Washington. The Public Participation Plan is attached as Exhibit C

H. 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, BSD 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, BSD shall make all records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right BSD may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If BSD withholds any requested records based on an assertion of privilege, BSD shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

I. 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.A (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, BSD 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. BSD 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 BSD'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.

J. 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 BSD 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 BSD 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 BSD;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII.L (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 BSD.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give BSD 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.K (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.L (Endangerment).

K. 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.M (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 BSD. BSD 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.I (Resolution of Disputes).

L. Endangerment

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

In the event BSD determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment, BSD may cease such activities. BSD 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, BSD shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with BSD's cessation of activities, it may direct BSD to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, BSD'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.J (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.

M. 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 BSD to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against BSD regarding remedial actions required by this Order, provided BSD 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.

By entering into this Order, BSD does not admit to any liability for the Site. Although BSD is committing to conducting the work required by this Order under the terms of this Order, BSD expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

N. 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 BSD 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 BSD's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, BSD 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, BSD shall notify Ecology of said transfer. Upon transfer of any interest, BSD shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

O. Compliance with Applicable Laws

1. All actions carried out by BSD 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 the execution of this Order have been identified in Exhibit D.

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

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

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.

P. Land Use Restrictions

In consultation with BSD, Ecology will prepare the Environmental (Restrictive) Covenants for the School Property and the Church Property consistent with WAC 173-340-440 and Chapter 64.70 RCW. After approval by Ecology, BSD shall record the Environmental (Restrictive) Covenants with the office of the Kitsap County Auditor within ten (10) days of transmittal. The Environmental (Restrictive) Covenants shall restrict future activities and uses of the Site as agreed to by Ecology and BSD. BSD shall provide Ecology with the original recorded Environmental (Restrictive) Covenants within thirty (30) days of the recording date. The Environmental Covenants are attached as Exhibit E.

Q. Financial Assurances

Pursuant to WAC 173-340-440(11), BSD shall maintain sufficient and adequate financial assurance mechanisms to cover all costs associated with the operation and maintenance of the remedial action at the Site, including institutional controls, compliance monitoring, and corrective measures.

Within sixty (60) days of the effective date of this Order, BSD shall submit to Ecology for review and approval an estimate of the costs that it will incur in carrying out the terms of this Order, including operation and maintenance, and compliance monitoring. Within sixty (60) days after Ecology approves the aforementioned cost estimate, BSD shall provide proof of financial assurances sufficient to cover all such costs in a form acceptable to Ecology.

BSD shall adjust the financial assurance coverage and provide Ecology's project coordinator with documentation of the updated financial assurance for:

1. Inflation, annually, within thirty (30) days of the anniversary date of the entry of this Order; or if applicable, the modified anniversary date established in accordance with this section, or if applicable, ninety (90) days after the close of BSD's fiscal year if the financial test or corporate guarantee is used.

2. Changes in cost estimates, within thirty (30) days of issuance of Ecology's approval of a modification or revision to the cleanup action plan (CAP) that result in increases to the cost or expected duration of remedial actions. Any adjustments for inflation since the most recent preceding anniversary date shall be made concurrent with adjustments for changes in cost estimates. The issuance of Ecology's approval of a revised or modified CAP will revise the anniversary date established under this section to become the date of issuance of such revised or modified CAP.

R. 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, BSD 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.

S. Indemnification

To the extent allowed under state law, BSD 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 (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions of BSD, its officers, employees, agents, or contractors in entering into and implementing this Order. However, BSD 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 BSD's receipt of written notification from Ecology that BSD has completed the remedial activity required by this Order, as amended by any modifications, and that BSD has complied with all other provisions of this Agreed Order. Upon Ecology's review and approval of the three Plans required under Section VII.B of this Order, Ecology shall provide notice to BSD that, except for potential future actions that may be required under the Plans or based on the results of ongoing monitoring, and acknowledging BSD's continuing obligation to conduct ongoing monitoring and operations as detailed in the Plans, BSD has performed all cleanup actions specified and agreed to by Ecology as of the date 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. A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:

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

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

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

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

Effective date of this Order: _____

Bremerton School District

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Dr. Aaron Leavell
Superintendent
Bremerton School District
Phone: 360-473-1004

Robert W. Warren, P.Hg.
Section Manager
Toxics Cleanup Program
Northwest Regional Office
Phone: 425-649-7054

EXHIBIT A
SITE DIAGRAM

**EXHIBIT B
LEGAL DESCRIPTION**

EXHIBIT C
PUBLIC PARTICIPATION PLAN

EXHIBIT D
APPLICABLE PERMITS AND SUBSTANTIVE REQUIREMENTS

EXHIBIT E
RESTRICTIVE ENVIRONMENTAL COVENANTS

EXHIBIT F
BREMERTON SCHOOL DISTRICT CROWN HILL ELEMENTARY SCHOOL SITE
SCOPE OF WORK

EXHIBIT G
FINAL CAP