

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

AGREED ORDER

City of Bellingham and
Puget Sound Energy

No. DE _____

TO: City of Bellingham
210 Lottie Street
Bellingham, WA 98225

Puget Sound Energy
10885 NE 4th Street
P.O. Box 97034
Bellevue, WA 98009-9734

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Exhibit A: Site Diagram

Exhibit B: Scope of Work and Schedule

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology), the City of Bellingham (the City) and Puget Sound Energy, Inc. (PSE) 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 PSE and the City to conduct a Remedial Investigation and Feasibility Study (RI/FS) at the South State Street Manufactured Gas Plant Site. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the authority of 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 the Order. The City and PSE agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the City's and PSE's responsibility under this Order. The City and PSE 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 used in this Order.

A. Site: The Site was formerly known as the Boulevard Park Site but is now referred to as the South State Street Manufactured Gas Plant Site, and is generally located at the northern portion of Boulevard Park and the adjacent tidelands, in Bellingham, WA. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. Based upon factors currently known to Ecology, the Site is 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 Ecology, the City and PSE.

C. Potentially Liable Parties (PLPs): Refers to the signatory Parties that have been notified of PLP status, which includes the City and PSE. 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 the Order. All exhibits are integral and enforceable parts of this Order. The terms “Agreed Order” or “Order” shall include all exhibits to the Order.

V. FINDINGS OF FACT

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

A. From approximately 1890 to the 1950's, a coal gasification plant operated on a portion of the northern section of what is now Boulevard Park in Bellingham, Washington. The property upon which the plant operated was converted along with adjacent property into Boulevard Park (a city park) in 1980. The facility manufactured gas from coal, supplying residents of Bellingham with gas for home heating and cooking. The gas plant consisted of aboveground gas holding tanks, fuel oil tanks, a retort and purifying facility, and several coal sheds used for storage. Of the original gas plant structures, a concrete, aboveground gas holding tank, a small brick building, and underground piping remain in the upper park area.

B. The coal gasification plant was originally operated by the Bellingham Bay Gas Company a predecessor of PSE. Cascade Natural Gas also owned and/or operated the property for some time in the mid 1950s. Eventually, residential developers purchased the property in the 1960s. In 1975, the City acquired ownership of the majority of the gas plant property from Ms. Catherine Jones and Burlington Northern Railroad Company (BNRC).

C. Between 1984 and 2007, a number of investigations (EPA 1984, E&E 1991, Ecology 1998a, b, Integral 2007) confirmed the presence of elevated concentrations of petroleum

hydrocarbons, polycyclic aromatic hydrocarbons (PAHs) and BTX (benzene, toluene, and xylene) in water and soil at the Site.

D. In 1991, Ecology conducted a Site Hazard Assessment and placed the Site (then referred to as the Boulevard Park Site) on the Hazardous Sites List. The Site was ranked number 1, where 1 represents the highest relative risk and 5 the lowest.

VI. ECOLOGY DETERMINATIONS

Based on the findings of fact, Ecology makes the following determinations, without any express or implied admissions of such determinations by the City or PSE:

A. PSE is a former “owner or operator” under RCW 70.105D.040(1)(b) of a “facility” as defined in RCW 70.105D.020(5) and is also a “generator” of hazardous wastes disposed of at the facility under RCW 70.105D.040(1)(c). The facility is known as the South State Street Manufactured Gas Plant Site (the Site).

B. The City is a current “owner or operator” as defined in RCW 70.105D.020(17) of a “facility” as defined in RCW 70.105D.020(5).

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

D. Based upon credible evidence, Ecology issued a PLP status letter to the City dated August 12, 2005, pursuant to RCW 70.105D.040, -.020(21) and WAC 173-340-500. By letter dated August 22, 2005, the City voluntarily waived its rights to notice and comment and accepted Ecology’s determination that the City is a PLP under RCW 70.105D.040, without admitting liability. Ecology issued a determination that the City is a potentially liable person (PLP) under RCW 70.105D.040 by letter dated December 29, 2008.

E. Based upon credible evidence, Ecology issued a PLP status letter to PSE dated December 31, 2008, pursuant to RCW 70.105D.040, -.020(21) and WAC 173-340-500. By letter dated January 7, 2009, PSE voluntarily waived its rights to notice and comment and accepted Ecology’s determination that PSE is a PLP under RCW 70.105D.040. Ecology issued a

determination that PSE is a potentially liable person (PLP) under RCW 70.105D.040 by letter dated February 3, 2009.

F. Based upon credible evidence, Ecology may identify additional PLPs for this Site that are not currently identified in this Order.

G. 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 action required by this Order is in the public interest.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the City and PSE take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

A. The City and PSE will conduct an RI/FS at the Site in accordance with WAC 173-340-350 and Chapter 173-204 WAC, and with the attached Scope of Work and Schedule (Exhibit B), which contains the deliverables required by this Order;

B. Each deliverable required by this Order, once approved by Ecology, becomes an integral and enforceable part of this Order.

C. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this section, Ecology shall provide written notice to the City and PSE that they have thirty (30) days to demonstrate sufficient progress in preparation of the required deliverable(s). If, in Ecology's estimation, the lack of progress is not cured within thirty (30) days, Ecology may then complete and issue the final deliverable. Ecology need only provide an opportunity to cure once per deliverable.

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notices

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 the Order is inadequate or improper in any respect.

B. Remedial Action Costs

The City and PSE shall, subject to the dispute provisions of this Agreed Order, 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). The City and PSE shall pay the required amount, except for those costs that the PLPs dispute, 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 Section VIII.J. (Resolution of Disputes), the City or PSE may dispute any itemized billing statements. Pursuant to WAC 173-340-550(4), failure to pay Ecology's uncontested costs and costs for which a final decision has been issued under the Dispute Resolution process within ninety (90) days of receipt of the itemized statement of costs or the date of the Dispute Resolution final decision will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

C. Implementation of Remedial Action

If Ecology determines that the City and PSE have failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to the City and PSE, perform any or all portions of the remedial action that remain incomplete. Except in emergency

situations, Ecology shall endeavor, where practicable, to provide the PLPs this notice in writing, and a thirty (30) day opportunity to cure. If Ecology performs all or portions of the remedial action because of the City and PSE's failure to comply with its obligations under this Order, the City and PSE shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.B (Remedial Action Costs), provided that the City and PSE are not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

Except where necessary to abate an emergency situation, neither the City nor PSE shall 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:

Mary O'Herron
Department of Ecology
Bellingham Field Office
1440 - 10th Street, Suite 102
Bellingham, WA 98225
360-715-5224

The project coordinator for the City is:

Gina Gobo
City of Bellingham
Parks Department
3424 Meridian Street
Bellingham, WA 98225
(360) 778-7000

The project coordinator for PSE is:

John Rork
PSE
10885 NE 4th Street
P.O. Box 97034
Bellevue, WA 98009-9734
425-456-2228

The project coordinators shall be responsible for overseeing the implementation of this Order. The Ecology project coordinator will be Ecology's designated representative for the Site.

To the maximum extent possible, communications between Ecology, the City, and PSE, 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.

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

E. Performance

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

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

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

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

The City and PSE 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 access to enter and freely move about all property at the Site that the City or PSE either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting non-privileged records (PSE and the City must follow the procedures outlined in Section VIII.I (Retention of Records) for

records withheld on the basis of privilege), operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the City's and PSE'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 the City and PSE. The City and PSE shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the City or PSE where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the City or PSE, 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. Ecology employees and their representative shall not be required to sign any release or waiver as a condition of Site property access.

G. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the City and PSE shall make the results of all sampling, laboratory reports, and/or test results generated by them or on their behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, the City and PSE shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the City and PSE pursuant to implementation of this Order. The City and PSE shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. The seven (7) day notification requirement shall be satisfied where the City and PSE have identified the work planned for the next reporting period in a quarterly progress report, including a schedule identifying any sample collection or work activity to take place at the Site, provided that Ecology is notified of any schedule changes at least seven (7) days ahead of the sampling event in question. Ecology shall,

upon request, allow split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order to be taken by the City or PSE, or its authorized representative provided it does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.F (Access), Ecology shall notify the City and PSE prior to any sample collection activity by Ecology or Ecology's representative unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

H. Public Participation

A public participation plan is required for this Site. Ecology shall review any existing public participation plan to determine its continued appropriateness and whether it requires amendment, or if no plan exists, Ecology shall develop a public participation plan alone or in conjunction with the City and PSE.

Ecology shall maintain the responsibility for public participation at the Site. However, the City and PSE shall cooperate with Ecology, and shall, with respect to public participation concerning work undertaken pursuant to this Order:

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

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify the City and PSE prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the City and PSE that do not receive prior Ecology approval, the City and PSE shall clearly indicate to their 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
Bellingham Field Office
1440 - 10th Street, Suite 102
Bellingham, WA 98225
- b. Bellingham Public Library
210 Central Avenue
Bellingham, WA 98227
- c. Department of Ecology
Northwest Regional Office
3190 160th Ave SE
Bellevue, WA 98008-5452

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

I. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, the City and PSE shall preserve all records, reports, documents, and underlying data in their possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, the City and PSE shall make all records available to Ecology and allow access for review within a reasonable time. Nothing in this Order is intended by the City or PSE to waive any right each may have under applicable law to limit disclosure of documents protected by the attorney work product and/or attorney-client privilege. If the City or PSE withholds any requested records based on an assertion of privilege, it shall

notify Ecology that records are being withheld and shall, upon written request from Ecology, provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No actual data collected on site pursuant to this Order shall be considered privileged.

J. Resolution of Disputes

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII.B (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

a. Upon receipt of Ecology's project coordinator's written decision or the itemized billing statement, the City or PSE 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. The City or PSE may then request regional management review of the decision. This request shall be submitted in writing to the Northwest Region Toxics Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's written decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of the City's or PSE'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 the City or PSE to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

- a. Circumstances beyond the reasonable control and despite the due diligence of the City and PSE including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the City and PSE;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty;
- c. Endangerment as described in Section VIII.M (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of the City and PSE.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the City and PSE written notification in a timely fashion of any extensions granted pursuant to the Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.L (Amendment of Order) when a schedule extension is granted.

4. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:

- a. Delays in the issuance of a necessary permit which was applied for in a timely manner;
- b. Other circumstances deemed exceptional or extraordinary by Ecology; or
- c. Endangerment as described in Paragraph H.13 (Endangerment) of this Order.

L. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.N (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of Ecology, the City, and PSE. The City and PSE 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 the Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J (Resolution of Disputes).

M. Endangerment

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

In the event the City and PSE determine that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, the City and PSE may cease such activities. The City and PSE shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction the City and PSE shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the City's and PSE's cessation of activities, it may direct the City and PSE to resume such activities.

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

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

N. Reservation of Rights

This Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against the City and/or PSE to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the City and PSE regarding remedial actions required by this Order, provided the City and PSE comply with this Order.

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

of natural resources resulting from the release or threatened release of hazardous substances at the Site.

By entering into this Agreed Order, neither the City nor PSE admit any liability for the Site. Although the City and PSE are committing to performing the work required by this Order under the terms of this Order, the City and PSE expressly reserve 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. Nothing in this Order shall affect the separate allocation of liability agreed upon between the City and PSE; however, this separate agreement between the City and PSE does not affect the City and PSE's alleged strict, joint and several liability to the State for this Site and for performing all work required by this Order.

O. Transfer of Interest in Property

During the effective period of this Order, no voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the City or PSE without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to the City's or PSE's transfer of any interest in all or any portion of the Site and during the effective period of this Order, the City or PSE shall provide a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, the City or PSE shall notify Ecology of said transfer. Upon transfer of any interest, the City or PSE shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

P. Compliance with Applicable Laws

1. All actions carried out by the City and PSE 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), the City and PSE are exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, the City and PSE 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 paragraph.

The City and PSE have a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology, or the City and PSE, 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 the City and PSE, shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the City and PSE shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the City and PSE and on how they must meet those requirements. Ecology shall inform the City and PSE in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Neither the City nor PSE shall begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

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

Q. Indemnification

The City, to the extent permitted by law, 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 that such arise from or on account of the negligent acts or omissions of the City, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the City 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 that such arise 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 the activities pursuant to this Order.

PSE 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 that such arise from or on account of the negligent acts or omissions of PSE, its officers, employees, agents, or contractors in entering into and implementing this Order. However, PSE 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 that such arise 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 the activities pursuant to this Order.

IX. SATISFACTION OF ORDER

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

X. ENFORCEMENT

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for remedial actions and orders related to the Site.

C. In the event the City and PSE refuse, without sufficient cause, to comply with any term of this Order, the City and PSE 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 they refuse to comply.

D. This Order is not appealable to the Washington State Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order (completed by Ecology): _____

PUGET SOUND ENERGY, INC.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Steven Secrist
Deputy General Counsel
Puget Sound Energy, Inc.
(425) 462-3178

Robert W. Warren
Section Manager
Toxics Cleanup Program
Northwest Regional Office
(425) 649-7054

CITY OF BELLINGHAM

Dan Pike
Mayor, City of Bellingham
(360) 778-8100

APPROVED AS TO FORM: _____
Office of the City Attorney

ATTEST: _____
Finance Director

EXHIBIT A

SOUTH STATE STREET MANUFACTURED GAS PLANT SITE


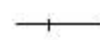
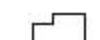
DRAFT AGREED ORDER

SITE DIAGRAM

February 2010



Legend

-  Preliminary SSSMGP Site Boundary
-  Railroad
-  Parcels



Data Source: Reid Middleton, Inc; City of Bellingham

Former Gas Plant Features and Preliminary South State Street MGP Site Boundary

EXHIBIT B

**SOUTH STATE STREET MANUFACTURED GAS PLANT SITE
REMEDIAL INVESTIGATION/FEASIBILITY STUDY**

SCOPE OF WORK

(The Month 2010)

PURPOSE

The purpose of this Remedial Investigation/Feasibility Study (RI/FS) Scope of Work (SOW) for the South State Street Manufactured Gas Plant Site (the Site) is to implement the Agreed Order (AO) entered into by the Department of Ecology (Ecology), the City of Bellingham (City) and Puget Sound Energy (PSE), to which this SOW is an Exhibit. The City and PSE shall be collectively known as “the Parties.”

The RI/FS is intended to provide sufficient data, analysis, and evaluations to enable Ecology to select a cleanup action for the Site.

The RI/FS Scope of Work (SOW) is divided into five major tasks as follows:

- 1) Progress Reports
- 2) Work Plan
- 3) Other Project Plans
- 4) Remedial Investigation
- 5) Feasibility Study

TASK 1 PROGRESS REPORTS

The Parties shall submit progress reports quarterly unless a longer reporting period is approved by Ecology in writing. Progress reports shall be submitted to Ecology until satisfaction of the AO. Progress Reports shall be submitted to the Ecology project coordinator by the 10th of every third month following the effective date of the AO. If this day is a weekend or holiday, deliverables shall be submitted to Ecology on the next business day. At a minimum, progress reports shall contain the following information regarding the preceding reporting period:

- A description of the actions which have been taken to comply with the AO and SOW during the previous reporting period;
- An estimate of the percentage of RI/FS work completed to date;
- Summaries of sampling and testing reports and other data reports received by the Parties;
- Summaries of deviations from approved work plans;
- Summaries of contacts with representatives of the local community, public interest groups, press, and federal, state or tribal government;

- Summaries of problems or anticipated problems in meeting the schedule or objectives set forth in the SOW and Work Plan;
- Summaries of solutions developed and implemented or planned to address any actual or anticipated problems or delays;
- Changes in key personnel; and
- A description of work planned for the next reporting period.

TASK 2 WORK PLAN

In order to plan and manage the RI/FS, the Parties shall document project tasks and management strategies in a RI/FS Work Plan (Work Plan), which shall be developed and submitted to Ecology for review and approval in accordance with this SOW, including the schedule contained below, and in accordance with the SOW described in Tasks 4 and 5 below. The Work Plan shall not be implemented until approved by Ecology. Once approved by Ecology, the Parties shall implement the Work Plan according to the schedule contained in this SOW — and according to any subsequent amendments to the Work Plan or schedule made under the Order.

The Work Plan shall specify and describe all tasks to be accomplished to complete an RI/FS that meets the requirements of WAC 173-340-350, in accordance with the AO and this SOW.

The Work Plan shall clearly describe the overall project management strategy for implementing and reporting on RI/FS activities. The responsibility and authority of all organizations and key personnel involved in conducting the RI/FS shall be outlined.

Elements of the Work Plan include, but are not limited to, the following:

- A project management strategy including a description of individual RI/FS subtasks;
- A review of existing and available data to support the development of RI/FS tasks which may include, as appropriate, the following:
 - a) Physical features, including topography and bathymetry, structure locations, and utilities;

- b) Soil, surface water and groundwater data, including contaminant concentrations and conventional parameters, depths and location of samples, which are necessary to determine the nature and extent of the contaminant(s), and comparison to MTCA;
 - c) Hydrogeologic data;
 - d) Sediment chemical and biological data, including contaminant concentrations and conventional parameters, depths and locations of samples, which are necessary to determine the nature and extent of the contaminant(s), and comparison to MTCA, SMS, and Water Quality standards;
 - e) Sediment and water dynamics data including current, waves, and sedimentation rates;
 - f) Natural resource data including plant and animal species, habitat types, and sensitive ecosystems;
 - g) Location and composition of current and historical contaminant sources including storm water and industrial discharges;
 - h) Current property ownership and zoning;
 - i) Current or planned land and in-water uses and their location, which may affect investigation and cleanup activities, including tribal, recreational and commercial fishing and shell fishing activities;
 - j) Historical, archeological, and cultural uses of the site including recent and historical photographs; and
 - k) A list of potential permits or approvals that may be required for sampling activities, or the substantive requirements of applicable permits or approvals that are procedurally exempt under RCW 70.105D.090
- Data Gaps identified for completion of the RI/FS;
 - A draft outline of the final RI and FS Reports including the types of data evaluation, figures, and tables that shall be included;
 - A proposed schedule for completion of all RI/FS subtasks not currently accounted for in the schedule; and
 - Project personnel and responsibilities.

TASK 3 OTHER PROJECT PLANS

Pursuant to WAC 173-340-350(7)(c)(iv), the Parties shall prepare and submit for Ecology review and approval a Sampling and Analysis Plan (SAP) which provides specific guidance for field and laboratory methodology. A Quality Assurance Project Plan (QAPP)

and Health and Safety Plan (HASP) shall also be submitted as appendices to the SAP. The HASP is subject to comment by Ecology, but not subject to Ecology approval. Details of these plans are provided below.

Sampling and Analysis Plan - The Parties shall prepare a SAP for RI sampling and analysis activities in accordance with WAC 173-340-820, WAC 173-204-600, and the Sediment Sampling and Analysis Appendix, as updated. The purpose of the SAP is to provide an overview of the RI sampling program that shall obtain information needed to meet the data needs described in Task 4 of the SOW.

The SAP shall describe the sampling objectives and the rationale for the sampling approach. A detailed description of sampling tasks shall then be provided, including specifications for sample identifiers; the type, number, and location of samples to be collected; the analyses to be performed; descriptions of sampling equipment and collection methods to be used; description of sample documentation; sample containers, collection, preservation and handling. The SAP shall describe sample custody and handling procedures, decontamination procedures, and the handling of investigative-derived wastes.

Quality Assurance Project Plan (Appendix to SAP). The Parties shall prepare a QAPP for RI sampling and analysis activities. The QAPP shall identify and describe laboratory methods and the QA/QC measures that shall be taken during the performance of all sampling and analysis tasks to ensure the fulfillment of data quality objectives. Data quality objectives shall reflect the criteria or threshold values used for remedial decisions. Laboratory methodology and QA/QC requirements shall be developed in accordance with Ecology guidance and the requirements of the Ecology Laboratory Accreditation Program and the Puget Sound Estuary Program (PSEP) and shall include the following elements:

- A brief project description, referencing the Work Plan and/or SAP for details;
- Project management and QA responsibilities;
- Quality assurance objectives;
- Procedures for analysis of samples and reporting of results, including:
 - Detection or quantitation limits;
 - Analytical techniques and procedures;
 - Quality assurance and quality control procedures; and
 - Data reporting procedures and validation procedures.

The Parties shall use an Ecology-accredited laboratory for the specific analyses to be performed under this AO. If an unaccredited lab is proposed to be used, the results of recent performance audits and systems audits shall be provided to Ecology prior to use of the lab.

Health and Safety Plan (Appendix to SAP) - The Parties shall prepare a HASP for RI activities in accordance with WAC 173-340-810. The HASP must be consistent with the requirements of the Washington Industrial Safety and Health Act of 1973, Chapter 49.17 RCW and implementing regulations, including any updates or amendments. The HASP shall identify specific monitoring and management responsibilities and activities to ensure the protection of human health activities associated with the RI.

TASK 4 REMEDIAL INVESTIGATION (RI)

The Parties shall conduct a remedial investigation that meets the requirements of WAC 173-340-350(7), according to the Work Plan as approved by Ecology and the schedule contained below. Key components of the RI for this Site that may be captured in the Work Plan are as follows:

- Nature and extent of contamination;
- Contaminant fate and transport processes;
- Assessment of potential human health and ecological health concerns; and
- Source control and recontamination evaluation.
- All the associated figures, tables, and photos.

TASK 5 FEASIBILITY STUDY (FS)

The Parties shall use the information obtained in the RI to conduct a Feasibility Study that meets the requirements of WAC 173-340-350(8). The FS shall include:

- Determination of cleanup standards and applicable laws;
- Identification and screening of cleanup technologies;
- Basis for assembly of cleanup action alternatives;
- Description of cleanup alternatives;

- Comparative evaluation of cleanup alternatives; and
- Identification of a preferred cleanup alternative.
- All the associated figures, tables and photos.

DELIVERABLES

The Parties shall prepare and submit all plans, reports, and studies listed below (items a through c) as required by the Order. In particular:

- All deliverables shall be submitted to Ecology in both electronic (Word and Adobe Portable Document Format [PDF] formats) and hard-copy formats;
- A draft shall be submitted to Ecology for review and approval in accordance with this SOW, including the schedule outlined below, and the Work Plan;
- Ecology will provide written comments on a draft as necessary. Technical comments will be provided under separate cover in addition to any redline editorial comments, directly from Ecology's Project Coordinator to the Parties after Ecology's Project Coordinator has reviewed the comments for relevance and edited them appropriately, so that Ecology speaks with a unified voice when communicating with the Parties;
- If Ecology provides comments on a draft document, the Parties shall revise the draft document by incorporating and/or otherwise addressing Ecology's comments. The Parties shall resubmit an electronic redlined/strikeout revised draft to Ecology for review and approval (only revised sections shall be reviewed by Ecology for completion, unless necessary to review the document more comprehensively due to revisions);
- Once Ecology approves a draft as the final version, it shall be considered the final draft for public review purposes (the public review draft or draft final document);
- Following public review of the draft final document, the Parties shall prepare and submit for approval by Ecology a final version, which addresses public comments as Ecology determines necessary (if changes to the document following public comment are determined to be substantial, the revised document shall be subject to additional public notice and comment);

- Upon Ecology approval, the final version submitted shall be considered the final document; and
- Ecology, in its discretion, and with assistance from the Parties pursuant to the terms of the Order, may prepare a Responsiveness Summary to public comments.

Specific deliverables described in this SOW include:

- a) RI/FS Work Plan and Other Project Plans – The Parties shall submit for Ecology review and approval an RI/FS Work Plan, SAP, and QAPP in accordance with the schedule below. The HASP shall also be submitted but not approved by Ecology.
- b) RI/FS Report – The Parties shall summarize and compile the results of Tasks 4 and 5 into an RI/FS Report. The RI/FS report shall follow the draft outline contained in the work plan as revised during the course of work. Revision of the outline shall require approval of Ecology.

SCHEDULE

The schedule for all tasks described in this SOW is presented below. If, at any time during the RI/FS process, unanticipated conditions or changed circumstances are discovered which may result in a schedule delay, the Parties shall bring such information to the attention of Ecology. Pursuant to Section VIII.K of the AO, Ecology shall determine whether a schedule extension is warranted.

Completion times are calendar days. Any deadline which falls on a holiday or weekend shall be extended to next business day.

RI/FS Actions

Completion Time

Draft RI/FS Work Plan, SAP, QAPP, and HASP

90 calendar days from effective date of the Order

Final RI/FS Work Plan, SAP, QAPP, and HASP incorporating Ecology's comments

60 calendar days from receipt of Ecology's comments on Draft RI/FS Work Plan, SAP, and QAPP and HASP pursuant to review process described in the Deliverable Section

Completion of RI work
and Submittal of RI data

360 calendar days from Ecology's
approval of Final RI/FS Work Plan, SAP,
and QAPP documents, or as set forth in
the Final RI/FS Work Plan schedule

Draft RI/FS Report

180 calendar days from completion of RI
work and submittal of RI data

Draft RI/FS Report for Public Review
Incorporating Ecology's comments

90 calendar days from receipt of
Ecology's comments on the Draft RI/FS
Report pursuant to review process
described in the Deliverable Section

Final RI/FS Report incorporating
Public comments, as
Ecology determines necessary

30 calendar days from the close of
public comment period, if Ecology
determines no changes are necessary;
60 calendar days in the event Ecology
determines changes are necessary