

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:  Bud Owens Family Limited Partnership  RE: Comet Trailer Corp Site 501 S. 1st Street Selah, Washington 98942	AGREED ORDER  No. DE 11193
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TO: Terra Rudick  
 Bud Owens Family Limited Partnership  
 P.O. Box 129  
 Selah, WA 98942

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## **I. INTRODUCTION**

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Bud Owens Family Limited Partnership under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the Bud Owens Family Limited Partnership to conduct a Remedial Investigation and Feasibility Study for the Comet Trailer Corp Site. This Order supersedes Agreed Order No. DE 03 TCPCR-5877 entered into between Mr. Bud Owens and Ecology on December 5, 2003. 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. Bud Owens Family Limited Partnership agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Bud Owens Family Limited Partnership's responsibility under this Order. Bud Owens Family Limited Partnership 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 RCW 70.105D and WAC 173-340 shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as Comet Trailer Corp and is generally located at 501 S. 1st Street, Selah, Washington 98942. The Site is defined by the extent of contamination

caused by the release of hazardous substances at the Site. Based upon factors currently known to Ecology, the Site is generally described in the Site Diagram (Exhibit A). The Site constitutes a facility under RCW 70.105D.020(8). The Facility/Site identification number is 503 and the Cleanup Site identification number is 4198 as listed in Ecology's Integrated Site Information System (ISIS).

B. Parties: Refers to the State of Washington, Department of Ecology and Bud Owens Family Limited Partnership.

C. Potentially Liable Person (PLP): For the purposes of this Order refers to Bud Owens Family Limited Partnership. Ecology has determined that Owens Family Limited Partnership and Burlington Northern Santa Fe (BNSF) Railway are also PLPs for the Site, but each are not a party to the Order.

D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits to this Order.

## V. FINDINGS OF FACT

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

A. Bud Owens Family Limited Partnership, Owens Family Limited Partnership, Steve and Janet Owens, and BNSF Railway are current owners of the properties generally located at 501 S. 1st Street, Selah, Washington 98942.

B. The late Mr. Bud Owens was a former owner of one of the properties and operated a truck trailer manufacturing business at the Site from 1984-1995. Since 1995, the property has been leased by Mr. Bud Owens and subsequently by the Bud Owens Family Limited Partnership.

C. Mr. Bud Owens leased railroad right-of-way (parcel 18130199997) from BNSF Railway. Waste generated during operation of the Comet Trailer Corp facility was deposited on this property. Mr. Bud Owens had communicated to Ecology that he would like to take full

responsibility for Comet Trailer Corp activities that occurred on all parcels he owned or leased. Per Mr. Bud Owens request, BNSF Railway was not to be involved in past or future remedial activities. Bud Owens Family Limited Partnership is continuing this stance for any future remedial activities.

D. On March 11, May 13, and September 19, 1991, Ecology staff conducted initial investigations of the Site. Due to the nature of business at the Comet Trailer Corp facility, Ecology collected samples of sandblast waste and sludge from a stormwater catch basin on the north end of the facility. The catch basin is connected to a stormwater drain system which enters Selah Ditch and eventually flows to the Yakima River. The samples were analyzed for volatile organics and total metals.

- a. Sandblast waste material samples: Total metals analysis revealed the presence of chromium at 261 mg/kg and 207 mg/kg. These concentrations are above MTCA Method A soil cleanup levels for chromium IV and below for chromium III. The Laboratory analysis to determine chromium speciation was not conducted for these samples.
- b. Catch basin sludge samples: Arsenic, cadmium, chromium (total), and methylene chloride were detected above MTCA Method A soil cleanup levels. The laboratory reporting limits for some contaminants (e.g. benzene and tetrachloethylene) were above the MTCA Method A soil cleanup levels, so the sampling was inconclusive for these analytes. Other contaminants including toluene, ethylbenzene, xylenes, lead, heavy oils, acetone, styrene, and trichlorofluoromethane were detected, although below MTCA Method A and B soil cleanup levels.

E. During September 1991 and May 2002 site visits, sandblast waste piles were identified at the following locations:

- a. South of the warehouse in a low area that has since been filled.
- b. Southwest corner of the unpaved area (sampled by Ecology in 1991)

c. Southeast corner of the unpaved area, south of the warehouse, and about 30 feet from Selah Ditch.

d. East portion of the Site on BNSF right-of-way property

F. In 1992, Ecology completed a Site Hazard Assessment for this Site. Ecology determined a rank of “1”, where “1” represents the highest relative risk and “5” the lowest. The ranking indicates that this Site posed a high potential threat to human health and the environment relative to other Washington State sites ranked at this time.

G. On December 10, 2002, Ecology issued a PLP status letter to Mr. Bud Owens.

H. On December 10, 2002, Ecology issued a PLP status letter to Burlington Northern Santa Fe Railway.

I. On January 22, 2003, Ecology notified Mr. Bud Owens of his status as a “Potentially Liable Person” for the release of hazardous substances at the Site.

J. On January 22, 2003, Ecology notified Burlington Northern Santa Fe Railway of its status as a “Potentially Liable Person” for the release of hazardous substances at the Site.

K. On March 20, 2003, GeoEngineers on behalf of BNSF Railway collected soil samples for metals analysis at two sandblast waste piles located on the railroad right-of-way parcel. On July 30, 2004, BNSF Railway provided a map of these sampling locations and laboratory results to Ecology.

L. On December 5, 2003, Mr. Bud Owens and Ecology entered into Agreed Order No. DE 03 TCPCR-5877 for Mr. Owens to conduct a Remedial Investigation and Feasibility Study (RI/FS) of the Site.

M. On August 18, 2004, during the initial RI/FS soil and groundwater sampling at the Site by Technico Environmental Services, Inc., petroleum free product was discovered in one of the groundwater monitoring wells. This free product was later confirmed to be diesel range organics or heating oil from an unknown source (possibly a former bulk fuel facility). A RI/FS document for the sandblast waste pile and catch basin releases was not received by Ecology as required under the 2003 Agreed Order.

N. From 2005 to 2011, Sage Earth Sciences on behalf Mr. Bud Owens and later the Bud Owens Family Limited Partnership conducted independent remedial investigations that were not part of the 2003 Agreed Order to determine the extent of contamination related to the petroleum free product release(s). Petroleum contamination extended over approximately 0.7 acres at the Site.

O. In January and February 2010, an independent interim cleanup action was conducted by the Bud Owens Family Limited Partnership to excavate the petroleum contaminated soil. After stockpile sampling, some of the soil was returned to the excavation above the groundwater table while contaminated soil was land farmed in the northwest corner of the Site. The land farmed soil was sampled in November 2010 and diesel range organics still exceeded MTCA Method A cleanup levels with a maximum concentration of 4,400 mg/kg. This soil has since been moved to the southwest corner of the Site and has been stockpiled.

P. On September 30, 2014, Ecology issued a PLP status letter to Owens Family Limited Partnership.

Q. On October 9, 2014, Ecology issued a PLP status letter to Bud Owens Family Limited Partnership.

R. On November 10, 2014, Ecology notified Owens Family Limited Partnership of its status as a "Potentially Liable Person" for the release of hazardous substances at the Site.

S. On November 10, 2014, Ecology notified Bud Owens Family Limited Partnership of its status as a "Potentially Liable Person" for the release of hazardous substances at the Site.

## **VI. ECOLOGY DETERMINATIONS**

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

A. Bud Owens Family Limited Partnership is an "owner or operator" as defined in RCW 70.105D.020(22) of a "facility" as defined in RCW 70.105D.020(8). Bud Owens Family Limited Partnership is identified as the current owner of parcel number 18130122423 on file with the Yakima County Assessor's Office.

B. Owens Family Limited Partnership is an “owner or operator” as defined in RCW 70.105D.020(22) of a “facility” as defined in RCW 70.105D.020(8). Owens Family Limited Partnership is identified as the current owner of parcel number 18130123001 on file with the Yakima County Assessor’s Office.

C. Burling Northern Santa Fe Railway is an “owner or operator” as defined in RCW 70.105D.020(22) of a “facility” as defined in RCW 70.105D.020(8). Burling Northern Santa Fe Railway is the current owner of railroad right-of-way (parcel number 18130199997).

D. The late Mr. Bud Owens was an “owner or operator” as defined in RCW 70.105D.020(22) of a “facility” as defined in RCW 70.105D.020(8). Mr. Bud Owens was a former owner of parcel number 18130122423 on file with the Yakima County Assessor’s Office. Mr. Bud Owens also leased railroad right-of-way from Burlington Northern Santa Fe Railway.

E. 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.

F. Based upon credible evidence, Ecology issued a PLP status letter to Mr. Bud Owens dated December 10, 2002, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that Mr. Bud Owens is a PLP under RCW 70.105D.040 and notified Mr. Bud Owens of this determination by letter dated January 22, 2003.

G. Based upon credible evidence, Ecology issued a PLP status letter to Burlington Northern Santa Fe Railway dated December 10, 2002, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that Burlington Northern Santa Fe Railway is a PLP under RCW 70.105D.040 and notified Burlington Northern Santa Fe Railway of this determination by letter dated January 22, 2003.

H. Based upon credible evidence, Ecology issued a PLP status letter to Owens Family Limited Partnership dated September 30, 2014, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that Owens Family Limited Partnership is a PLP under RCW 70.105D.040 and notified Owens Family Limited Partnership of this determination by letter dated November 10, 2014.

I. Based upon credible evidence, Ecology issued a PLP status letter to Bud Owens Family Limited Partnership dated October 9, 2014, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that Bud Owens Family Limited Partnership is a PLP under RCW 70.105D.040 and notified Bud Owens Family Limited Partnership of this determination by letter dated November 10, 2014.

J. 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.

K. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan. Either party may propose an interim action under this Order. If the Parties are in agreement concerning the interim action, the Parties will follow the process in Section VII.E. If the Parties are not in

agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70.105D, or to undertake the interim action itself.

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

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

A. The work to be performed includes the preparation, implementation, and reporting of a Remedial Investigation/Feasibility Study (RI/FS) consistent with the scope of work in Exhibit B (Scope of Work).

B. The Work Plan shall consist of a detailed description of site conditions, work to be performed, personnel requirements, and schedules for implementation and deliverables for the following:

1. Project Plans including RI Work Plan, Sampling and Analysis Plan/Quality Assurance Project Plan, Health and Safety Plan.
2. RI Field Investigation
3. Feasibility Study
4. Remedial Investigation/Feasibility Study Report

These work plans and each element thereof shall be designed, implemented, and completed in accordance with MTCA (Chapter 70.105D RCW) and its implementing regulations (Chapter 173-340 WAC) as amended, and all applicable federal, state and local laws and regulations.

C. Within 60 days of the issuance of this Order, the PLPs must submit a draft Remedial Investigation (RI) Work Plan including a combined draft Sampling and Analysis Plan (SAP) / Quality Assurance Project Plan (QAPP), and a site Health and Safety Plan (HASP) for Ecology's review per WAC (173-340-350(7)(c)(iv). The documents must conform to the requirements specified in WAC 173-340-810, worker safety and health, and WAC 173-340-820, sampling and analysis plans.

D. The revised RI Work Plan and associated documents responsive to Ecology's comments as determined by Ecology are due within 45 days of the PLPs' receipt of Ecology's comments on the draft documents. Upon approval by Ecology, the RI Work Plan, SAP/QAPP and HASP are considered final and become integral and enforceable parts of this Order.

E. The RI field work shall begin within 30 days of Ecology's written approval of the final RI Work Plan and associated SAP/QAPP and HASP. Construction (e.g. soil sampling, monitoring well installation/development, surveying) shall be completed within 60 days of initiation of RI field work. In addition to the construction phase, the RI field work will include up to four consecutive quarters of groundwater monitoring well sampling events to allow groundwater to be characterized for seasonal variations in flow and contaminant concentrations. Groundwater sampling for site characterization shall be completed within 1 year of the completion of the monitoring well construction.

F. A draft Remedial Investigation/Feasibility Study Report will be submitted to Ecology within 60 days of the receipt of the final analytical data from sampling events specified under the RI Work Plan for Ecology's review and approval. The draft RI/FS Report must conform to WAC 173-340-350, remedial investigation and feasibility study. Within 45 days of the receipt of comments from Ecology, the PLPs must deliver to Ecology a revised RI Report and revised Feasibility Study responsive to Ecology's comments as determined by Ecology on the draft RI Report and draft Feasibility Study.

G. Monthly progress reports will be submitted to Ecology's Project Coordinator via mail or e-mail. The first progress report shall be submitted to Ecology on or by 15th of the month for work performed the previous month. Progress reports shall continue to be submitted on a monthly basis until the full nature and extent of the contaminant(s) are described, documented, and submitted in a final RI/FS Report and Ecology notifies the PLPs in writing that monthly progress report submission may be ended. Document submissions must be approved by Ecology and are not final until approved. Emergency situations and any conditions significantly delaying work must be reported to Ecology within 24 hours.

H. All plans or other deliverables submitted by the PLPs for Ecology's review and approval under the Scope of Work (Exhibit B) and Schedule (Exhibit C) shall, upon Ecology's approval, become integral and enforceable parts of this Order.

I. If the Parties agree on an interim action under Section VI.E, the PLPs 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 PLPs 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 the PLPs are required to conduct the interim action in accordance with the approved Interim Action Work Plan.

J. If Ecology determines that the PLPs have failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to the PLPs, perform any or all portions of the remedial action or at Ecology's discretion allow the the PLP opportunity to correct. The PLPs shall reimburse Ecology for the costs of doing such work in accordance with Section VII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

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

## **VIII. TERMS AND CONDITIONS**

### **A. Remedial Action Costs**

The PLPs shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under RCW 70.105D, 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). For all costs incurred subsequent to the issuance of this Order, the PLPs shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

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

**B. Designated Project Coordinators**

The project coordinator for Ecology is:

Matthew Durkee, LHG  
Department of Ecology – Central Regional Office  
15 W. Yakima Ave., Suite 200  
Yakima, WA 98902  
matthew.durkee@ecy.wa.gov  
(509) 454-7835

The project coordinator for the PLPs is:

David Green, LHG  
Sage Earth Sciences, Inc.  
1705 S. 24<sup>th</sup> Ave.  
Yakima, WA 98902  
info@sage-earth-sciences.com  
(509) 834-2333

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the PLPs, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project

coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this 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.

**C. 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 RCW 18.43 and 18.220.

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 RCW 18.43 and 18.220.

The PLPs shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

**D. Access**

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that the PLPs either own, control, or have access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the PLPs' progress in carrying out the terms of this Order; conducting such tests or collecting such samples

as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the PLPs. The PLPs shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the PLPs where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the PLPs unless an emergency prevents such notice. All persons who access the Site pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

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

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

If requested by Ecology, the PLPs shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the PLPs pursuant to implementation of this Order. The PLPs shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the PLPs and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.E (Access), Ecology shall notify the PLPs prior to any sample collection activity unless an emergency prevents such notice.

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

**F. Public Participation**

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

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

1. If agreed to by Ecology, develop appropriate mailing 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 the PLPs prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the PLPs that do not receive prior Ecology approval, the PLPs shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

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

- a. Selah Public Library  
106 S. 2nd St.  
Selah, WA 98942
- b. Ecology's Central Regional Office  
15 W. Yakima Ave., Suite 200  
Yakima, WA 98902

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 Central Regional Office in Yakima, Washington.

#### **G. Retention of Records**

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, the PLPs shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, the PLPs shall make all records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right the PLPs may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If the PLPs withhold any requested records based on an assertion of privilege, the PLPs 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.

#### **H. Resolution of Disputes**

1. In the event that the PLPs elect to invoke dispute resolution the PLPs must utilize the procedure set forth below.

a. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), the PLPs have fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute ("Informal Dispute Notice").

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision ("Informal Dispute Decision") stating: the nature of the dispute; the PLPs' position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

c. The PLPs may then request regional management review of the dispute. This request ("Formal Dispute Notice") must be submitted in writing to the Central Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

d. The Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute ("Decision on Dispute") within thirty (30) calendar days of receipt of the Formal Dispute Notice. The Decision on Dispute 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.

4. In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section VII.E (Work to be Performed) or initiating enforcement under Section X (Enforcement).

**I. Extension of Schedule**

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

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

2. The burden shall be on the PLPs to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

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

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

**J. 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 the PLPs. The PLPs shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed

amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.I (Resolution of Disputes).

**K. 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 the PLPs to cease such activities for such period of time as it deems necessary to abate the danger. The PLPs shall immediately comply with such direction.

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

If Ecology concurs with or orders a work stoppage pursuant to this section, the PLPs' obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.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.

**L. Reservation of Rights**

This Order is not a settlement under RCW 70.105D. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against the PLPs to recover remedial action costs paid

to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the PLPs regarding remedial actions required by this Order, provided the PLPs complies with this Order.

Ecology nevertheless reserves its rights under RCW 70.105D, 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, the PLPs do not admit to any liability for the Site. Although the PLPs are committing to conducting the work required by this Order under the terms of this Order, the PLPs 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.

**M. Transfer of Interest in Property**

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

Prior to the PLPs' transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the PLPs shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, the PLPs shall notify Ecology of said transfer. Upon transfer of any interest, the PLPs shall 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.

**N. Compliance with Applicable Laws**

1. All actions carried out by the PLPs pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to

obtain necessary permits, except as provided in RCW 70.105D.090. 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 PLPs are exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, the PLPs shall comply with the substantive requirements of such permits or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

The PLPs have a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the PLPs determine 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 PLPs shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the PLPs shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the PLPs and on how the PLPs must meet those requirements. Ecology shall inform the PLPs in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The PLPs shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

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

shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

**O. Indemnification**

The PLPs agree to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (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 the PLPs, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the PLPs shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

**IX. SATISFACTION OF ORDER**

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

**X. ENFORCEMENT**

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

- A. The Attorney General may bring an action to enforce this Order in a state or federal court.
- B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
- C. 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.

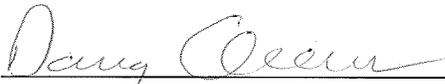
2. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

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.

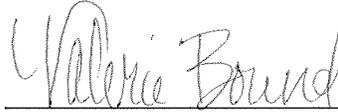
Effective date of this Order: May 11, 2015

BUD OWENS FAMILY LIMITED  
PARTNERSHIP



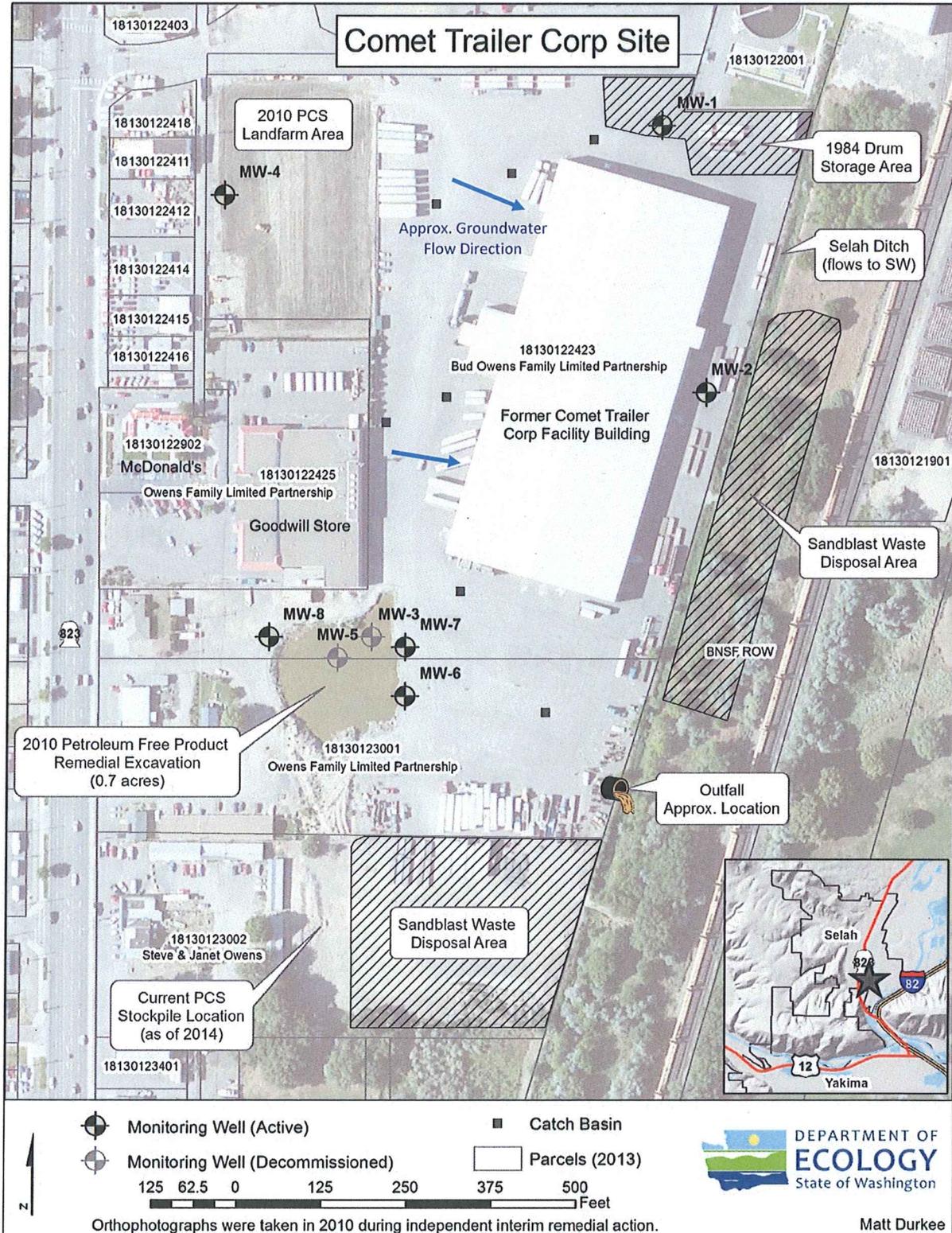
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STATE OF WASHINGTON  
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EXHIBIT A  
Site Diagram



## EXHIBIT B

### Scope of Work

WAC 173-340-350 (Remedial Investigation and Feasibility Study) broadly describes the elements necessary to complete a RI/FS. The purpose of the RI/FS is to collect, develop, and evaluate sufficient information regarding the site to select a cleanup action under WAC 173-34-360 through 173-340-390. Other applicable provisions are provided in Part VIII (General Provisions) of WAC 173-340. This Scope of Work outlines the major tasks and associated subtasks to assist in conducting the RI/FS.

#### Task 1: RI/FS Planning

##### A. RI/FS Work Plan

The work plan will contain the following:

1. Background Summary consisting of:
  - a. Site description and history (including previous investigations).
  - b. General geology and hydrogeology of the Site area.
  - c. Site diagram(s), updated to include locations of above ground features such as buildings and subsurface features including utilities, petroleum product tanks and associated piping system; property lines, boring locations, monitoring wells and elevations. All maps will be consistent with the requirements set forth in WAC 173-340-840(4) and be of sufficient detail and accuracy to locate and report all current and future work performed at the Site.
2. Sampling and Analysis Plan/Quality Assurance Project Plan (SAP/QAPP)  
A SAP/QAPP will be developed that will incorporate the following items consistent with WAC 173-340-820:
  - a. A statement on the purpose and objectives of the data collection, including quality assurance and quality control (QA/QC) requirements.
  - b. Organization and responsibilities for the sampling and analysis activities.
  - c. Requirements for sampling activities will include:
    - i. Project schedule.
    - ii. Types of media to be sampled and the number of samples to be collected from each media.
    - iii. Identification of parameters to be field measured or to be collected for laboratory analysis.
    - iv. Proposed sampling locations.

- v. Procedures for collection of representative samples and protocols for sample storage and handling, including holding times, required sample volumes, proper containers, and sample preservation.
- vi. Sampling supplies and equipment.
- vii. Sample shipping arrangements.
- viii. Procedures for personnel and equipment decontamination.
- ix. Monitoring well construction specifications.
- x. Procedures for the management of waste materials generated by sampling activities.
- xi. Description and number of field and laboratory QA/QC samples, including field duplicates, method blanks and spikes.
- xii. Protocols for sample labeling and chain of custody.
- xiii. Provisions for splitting samples, where appropriate.
- d. Procedures for analysis of samples and reporting of results, including:
  - i. Detection or quantitation limits.
  - ii. Analytical methods and procedures.
  - iii. Quality assurance and quality control procedures.
  - iv. Data reporting procedures, and where appropriate, validation procedures.

### 3. Health and Safety Plan

- a. Level of worker protection
- b. Hazard evaluation
- c. Waste characteristics
- d. Special considerations and emergency information

### Task 2: RI Field Investigation

The investigation will meet the requirements under WAC 173-340-350 and will include the following elements:

#### A. Site Characterization

Collect sufficient data to determine the nature of contamination, to define its lateral and vertical extent, and to assess the fate and transport of the contaminants including the velocity and direction of groundwater and contamination migration. The information obtained shall be sufficient to assist in completing a Feasibility Study and in selecting an appropriate remedial action.

1. Hydrogeology
  - a. Install new groundwater monitoring wells and soil borings, as required. Monitoring well construction should be consistent with WAC 173-160.
  - b. Verify the elevation of existing monitoring wells. Survey the newly-installed wells and other wells, where needed, to determine elevation and horizontal location of each well.
  - c. Evaluate groundwater from existing wells by collecting field parameters, samples for laboratory analysis and associated measurements such as water level elevations.
  - d. Characterize the water level fluctuations and groundwater flow directions over seasonal changes.
  - e. Measure the properties of the unconfined aquifer for LNAPL characterization including geometry of the LNAPL body and to assist in NAPL recovery, if required.
  - f. Model relevant hydrogeological parameters that may include such factors as seepage velocity, LNAPL transmissivity, LNAPL and groundwater plume trend (e.g., growing, stable or shrinking).
2. Soils
  - a. Install soil borings and/or test pits, as needed.
  - b. Characterize soil samples using the Unified Soil Classification System (USCS).
  - c. Prepare soil logs for borings, monitoring well installations, and test pits.

#### B. Source and Contamination Characterization

1. Sampling locations will be selected to characterize contamination in site media and to assess the various exposure pathways.
2. Collect soil and groundwater samples sufficient to delineate sources of contamination and its nature and extent.

### Task 3: Feasibility Study

The purpose of the Feasibility Study is to evaluate potential remedial technologies and approaches to enable selection of an appropriate remedial action for the Site. The Feasibility Study must meet the requirements stated in WAC 173-340-350(8).

#### A. Elements of the Feasibility Study

1. Identification of contamination to be remediated.
2. Identification and initial screening of treatment technologies.
3. Proposed remedial alternatives and evaluation with respect to MTCA criteria.
4. Recommended alternative.

## Task 4: RI/FS Report

The PLPs will complete a report documenting the Remedial Investigation/Feasibility Study as required by WAC 173-340-350(7) and (8). This report will include the following elements:

### A. Remedial Investigation

1. Background Information.
  - a. Site History.
  - b. Previous Studies.
2. Nature and Extent of Contamination
  - a. Data Presentation- laboratory analytical reports and narratives, previous investigations, well and boring logs, and any other documentation of characterization activities will be provided. This will include summary tables of analytical results and other supporting maps and figures.
  - b. Data Analysis- Analyze all data collected during Task 2 and prepare supporting maps and figures. This will include figures of extent of groundwater plume and groundwater flow directions.
  - c. Presentation of conceptual site model.
3. Applicable Relevant and Appropriate Requirements (ARARs) Analysis  
Identify Applicable State and Federal Laws for cleanup of the Site in accordance with WAC 173-340-710.
4. Discussion and Recommendations
  - a. Interpret and discuss data to determine the nature and extent of the contamination and to support final recommendations for remediation of the Site.
  - b. A summary of all possible and suspected source areas of contamination based on the data collected will be included.
  - c. Recommendations should be provided identifying additional data requirements.

### B. Feasibility Study

- a. Identification of contamination to be remediated.
- b. Identification and initial screening of treatment technologies.
- c. Proposed remedial alternatives and evaluation with respect to MTCA criteria.
- d. Recommended alternative.

## EXHIBIT C

### Schedule of Deliverables or Action Required

<b>Deliverable or Action Required</b>	<b>Completion/Due to Ecology</b>
Draft RI Work Plan including SAP/QAPP and HASP	60 days following the effective date of the Agreed Order
Final RI Work Plan including SAP/QAPP and HASP	45 days after receipt of Ecology's written comments on Draft RI Work Plan
Perform RI field work	Begin within 30 days after Ecology's written approval of the Final RI Work Plan.  Construction shall be completed within 60 days of initiation of RI field work.  Groundwater sampling for site characterization shall be completed within 1 year of completion of monitoring well construction.
Draft RI/FS Report	60 days after receipt of the final analytical data from the sampling events specified under the RI Work Plan
Final RI/FS Report	45 days after receipt of Ecology's comments on the Draft RI report and Draft Feasibility Study
Monthly reports on the progress of the RI/FS	Monthly by the 15th of the month for work performed the previous month.  The progress reports will be submitted to Ecology via mail or e-mail.

This table is a summary of the requirements of the Agreed Order. In the event of any conflict or perceived conflict between the contents of this table and the text of the Order, the text of the Order shall prevail.