

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

AGREED ORDER

Shell Oil Products US (SOPUS)

No. DE 12908

Smith-Kem Ellensburg, Inc.

RE: Smith-Kem Ellensburg, Inc.
200 South Railroad Avenue
Ellensburg, WA

TO: ATTN: Laurel Erickson
Smith-Kem Ellensburg, Inc.
PO Box 774
Ellensburg, WA 98926

ATTN: Ms. Andrea A. Wing
Principal Program Manager
Shell Oil Products US (SOPUS)
20945 S. Wilmington Avenue
Carson, CA 90810

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and PLPs Shell Oil Products US (SOPUS or Shell), on behalf of Shell Oil Company, and Smith-Kem Ellensburg (Smith-Kem) (collectively referred to as the PLPs) 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 PLPs to complete a Remedial Investigation (RI), Feasibility Study (FS), and to prepare a Draft Cleanup Action Plan (DCAP), for the site identified by Ecology as the "Smith KEM Ellensburg Site," located at 200 South Railroad Avenue, Ellensburg, WA 98926 (the Site). 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. The PLPs agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the PLPs' responsibility under this Order. The PLPs shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

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

A. Site: The Site is referred to as "Smith KEM Ellensburg" and is generally located at or near 200 South Railroad Avenue, Ellensburg, Washington. 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 the Site Diagram (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(8). The Facility/Site ID number is 12832256 and the Cleanup Site ID number is 4257 as listed in Ecology's Integrated Site Information System.

B. Parties: Refers to the State of Washington, Department of Ecology, Shell Oil Products US (SOPUS or Shell), on behalf of Shell Oil Company, and Smith-Kem Ellensburg, Inc. (Smith-Kem).

C. Potentially Liable Persons (PLPs): Refers to Shell and Smith-Kem.

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. Ad Gro, LLC (Ad Gro) is the owner of Tax Parcel No. 226833 as identified by records from the Kittitas County Assessor's office and located at 200 Railroad Ave, Ellensburg, Washington. Ad Gro acquired the property from James and Jean Smith in 1996. Ad Gro has been identified by Ecology as a PLP for the site but is not a party to this Order. Nothing in this Order shall be construed as modifying Ad Gro's status as a PLP at the Site, or removing its potential obligations at the Site pursuant to MTCA.

B. Smith-Kem is a former operator of the agricultural products business located at 200 Railroad Avenue, Ellensburg, Washington on Tax Parcel No. 226833. Smith-Kem conducted various operations, including fertilizer blending and pesticide storage, at the Site until March 31, 2015, when The McGregor Company (McGregor) acquired portions of the business and continued operations on the Site. McGregor began leasing Tax Parcel No. 226833 and its associated structures from Ad Gro on April 1, 2015, and is the current operator on the property. As of the date

of this Order, McGregor is operating under the name "Smith-Kem," but it is a distinct and separate legal entity from the Smith-Kem entity which is a party to this Order.

C. Shell Oil Company is a former owner and operator of the property identified as Tax Parcel No. 226833 and located at 200 South Railroad Avenue, Ellensburg, Washington. Shell Oil Company operated a bulk fuel facility on the Site from approximately 1923 until the early 1970s. From 1948 until February 2, 1973, Shell Oil Company leased a portion of the property to Smith-Kem, which sold Shell-branded agricultural products on the property. Shell Oil Company sold the property to James and Jean Smith by warranty deed dated November 30, 1972.

D. A Sanborn Fire Insurance map dated 1928 shows a facility labeled as "Shell Oil Company, Oil Storage Plant." The facility includes oil pumps, aboveground storage tanks (ASTs) and product lines that extend from the railroad spur to the offloading building.

E. In 2007, Sage Earth Sciences (Sage) performed a limited site investigation to assess petroleum hydrocarbons in soil and groundwater adjacent to the AST system located at the Site. Their report, dated June 11, 2007, indicated that soil and groundwater were impacted by diesel at concentrations that exceeded the MTCA Method A cleanup levels for these media.

F. On July 2, 2007, Sage notified Ecology under MTCA of a release or potential release of petroleum products at the Site.

G. On May 29, 2008, Ecology conducted an initial investigation and on May 30, 2008, concluded that additional investigation was required to assess other potential hazardous substances, including pesticides.

H. On June 2, 2008, Ecology issued an Early Notice Letters to Smith-Kem and Ad Gro.

I. On August 13, 2008, Ecology assigned a Site Hazard Assessment (SHA) ranking of "3" to the Site.

J. By letter dated November 15, 2012, Ecology received notification from Conestoga-Rovers & Associates (CRA) on the behalf of Shell acknowledging the PLP status of Shell with regard to former operation of the bulk fuel terminal.

K. In June 2013, CRA performed a site investigation for the purpose of confirming and further assessing soil and groundwater conditions as reported by Sage in 2007.

L. Between September and October 2013, Shell performed additional investigation focused on the petroleum hydrocarbon releases. Eight monitoring wells are installed to assess groundwater impacts.

M. In 2014, consultants from Fulcrum Environmental and Nth Degree Environmental collected groundwater from the existing network of eight monitoring wells to investigate the presence and distribution of pesticide contamination in groundwater. A report dated August 4, 2014 indicated that groundwater samples from five of the eight wells showed detections of G-BHC (lindane), chlordane, endrin, endosulfan II, endrin aldehyde, and dieldrin.

N. In April 2015, additional groundwater sampling with an expanded analyte list was performed by Landau Associates on behalf of McGregor. The sampling identified the presence of TPH-D, chlordane, dieldrin, and toxaphene at concentrations above their respective MTCA Method A or Method B cleanup levels. TPH-O, nitrate, lindane, 2,4-D, dinoseb, and dicamba were also detected in groundwater, with 2,4-D detected at concentrations above its respective MTCA Method B cleanup level. Additionally, concentrations of ammonia are present in groundwater.

O. On August 18, 2015, John Mefford of the Department of Ecology visited the Site and observed a surface depression adjacent to monitoring well No. 4. ("MW-4"). MW-4 was the location of McGregor's groundwater exhibiting the highest concentrations of TPH-D, chlordane, dieldrin, toxaphene, 2,4-D, and nitrate above MTCA cleanup levels. The surface depression contains two concrete culverts as part of a surface water conveyance system that appears may direct water off-property. These culverts as well as two more culverts at the south property boundary were observed to be partially plugged with sediments.

VI. ECOLOGY DETERMINATIONS

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

A. Shell Oil Company is a former "owner or operator" as defined in RCW 70.105D.020(22) of a "facility" as defined in RCW 70.105D.020(8). Equilon Enterprises LLC DBA Shell Oil Products US is a wholly-owned subsidiary of Shell Oil Company and is performing the work required under this Order on behalf of its parent, Shell Oil Company.

B. Ad Gro, LLC is an "owner or operator" as defined in RCW 70.105D.020(22) of a "facility" as defined in RCW 70.105D.020(8).

C. Smith-Kem is a former "owner or operator" as defined in RCW 70.105D.020(22) of a "facility" as defined in RCW 70.105D.020(8).

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

E. Based upon credible evidence, Ecology issued a PLP status letter to Shell dated July 18, 2012, pursuant to RCW 70.105D.040, 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 Shell is a PLP for petroleum hydrocarbon contamination at the Site under RCW 70.105D.040 and notified Shell of this determination by letter dated December 7, 2012.

F. Based upon credible evidence, Ecology issued PLP status letters to Smith-Kem and Ad Gro dated March 1, 2013, pursuant to RCW 70.105D.040 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 Smith-Kem and Ad Gro are PLPs at the Site under RCW 70.105D.040 and notified Smith-Kem and Ad Gro of this determination by letter dated May 10, 2013.

G. Based upon credible evidence, Ecology issued a PLP status letter to Shell dated October 31, 2014, pursuant to RCW 70.105D.040 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 final PLP

determination that Shell is a PLP at the Site under RCW 70.105D.040 and notified Shell of this determination by letter dated February 25, 2015.

H. Pursuant to RCW 70.105D.030(1) and -.050(1), Ecology may require the 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.

I. 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, RI/FS, or design of a CAP. 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.T of this Order. 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(s) itself.

VII. WORK TO BE PERFORMED

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

- A. Within 90 days of Effective Date of this Order, the PLPs shall submit to Ecology an Agency Review Draft RI Work Plan, which shall include a combined Sampling and Analysis Plan and Quality Assurance Project Plan (SAP/QAPP) and a Site Health and Safety Plan (HASP) consistent with the requirements specified in WAC 173-340-810 (Worker Safety and Health) and WAC 173-340-820 (Sampling and Analysis Plans). The Agency Review Draft RI Work Plan, SAP/QAPP, and HASP

shall comply with all requirements for a Site Remedial Investigation set forth in WAC 173-340-350. The Agency Review Draft RI Work Plan shall be sufficient to determine the nature and extent of contamination that has resulted from the release(s) of hazardous substances at the Site in all affected or potentially affected media (soil, interstitial air in soil, air, groundwater, drinking water, and/or surface water if applicable). The Agency Review RI Work Plan shall include installation and sampling of groundwater monitoring wells, soil borings, and any other sampling necessary to complete development of a Conceptual Site Model and fully delineate the nature and extent of contamination in all affected and potentially affected media at the Site to the satisfaction of Ecology.

- B. Ecology will strive to provide comments on the Agency Review Draft RI Work Plan for revision by the PLPs within 30 days of receipt of the Agency Review Draft RI Work Plan.
- C. Within 30 days of receipt of review comments from Ecology on the Agency Review Draft RI Work Plan, the PLPs shall submit to Ecology a proposed Revised RI Work Plan including the SAP/QAPP and HASP. While Ecology does not approve Site HASPs, such plans must comply with the requirements of the Washington State Department of Labor and Industries' Division of Occupational Safety and Health regulations and standards.
- D. Upon approval by Ecology, the RI Work Plan, SAP/QAPP, and HASP shall be considered final and become integral and enforceable parts of this Order.
- E. If the RI Revised Work Plan (including the proposed SAP/QAPP) submitted to Ecology is not satisfactory to Ecology after the completion of two rounds of review and comment, Ecology may at its sole discretion complete the Revised RI Work Plan (including the proposed SAP/QAPP) or contract with an Ecology contractor for completion of the Revised RI Work Plan (including the proposed SAP/QAPP) at the expense of the PLPs under Sec. VIII of this Order. The Final RI Work Plan (including

the SAP/QAPP) approved by Ecology shall be appended to this Order and become an integral and enforceable part of this Order.

- F. Within 60 days of Ecology's acceptance of the Final RI Work Plan, the PLPs shall initiate implementation of the investigation work described in the Final RI Work Plan.
- G. Within 90 days of completion of the RI activities, the PLPs shall submit to Ecology an Agency Review Draft RI Report.
- H. Ecology will strive to provide comments on the Agency Review Draft RI Report within 60 days of receipt of the Agency Review Draft RI Report.
- I. Within 45 days of receipt of comments by Ecology on the Agency Review Draft RI Report, the PLPs shall deliver to Ecology a Final RI Report satisfactory to Ecology and responsive to Ecology's comments and in compliance with MTCA.
- J. Within 60 days after approval of the Final RI Report, the PLPs shall submit an Agency Review Draft FS Report. The Agency Review Draft FS Report must comply with the requirements of WAC 173-340-350.
- K. Following review and comment by the Ecology Project Coordinator, within 15 days of receipt of comments from Ecology on the Agency Review Draft FS Report, the PLPs shall submit to Ecology a Revised FS Report satisfactory to Ecology and responsive to Ecology's comments and in compliance with MTCA.
- L. If the Revised FS Report submitted to Ecology is not satisfactory to Ecology, Ecology may at its sole discretion complete the Revised FS Report or contract with an Ecology contractor for completion of the Revised FS Report at the expense of the PLPs under Sec. VIII (A) of this Order. The Final FS Report approved by Ecology shall be appended to this Order and become an integral and enforceable part of the Order.
- M. Within 90 days of Ecology's approval of the Final FS Report, the PLPs shall submit to Ecology a draft Cleanup Action Plan (DCAP).

- N. Within 60 days of receipt of comments from Ecology on the DCAP, the PLPs shall submit to Ecology a final DCAP satisfactory to Ecology.
- O. If the DCAP submitted is not satisfactory to Ecology after the completion of two rounds of review and comment (including initial review and comments), Ecology may at its sole discretion complete the DCAP or contract with an Ecology contractor for completion of the DCAP at the expense of the PLPs under Sec. VIII (A) of this Order. The Final DCAP approved by Ecology shall be appended to this Order and become an integral and enforceable part of the Order.
- P. Groundwater monitoring shall be performed quarterly for a minimum of four consecutive quarters (sample every three months for 12 consecutive months). All sampling reports, including quarterly groundwater monitoring reports, will be due 30 days after each sampling event.
- Q. All data generated under this Order at the Site shall be reported to Ecology in the reports specified above, and in addition shall be submitted in electronic form in the format required by instructions and staff direction to the Ecology Environmental Information Management (EIM) System in compliance with WAC 173-340-840, and all submittals shall meet the requirements of that section. Data submitted to EIM shall not be considered properly submitted until the EIM Data Coordinator has cleared the data for transfer into the database and the Ecology Project Coordinator has verified that the data is complete and accurate.
- R. Any plans or other deliverables submitted by the PLPs for Ecology's review and approval under the Schedule of Deliverables or Action Required (Exhibit B) shall, upon Ecology's approval, become integral and enforceable parts of this Order.
- S. Monthly progress reports shall be submitted to Ecology's Project Coordinator via mail or email. The first progress report shall be submitted to Ecology on or by the 15th of the month for work performed the previous month. Monthly progress reports shall continue to be submitted on a monthly basis during the RI process until

Ecology notifies the PLPs in writing that monthly report submission can 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.

- T. If the Parties agree on an interim action under Section VI.I of this Order, 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.
- U. 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 PLPs an opportunity to correct. The PLPs shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).
- V. 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 OF ORDER

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 Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Ecology has accumulated \$3,157.07 in remedial action costs related to this Site as of February 12, 2016. Payment for this amount shall be submitted within 30 days of the effective date of this Order. For all costs incurred subsequent to February 12, 2016, the PLPs shall pay the required amount within 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. As requested by the PLPs, a general statement of work performed will be provided by Ecology on a monthly basis. Itemized statements shall be submitted by Ecology on a quarterly basis to the PLPs. 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 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:

John Mefford
Toxics Cleanup Program
Washington State Department of Ecology
Central Regional Office
1250 W. Alder Street, Union Gap, WA 98903
Tel: 509-454-7836
Fax: 509.575.2809
john.mefford@ecy.wa.gov

The project coordinators for the PLPs are:

For SOPUS:

Ms. Andrea Wing

Principal Program Manager
Shell Oil Products US
20945 S. Wilmington Avenue
Carson, CA 90810
Tel: 714.731.1050
Fax: 714.731.1038
andrea.wing@shell.com

For Smith-Kem:

Allison Geiselbrecht, Ph.D., Principal
Floyd Snider
601 Union Street, Suite 600
Seattle, WA 98101
Tel: 206.292.2078
Fax: 206.682.7867
Allison.Geiselbrecht@floydsnider.com

In addition to the project coordinator for Smith-Kem, copies of all notices or communications under this agreement shall also be provided to:

Elizabeth Black
Cascadia Law Group PLLC
1201 Third Ave., Suite 320
Seattle, WA 98101
Tel: 206-292-2655
ebblack@cascadialaw.com

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 Decree.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least 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 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 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 the full authority 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 HASP. 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 their 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.DB (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 Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

F. Public Participation

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing this public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that this Order is inadequate or improper in any respect.

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, RI/FS reports, CAPs, 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, 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. Ellensburg Public Library
209 N. Ruby Street, Ellensburg, WA 98926
- b. Ecology's Central Regional Office
1250 W. Alder Street, Union Gap, WA 98903

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 Union Gap, Washington.

G. Retention of Records

During the pendency of this Order, and for 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 a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII.A (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

a. Upon receipt of Ecology's project coordinator's written decision or the itemized billing statement, the PLPs have 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 14 days, Ecology's project coordinator shall issue a written decision.

c. The PLPs may then request regional management review of the decision. This request shall be submitted in writing to the Central Region Toxics Cleanup Section Manager within seven 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 30 days of the PLPs' 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.

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 (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 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.K (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.J (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.K (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 days of verbal agreement.

Except as provided in Section VIII.L (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.H (Resolution of Disputes).

K. 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 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 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, the PLPs may cease such activities. The PLPs shall notify Ecology's project coordinator as soon as possible, but no later than 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.I

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

By entering into this Order, 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 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 PLPs' transfer of any interest in all or any portion of the Site, and during the effective period of this Order, PLPs shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least 30 days prior to any transfer, PLPs shall notify Ecology of said transfer. Upon transfer of any interest, 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 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 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 for death or injuries to persons or for loss or damage to property to the extent arising from or on account of acts or omissions of 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 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: February 29, 2016

SMITH-KEM ELLENSBURG, Inc.


Laurel Erickson
President

**EQUILON ENTERPRISES LLC
(DBA - SHELL OIL PRODUCTS US)**


William E. Platt III.
Senior Manager

**STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY**

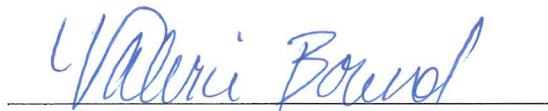
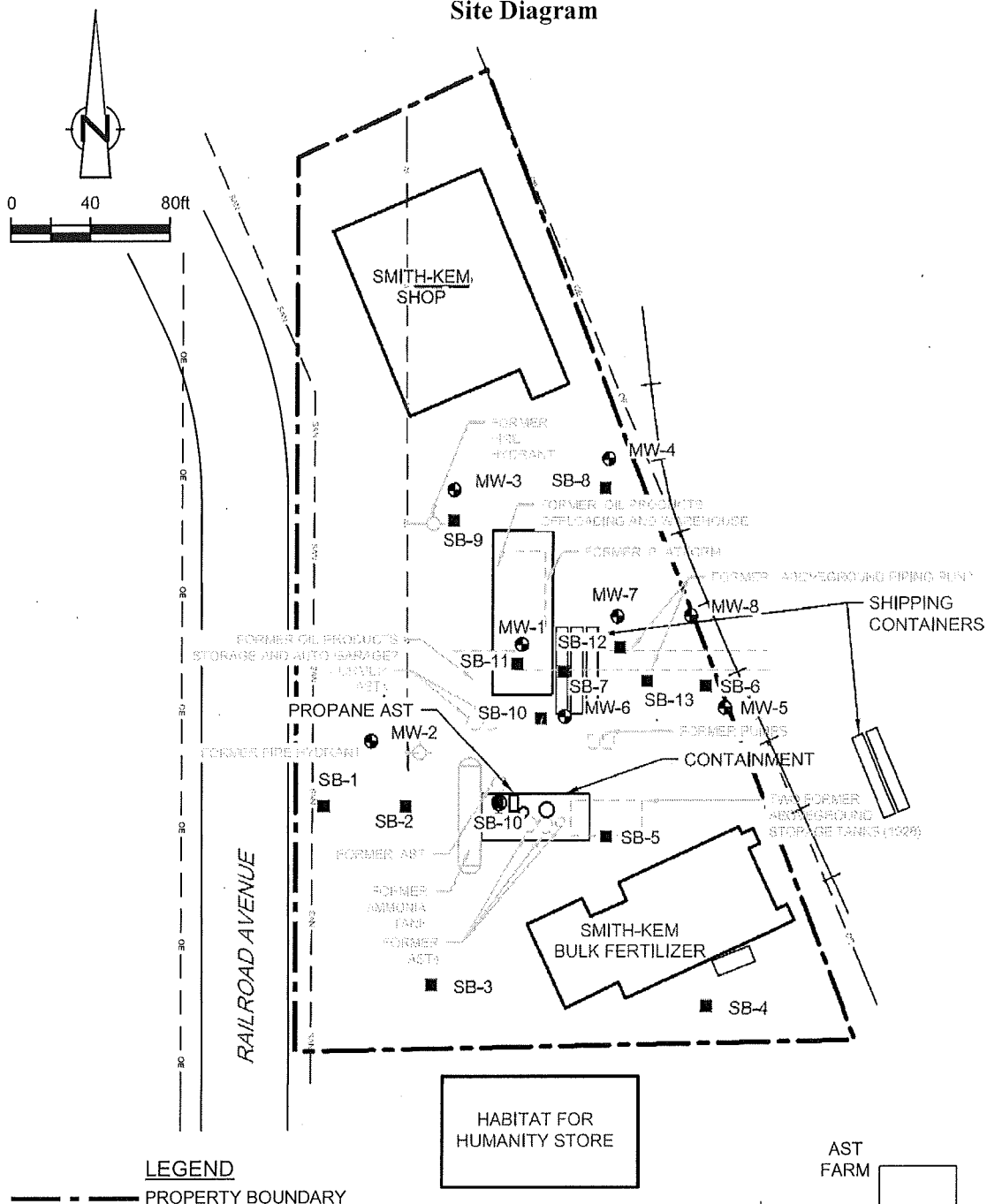

Valerie Bound
Section Manager
Toxics Cleanup Program
Central Regional Office

EXHIBIT A

Site Diagram



LEGEND

- PROPERTY BOUNDARY
- RAILROAD
- x- FENCE
- w- WATER LINE
- san- SEWER LINE
- oe- OVERHEAD ELECTRIC
- MW-5 ● MONITORING WELL LOCATION
- SB-11 ■ SOIL BORING LOCATION

NOTES:

1. CONCRETE CONTAINMENT BERM WAS BUILT BY SMITH-KEM.
2. OFFICE BUILDING IS ORIGINAL SHELL FACILITY STRUCTURE.

SITE PLAN
SMITH-KEM FACILITY
SHELL OIL PRODUCTS US
200 RAILROAD AVENUE SOUTH
Ellensburg, Washington



EXHIBIT B

Schedule of Deliverables or Action Required

Deliverable or Action Required	Completion/Due to Ecology
Draft RI work plan including SAP/QAPP and HASP (Agency Review Draft)	Due within 90 days of issuance date for Order.
Final RI work plan including SAP/QAPP and HASP	Due within 30 days after receipt of Ecology's written comments on Draft RI work plan.
Perform RI field work and field work associated with any modifications or amendments to the work plan.	Initially begin within 60 days of Ecology acceptance of Final RI work plan.
Draft RI Report (Agency Review Draft)	Due within 90 days of receipt of the final analytical data from the sampling events specified under the RI work plan
Revised RI Report (Final)	Due within 45 days of receipt of Ecology's comments on the Draft RI report.
Draft FS Report (Agency Review Draft)	Due within 60 days after Final RI Report.
Final FS Report (Final)	Due within 15 days after receipt of Ecology's written comments on Draft FS.
Draft Cleanup Action Plan (Agency Review Draft)	Due within 90 days of Ecology's acceptance of the FS.
Draft Cleanup Action Plan (Final draft)	Due within 60 days of receipt of comments from Ecology.

This table describing the schedule of deliverables or action required is a summary of text in the Work to Be Performed Section of the Agreed Order. In the event of any conflict or perceived conflict between the contents of this table and the full text of the Order, the full text of the Order shall prevail.