

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

AGREED ORDER

General Electric Company

No. DE 5477

TO: General Electric Company, GE Aviation  
c/o James W. Sumner  
Manager, Group Environmental Programs  
One Neumann Way MD T165  
Cincinnati, OH 45215

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## **I. INTRODUCTION**

The objective of the State of Washington, Department of Ecology (Ecology) under this Agreed Order (Agreed Order or Order) is to require remedial action at a facility where there has been a release or threatened release of hazardous substances. This Agreed Order requires the General Electric Company (GE) to monitor groundwater, maintain the existing groundwater extraction system and complete a focused feasibility study in accordance with Exhibits B - G of this Agreed Order.

## **II. JURISDICTION**

This Agreed Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050(1). This order also satisfies the requirements of WAC 173-303-646 through 64630 and Chapter 70.105 RCW.

## **III. PLP 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. GE agrees to undertake all actions required by the terms and conditions of this Order that are consistent with applicable laws and regulations. No change in ownership or corporate status shall alter GE's responsibility under this Order. GE shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform oversight or design 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. Agreed Order or Order: Refers to this Order and each of the exhibits to the Order. All exhibits are an integral and enforceable part of this Order. The terms "Agreed Order" or "Order" shall include all exhibits to this Order.

B. Contaminants of Concern (COCs): For this cleanup, the COCs are those dangerous constituents released to the subsurface soils and groundwater from past GE operational practices at the former GE 220 S. Dawson Street facility or released from the aquifer as a result of changes in geochemical conditions resulting from those releases in concentrations exceeding applicable cleanup levels. Based on the investigations conducted at this Site, the COCs are trichloroethylene (TCE), 1,1,1-trichloroethane (TCA), perchloroethylene (PCE), 1,1-dichloroethene (DCE), cis 1,2-dichloroethylene, trans 1,2 dichloroethylene, 1,4 dioxane, arsenic and vinyl chloride. Other substances may be identified as COCs as a result of work associated with the attached Scope of Work (*see* Exhibit B).

C. Parties: Refers to the State of Washington, Department of Ecology and GE.

D. Potentially Liable Person (PLP): Refers to the General Electric Company.

E. Site: The Site is referred to as the former GE facility and is generally located at 220 South Dawson Street, Seattle, Washington. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. The Site is generally described in the Site Diagram (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(5)

## V. FINDINGS OF FACT

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

A. In 1949, GE purchased Property at 220 South Dawson Street in Seattle, Washington (the "Property"). From 1959 to 1994, GE manufactured and repaired aircraft parts at the Property. In 1994, GE ceased manufacturing and repair operations at this location, and used the Property as warehouse and office space until December 1996, at which time GE vacated the premises. Since then, various companies have used the building on the Property as a warehouse. Keymac, LLC currently owns the Property.

B. Groundwater in the vicinity of the property is generally encountered between seven and ten feet below ground surface. Groundwater flows west to southwest.

C. During operation of its aircraft parts manufacturing and repair business at the Property, GE used COCs. Ecology conducted a RCRA Facility Assessment on July 6, 1994 to identify those areas at the dangerous waste facility where releases, as defined in RCW 70.105D.020(7), may have occurred. Releases of COCs have occurred to the soils and groundwater at the Site.

D. Prior to signing Agreed Order DE 02HWTRNR-4686 in 2002, GE voluntarily undertook independent remedial actions at the Site. Between December 1995 and August 1996, GE excavated more than 3,000 tons of soil from the Site and sent it off-site for treatment in a high-temperature cement kiln. During this time, GE removed from the Property all soils with concentrations of total petroleum hydrocarbons and chlorinated volatile organic compounds (CVOCs) that exceeded MTCA cleanup levels based on residential exposure scenarios that were in effect at that time, with the exception of soils below the water table and three small areas where soil excavation was not feasible due to proximity to existing structures. A comprehensive account of the soil removal is provided in Independent Remedial Action of Soils - GEAE Plant 1 Facility (Dames & Moore, 1996). More stringent MTCA cleanup levels for soil are now in effect.

E. In August 1996, as an independent action, GE began operating a shallow groundwater extraction system on the Property. The system has extracted to date in excess of 100 million gallons of shallow groundwater at the Site. GE also conducted periodic groundwater sampling and provided reports on these activities to the Department of Ecology on a regular basis.

F. Based on data from investigations conducted at the Site by GE under the 2002 order, the Department of Ecology has determined that groundwater downgradient of the Property is known to be contaminated from releases at the GE facility. GE's investigations have detected TCE, PCE, 1,1,1-TCA, vinyl chloride, cis-1,2 dichloroethylene, trans-1,2 dichloroethylene and 1,4 dioxane in groundwater beneath and/or downgradient of the Property. Many of these COCs exceeded the MTCA Method B groundwater cleanup levels. The facility is located in an

industrial portion of the Duwamish River Valley. Land uses are predominantly light industrial (e.g. manufacturing and warehousing) with some commercial businesses, occasional residences, and vacant lots. The Property is zoned Industrial General 2 Unlimited/85 and the adjacent properties and properties between the site and the Duwamish Waterway are also zoned for industrial purposes. Two residences are located immediately south of the site: one appears to be vacant and both are located between industrial facilities.

G. The previous Agreed Order, DE 02HWTRNR-4686 required GE to conduct groundwater interim actions and remedial investigations, and to investigate vapor intrusion within buildings above the contaminated groundwater.

H. Pursuant to Agreed Order DE 02HWTRNR-4686, GE installed a new recovery well, a new shallow monitoring well, an intermediate monitoring well and several downgradient monitoring wells from 2002 to 2005; GE collected quarterly groundwater samples and provided the results to Ecology; and GE conducted an investigation of downgradient groundwater using geoprobes in 2002 and collected data for evaluating natural attenuation parameters in February 2004. Sampling was conducted in August 2003 and February 2004 to assess the potential for site groundwater to geochemically alter metal concentrations in groundwater. Analysis of groundwater for 1,4 dioxane was also requested by Ecology and conducted by GE in 2004 and 2005.

I. GE performed several rounds of modeling to evaluate the indoor air pathway for the former GE building as well as the downgradient Liberty Ridge and Interior Environments buildings. GE sampled indoor and sub-slab air at the former GE building and indoor air at the Interior Environments building.

J. Based on several vapor intrusion assessment reports prepared on behalf of GE for Ecology, dated February 6, 2006; October 12, 2006; and January 9, 2007, indoor air concentrations of TCE were measured above the MTCA Method C air cleanup level in several occupied businesses within the 220 South Dawson Street building. The MTCA Method C air cleanup level as applied by Ecology in these circumstances is a protective level set based on the

assumption that a person working in the building is exposed to TCE vapor 24 hours per day, seven days per week, for thirty (30) years. The eight other volatile compounds measured as part of the above-listed studies did not exceed the MTCA Method C air cleanup levels. Indoor air TCE concentrations in some areas of the building also exceeded Ecology's remediation level set for the interim action based on a 40 hour per week worker scenario. GE installed a vapor intrusion mitigation (VIM) system as an interim action to reduce a threat to human health by mitigating the upward migration of subsurface TCE vapors and to reduce TCE concentrations to levels below the MTCA Method C air cleanup level.

## **VI. ECOLOGY DETERMINATIONS**

Ecology makes the following determinations. GE does not join in these determinations.

A. GE is a person who owned or operated the facility at the time of disposal or release of a hazardous substance and is liable under RCW 70.105D.040(1)(b).

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

C. Based on the Findings of Fact, Ecology has determined that release(s) and potential release(s) of hazardous substances at and/or from the Site present a threat to human health and the environment.

D. Based upon credible evidence, Ecology issued a PLP status letter to GE dated October 18, 1995, pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500. By a letter of October 25, 1995, without admitting liability, GE voluntarily waived its rights to notice and comment and accepted Ecology's determination that GE is a PLP under RCW 70.105D.040.

E. 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 in a manner consistent with applicable laws and regulations, 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.

F. Agreed Order DE 02HWTRNR-4686 is hereby closed and any remaining obligations are superseded by the requirements of this Agreed Order.

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

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

A. The Scope of Work, attached as Exhibit B, fully incorporated herein, sets out the required work under this Order;

B. The Schedule of Deliverables, attached as Exhibit C, fully incorporated herein, sets out the required work schedule under this Order;

C. All required submittals in Exhibit B shall be submitted to the Ecology Project Coordinator under a GE cover letter signed by the GE Project Coordinator or his duly authorized designee from within GE.

D. If any memorandum, study, plan, report or document (“Deliverable”) required pursuant to this Section VII is disapproved, Ecology shall provide GE with a detailed explanation of why the Deliverable was disapproved, including clear and specific indications as to how to revise the Deliverable in a manner that would lead to Ecology approval. GE will make the appropriate revisions consistent with Ecology’s comments and resubmit the Deliverable in accordance with the existing schedule of deliverables, Exhibit C. If GE disagrees with the grounds for Ecology’s disapproval, it may request a technical conference with Ecology, prior to the due date listed in Exhibit C, to discuss the disagreement and work towards a solution.

E. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this Section, Ecology may complete and issue the final deliverable on its own letterhead.

## **VIII. TERMS AND CONDITIONS OF ORDER**

### **A. Public Notice**

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

### **B. Remedial Action Costs**

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

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

The address for mailing via the post office is:

Cashiering Unit  
P.O. Box 47611  
Olympia, Washington 98504-7611



If you choose to send a check by a messenger/overnight delivery service, the address to use is:

Cashiering Unit  
300 Desmond Drive  
Lacey, WA 98503

In order to ensure that your payment is properly credited, please enclose the bottom portion of Ecology's invoice and indicate that the check is for cost recovery on the GE Facility.

**C. Implementation of Remedial Action**

If Ecology determines that GE has failed without sufficient cause to implement the remedial action required by this Agreed Order, in whole or in part, Ecology may, after notice to GE, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of GE's failure to comply with its obligations under this Order, GE shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.B (Remedial Action Costs), provided that GE is not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

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

**D. Designated Project Coordinators**

The project coordinator for Ecology is:

**Dean Yasuda**  
**Washington State Department of Ecology**  
**Northwest Regional Office**  
**3190 160<sup>th</sup> Avenue SE**  
**Bellevue, WA 98008-5452**

The project coordinator for GE is:

**James W. Sumner**  
**GE Aviation**  
**Manager, Group Environmental Programs**  
**One Neumann Way MD T165**  
**Cincinnati, OH 45215**

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 GE, 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.

**E. Performance**

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist licensed in the State of Washington or under the direct (in this section, "direct" shall not mean personal presence at the site) 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 performed under the direct oversight of a professional engineer registered in the State of Washington or a qualified technician under the direct supervision of a professional engineer registered in the State of Washington or as otherwise provided for in RCW 18.43.130 or WAC 173-340-400(6)(b).

Any documents submitted containing geologic, hydrologic or engineering work shall be under the seal of an appropriately licensed professional as required by Chapters 18.220 or 18.43 RCW, and WAC 173-340-840.

GE shall notify Ecology in writing of the identity of new contractor(s) and subcontractor(s) to be used in carrying out the terms of this Order, at least seven (7) calendar days in advance of their involvement at the Site.

**F. Access**

RCW 70.105D.030(1)(a) authorizes Ecology or any Ecology authorized representative to enter all property at the Site that GE either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*; inspecting records, operation logs, and contracts related to work being performed pursuant to this Order; reviewing GE's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by GE. Ecology or any Ecology authorized representative shall provide reasonable notice as provided under WAC 173-340-800 to GE and the property owner or tenant, unless an emergency prevents such notice. Ecology may make on the spot visits with the permission of the owners or tenants of the Site. GE shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by GE where remedial activities or investigations will be performed pursuant to this Order. All Ecology staff, Ecology-authorized personnel and all other 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 property access.

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

With respect to the implementation of this Order, GE 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, GE shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by GE pursuant to the implementation of this Order. GE shall notify Ecology four to seven (4-7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow GE 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.F (Access), Ecology shall notify GE at least four to seven (4-7) days prior to any sample collection activity unless an emergency prevents such notice.

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

#### **H. Public Participation**

A Public Participation Plan is required for this Site. Ecology shall review the existing Public Participation Plan to determine its continued appropriateness and, if necessary, make any needed amendments.

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

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

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify GE prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments. Routine, on-going

meetings with current building owners and tenants at the GE site are not considered “major” meetings. For all press releases, fact sheets, meetings, and other outreach efforts by GE that do not receive prior Ecology approval, GE shall not in any way indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was sponsored or endorsed by Ecology.

3. When requested by Ecology, and subject to a mutually agreed-to timing, 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. New Holly Library  
7058 32nd Ave. S.  
Seattle, Washington 98118
- b. Ecology’s Northwest Regional Office  
3190 160<sup>th</sup> Avenue SE  
Bellevue, Washington 98008-5452

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

#### **I. Retention of Records**

During the pendency of this Order, and for ten (10) years from the date of completion of the work performed pursuant to this Order, GE 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, GE shall make all such records available to Ecology and allow access for review within a reasonable time.

**J. Resolution of Disputes**

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, 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, GE has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its objection to the decision or itemized statement and specific reasons for its objection.

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) calendar days of Ecology's receipt of GE's written notice of objection, unless a longer period is mutually agreed to by the parties, Ecology's project coordinator shall issue a written decision thereafter.

c. GE may then request regional management review of the Ecology project coordinator's decision. This request shall be submitted in writing to the Northwest Region Hazardous Waste and Toxics Reduction Section Manager within seven (7) calendar days of receipt of Ecology's project coordinator's written decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) calendar days of GE's request for review. GE shall have seven (7) calendar days after receipt of the Section Manager's written decision to request review of this Section Manager decision by the Hazardous Waste and Toxic Reduction Program Manager.

The Program 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. With regard to disputes regarding the approval or disapproval of a Deliverable or a proposed change to the work to be performed under this Order, Ecology's agreement to a schedule extension pending the completion of the dispute resolution process shall not be unreasonably withheld.

**K. Extension of Schedule**

1. With the exception of a request submitted due to the occurrence of a force majeure event as listed in paragraph K.2., an extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, at least fourteen (14) calendar days, unless otherwise approved by Ecology, prior to expiration of the deadline for which the extension is requested, and when 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 GE 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. The existence of good cause shall be determined by Ecology in its sole discretion. Good cause may include, but may not be limited to:

- a) Circumstances beyond the reasonable control and despite the due diligence of GE 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 GE.;
- 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 GE.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give GE written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved in writing by Ecology. Ecology shall not unreasonably deny a request for extension of time. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.O (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) Delays caused by Ecology, including delays caused by requests for changes to design or scope or delays caused by failing to review documents in a timely manner and provide approval;
- c) Other circumstances deemed exceptional or extraordinary by Ecology; or
- c) Endangerment as described in Section VIII.L (Endangerment).

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

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

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

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

**M. Reservation of Rights**

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

Ecology 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 and GE also reserve all of their respective rights and defenses regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

**N. Compliance with Applicable Laws**

1. All actions carried out by GE pursuant to this Agreed 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), GE is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, GE 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.

GE has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or GE determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or GE shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, GE 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 GE and on how GE must meet those requirements. Ecology shall inform GE in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. GE 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 necessary for the State to administer any federal law, the exemption shall not apply and GE 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. 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 GE. Either GE or Ecology may initiate such a request. If GE requests such an amendment, GE 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 GE does not agree with Ecology's decision, GE may address the disagreement through the dispute resolution procedures described in Section VIII.J (Resolution of Disputes).

**P. Indemnification**

GE agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property to the extent arising from or on account of negligent or willful acts or omissions of GE, its officers, employees, agents, or contractors in entering into and implementing this Order. However, GE 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 or willful acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

**Q. Use of Facilitator**

The Parties agree that an objective, neutral facilitator may be helpful to document meeting results, agreements and disagreements and to assist the Parties in improving communication at meetings and preventing misunderstandings. The facilitator will facilitate meetings and may also assist the Parties in creating an agenda ahead of meetings, and in following the created agenda, as appropriate, at meetings.

During the meetings where the facilitator is used, the facilitator will verbally summarize the results of the discussion as each topic is completed. During the summary, the Parties will be able to clarify any misunderstandings and correct any mistakes made by the facilitator in summarizing the meeting. The purpose of the summary will be to ensure that at the end of the meeting both Parties agree about (1) the details of any agreement made during the discussion of each topic and (2) the respective positions of the Parties on topics where agreement was not reached.

Before the end of the meeting, the facilitator will prepare a written, bulleted list of topics discussed and agreements reached by the Parties, and where agreement is not reached, a short recitation of the positions of the Parties. Before the meeting ends, the Parties shall have a chance to review and comment on the facilitator's written bulleted list. The Parties agree to make every effort to complete this review during the meeting, including providing adequate meeting time to complete this task. The Parties will review the list before the end of the meeting. In the event that the Parties are unable to complete this review of all items at the meeting due to time constraints or other unanticipated reasons, the facilitator shall hold over the specific item(s) that were not reviewed until the next meeting, and the facilitator shall assist the Parties in setting up a timely follow-up meeting or call to complete the review.

Either Party may decide that the facilitator shall assist with a particular meeting or telephone call between the Parties. It is not expected that a facilitator would be required for every meeting. Both GE and Ecology shall cooperate in good faith to work with the facilitator when the facilitator is used. The facilitator will not function as a decision maker, mediator, or

tie breaker. Further, the facilitator will not play any role in the dispute resolution process described under Section VIII.J (Resolution of Disputes). However, nothing in this Section shall preclude either Party from using the facilitator's notes, bulleted list or records of agreements, as appropriate, in the dispute resolution process or in subsequent meetings between the Parties.

The Parties will mutually agree to the identity of the facilitator to be used. In order to reach mutual agreement, no later than fifteen (15) days from the effective date of the Order each Party will provide to the other a Party (1) a list of two to three candidates with qualifications and experience appropriate to facilitating this project; and (2) resumes for each proposed candidate showing such experience and qualifications. At least two of each Party's proposed candidates will be from outside of state government. GE shall be solely responsible for contracting with the facilitator. GE shall also be solely responsible for any and all costs incurred by the facilitator in connection with the contract. Alternatively, if a facilitator from within the Department of Ecology, or from within another part of state government is selected, GE shall be solely responsible for payment of all services associated with use of the facilitator.

The selected facilitator may be changed at the request of either Party. In the event either party elects to change the previously selected facilitator, the Parties will mutually agree to a replacement facilitator. In order to reach mutual agreement, no later than fifteen (15) days from the date either party elects to change the previously selected facilitator, each Party will again provide to the other a Party (1) a list of two to three candidates with qualifications and experience appropriate to facilitating this project; and (2) resumes for each proposed candidate showing such experience and qualifications. The lists of possible replacement facilitators may include candidates originally proposed, but not selected.

#### **IX. SATISFACTION OF ORDER**

The provisions of this Order shall be deemed satisfied upon GE's receipt of written notification from Ecology that GE has completed the work required by the Scope of Work attached as Exhibit B to this Agreed Order, as amended in accordance with Section VIII.O (Amendment of Order), and that GE has complied with all other provisions of this Agreed Order.

**X. ECOLOGY APPROVALS**

All Ecology approved technical memorandums, sampling and analysis plans, procedures, work plans, reports and documents required under this Order that are within the scope of the Order and impose obligations consistent with the applicable laws and regulations are deemed incorporated herein and enforceable parts of this Order.

**XI. ENFORCEMENT**

A. This order is issued pursuant to the Model Toxics Control Act and the Attorney General may bring an action to enforce this Order in a state or federal court pursuant to RCW 70.105D.050.

B. 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.

The effective date of this Agreed Order shall be the date that Ecology signs below.

<b>STATE OF WASHINGTON DEPARTMENT OF ECOLOGY</b>   <hr/> <p>Julie Sellick Section Manager Hazardous Waste and Toxics Reduction Program Northwest Regional Office 425.649.7053 Dated: _____</p>	<b>GE Aviation</b>   <hr/> <p>Harold V. Jones General Manager Environmental Affairs and Safety GE Aviation One Neumann Way MD T165 Cincinnati, OH 45215 Dated: _____</p>
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