

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

USG Interiors, LLC
(Highway 99 Site)

AGREED ORDER

No. DE 11099

TO: Mr. Gregory D. Kinser
Director, Environmental
USG Interiors, LLC
550 West Adams Street
Chicago, IL 60661

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EXHIBIT A Site Diagrams

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and USG Interiors, LLC (USG) 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 USG to implement the cleanup action plan (CAP) developed under Agreed Order No. DE 6333, dated October 19, 2009. 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. USG agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter USG's responsibility under this Order. USG 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 USG Highway 99 Site (the Site) and is generally located at 7110 Pacific Highway East in Milton, Washington. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. The Site is more particularly described in the Site Diagrams (Exhibit A). The Site constitutes a facility under RCW 70.105D.020(8).

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

C. Potentially Liable Person (PLP): Refers to USG; Site Owner/Operators, Ms. Jennifer Walker and Mr. Donald Miniken Jr for Freeway Sales LLC d/b/a Kanopy Kingdom; Owner/Operator Mr. Michael Rendell for Freeway Trailer Sales; Owner/Operator Mr. Eric Thompson for East Fork Corporation d/b/a General Trailer Parts LLC; Owner/Operator Ms. Linda Plein for Batrob LLC.

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 USG:

A. Prior to 1985, USG (formerly US Gypsum Company) disposed of several waste products in pits dug at the Site. The waste products buried at the Site included 20,000 tons of "bag house dust" and "shot" from their Tacoma rock wool manufacturing plant. Both bag house dust and shot contain elevated levels of arsenic.

B. Ecology issued Order DE 84-506 on August 17, 1984, requiring USG to submit a post-cleanup monitoring plan. This plan, as approved by Ecology, included installation of two monitoring wells.

C. From October 1984 through January 1985, USG voluntarily excavated shot, bag house dust, and soil exceeding the site specific soil clean-up level from the Site, and disposed of this material at a hazardous waste landfill.

D. Soil clean-up levels specified in Order DE 84-506 were achieved.

E. Agreed Order DE 87-506, issued in 1987, provided for monthly groundwater monitoring to verify the effectiveness of the 1984/1985 clean-up action. Monthly groundwater sampling continued until April 2005.

F. In 2006 Ecology required USG to conduct a soil and groundwater assessment for arsenic in the vicinity of monitoring well 99-1.

G. On February 2, 2007, Ecology received a report from USG entitled "Soil and Groundwater Quality Assessment / Source Evaluation Report, USG – Fife Site, 7110 Pacific Highway East, Milton, Washington (the report)" dated January 31, 2007. This report provides the results of nine push-probe borings taken from the Site. The report indicated that of the nine soil borings sampled, eight exceeded the current 20 milligram per kilogram (mg/kg) MTCA Method A residential soil cleanup level for arsenic. The highest soil arsenic concentration discovered by this sampling was 1,400 mg/kg. Of the nine groundwater samples extracted by the push-probes, all nine exceeded the current 5 microgram per liter (ug/l) MTCA Method A groundwater cleanup level for arsenic. The highest groundwater arsenic concentration measured was 30,000 ug/l.

H. The Site is located directly adjacent to, and on the banks of, Hylebos Creek. Site groundwater is in direct hydrologic connection with the creek, and likely discharges directly to the creek. Therefore, the arsenic contained in the Site soils and groundwater, and likely also in the creek bank sediments, is likely being continuously released into the creek. The Site is located on the banks of the creek close to the point of the creek's discharge into the Hylebos Waterway of Puget Sound. The arsenic presents a threat or potential threat to the environment of Hylebos Creek and of Puget Sound.

I. Based on this report, Ecology issued to USG a letter on March 30, 2007 proposing that USG is a Potentially Liable Person (PLP) for the USG Highway 99 Site, as defined in MTCA.

J. On May 2, 2007, USG provided Ecology with a letter waiving its right to a 30-day public comment period, and accepting its status as a PLP.

K. On November 6, 2008, Ecology issued letters of PLP Determination to the current Owner/Operators of the Site: Ms. Jennifer Walker and Mr. Donald Miniken Jr. for Freeway Sales LLC d/b/a Kanopy Kingdom, located at 7110 Pacific Highway E, Milton, Washington 98354; and also to Mr. Michael Rendell for Freeway Trailer Sales, located at 7100 Pacific Highway E, Milton, Washington 98354 (See Exhibit A – Site Diagrams for parcel locations).

L. Under Agreed Order No. DE 6333, USG performed a remedial investigation/feasibility study and prepared a draft CAP. The selected remedy is documented in the draft CAP. Arsenic impacted soil and groundwater can be treated by solidification/chemical stabilization techniques for the soil and in-situ chemical oxidation (ISCO) for the groundwater. Monitored Natural Attenuation (MNA) will be used to ensure that arsenic concentrations decline over time and that geochemical conditions promote the stability of the iron-arsenic oxyhydroxide co-precipitates formed during ISCO treatment. Also as part of the CAP, the contaminated sediments in the Hylebos Creek will be excavated.

M. On March 27, 2015, Ecology issued a letter of PLP Determination to the current Owner/Operator of the Site: Ms. Linda Plein for Batrob LLC, located at 7220 Pacific Highway E, Milton, Washington 98354; and on March 30, 2015, Ecology issued a letter of PLP Determination to the current Owner/Operator of the Site: Mr. Eric Thompson for East Fork Corporation d/b/a General Trailer Parts LLC, located at 7200 Pacific Highway E, Milton, Washington 98354.

VI. ECOLOGY DETERMINATIONS

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

A. USG is an “owner or operator” as defined in RCW 70.105D.020(22) of a “facility” as defined in RCW 70.105D.020(8) based on its prior ownership of the Site, and its disposal of waste at the Site.

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

C. Based upon credible evidence, Ecology issued a PLP status letter to USG dated March 30, 2007, pursuant to RCW 70.105D.040, .020(21), and WAC 173-340-500. By letter dated May 2, 2007, USG voluntarily waived its rights to notice and comment and accepted Ecology’s determination that USG is a PLP under RCW 70.105D.040.

D. Pursuant to RCW 70.105D.030(1) and .050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

VII. WORK TO BE PERFORMED

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

A. The Scope of Work required by this Order consists of the following tasks and is to be consistent with the finalized Corrective Action Plan for the Site:

1. Prepare an Inadvertent and Unanticipated Discovery Plan in the event of a discovery of archeological resources during remedial activities at the site.
2. Conduct a subsurface investigation to further delineate the fill/soil hot spot.
3. Conduct a bench-scale study to select the optimal solidification/stabilization mix design to treat the fill/soil hot spot.
4. Conduct a bench-scale study to assess soil oxidant demand, select the most effective oxidant, and determine whether metered or batch delivery of the oxidant will work best to treat dissolved arsenic in groundwater.
5. Solidify the fill/soil hot spot by injecting a cement-based reagent and auger mixing.
6. Conduct a pilot test of the ISCO treatment of groundwater, including performance monitoring.
7. Treat the groundwater arsenic hot spot by ISCO. Chemical oxidant would be injected into several injection wells installed at the site around well 99-1.
8. Treat the arsenic groundwater plume in the core remediation area by ISCO. Chemical oxidant would be injected into the subsurface using injection trenches situated at the

hydraulically upgradient sides of the site using either batch or metering methods as determined by the bench-scale test.

9. Replace a portion of pavement in the core remediation area with permeable pavement to allow precipitation to infiltrate, promoting oxidizing groundwater conditions and minimizing arsenic mobility.
10. Monitor natural attenuation by collecting groundwater samples to ensure that arsenic concentrations decline over time and geochemical conditions promote the stability of the iron-arsenic oxyhydroxide co-precipitates throughout the arsenic plume.
11. Construct coffer dams at both ends of the planned sediment cleanup area in Hylebos Creek and then excavate impacted sediment for off-site disposal. Restore the creek channel using clean sand and remove the coffer dams.
12. Record environmental (restrictive) covenants with Pierce County for all affected properties. Each environmental covenant shall describe the contamination left at the site, including the contaminant(s) remaining, the specific location of remaining contamination, and the land use controls that will be in place to physically protect the integrity of the pavement cap and groundwater use restrictions.

Schedule for performance and/or deliverables.

Task	Schedule
Inadvertent and Unanticipated Discovery Plan	30 days from the effective date of Agreed Order
Draft Bench-Scale Testing Sampling and Analysis Plan	60 days from the effective date of Agreed Order
Begin Hot Spot Delineation Fieldwork	45 days after receiving Ecology approval of the Bench-Scale Testing Work Plan
Begin Bench-Scale Testing	60 days after receiving Ecology approval of the Bench-Scale Testing Work Plan
Draft Bench-Scale Testing Report	270 days after receiving Ecology approval of the Bench-Scale Testing Work Plan

Draft Engineering Design Report and Compliance Monitoring Plan	120 days after receiving Ecology approval for the Bench-Scale Testing Report
Draft Construction Plans and Specifications – Soil/Fill Hot-Spot Solidification	90 days after receiving Ecology approval of the Engineering Design Report and Compliance Monitoring Plan
Begin Contractor Procurement	30 days after receiving Ecology approval of Construction Plans and Specifications
Begin Cleanup Action - Soil/Fill Hot-Spot Solidification	180 days after receiving Ecology approval of Construction Plans and Specifications
Begin Pilot Test of <i>In Situ</i> Chemical Oxidation (ISCO) of Groundwater (includes 1 year of performance groundwater monitoring)	30 days after completion of Soil/Fill Hot-Spot Solidification fieldwork
Draft ISCO Pilot Test Report	420 days after commencement of ISCO Pilot Test
Draft Construction Plans and Specifications, Draft Operations and Maintenance Plan – Groundwater ISCO	90 days after receiving Ecology approval of ISCO Pilot Test Report
Begin Cleanup Action - Groundwater ISCO (includes hot-spot treatment, construction of ISCO trenches, operations and maintenance, and performance monitoring)	90 days after receiving Ecology approval of Construction Plans and Specification, and Operations and Maintenance Plan – Groundwater ISCO
Begin Permeable Pavement Construction	To be determined by results of Groundwater ISCO Performance Monitoring
Begin Cleanup Action - Hylebos Creek Sediment	To be determined by results of Groundwater ISCO Performance Monitoring, but no later than 720 days after beginning Groundwater ISCO Cleanup Action. Construction will depend on in-water work period.
Confirmational Groundwater Monitoring	To be determined by results of Groundwater ISCO Performance Monitoring

B. A sampling and analysis plan (SAP) will be prepared to implement a subsurface investigation to further delineate arsenic concentrations in fill and soil. The SAP will include a

bench-scale treatability and pilot study work plan to determine the optimal solidification/stabilization reagent mix design and select an oxidant to treat arsenic in groundwater. The draft SAP will be submitted to Ecology 60 days from the effective date of this Agreed Order. A final SAP will be submitted to Ecology 15 days after receipt of Ecology comments on the draft SAP.

C. An Engineering Design Report (EDR), construction plans and specifications and a Compliance Monitoring Plan will be prepared to implement and monitor the CAP. The draft EDR will be submitted to Ecology 120 days after receiving Ecology approval of the Bench-Scale Testing Report. A final EDR will be submitted to Ecology 30 days after receipt of Ecology comments on the draft EDR.

VIII. TERMS AND CONDITIONS

A. Remedial Action Costs

USG shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2) subject to the Resolution and Disputes section of this Order. 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 \$427.32 in remedial action costs related to this Site as of March 31, 2015. Payment for this amount shall be submitted within thirty (30) days of the effective date of this Order. For all costs incurred subsequent to March 31, 2015, USG shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's

costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

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

B. Implementation of Remedial Action

If Ecology determines that USG has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to USG, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of USG's failure to comply with its obligations under this Order, USG shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Remedial Action Costs), provided that USG 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, USG shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

C. Designated Project Coordinators

The project coordinator for Ecology is:

Jason Landskron, P.E., Cleanup Project Manager
Washington State Dept. of Ecology
Southwest Regional Office
300 Desmond Drive
Lacey, WA 98503
Telephone: 360-407-6388

The project coordinator for USG is:

Mr. Gregory D. Kinser
Director, Environmental
USG Interiors, LLC
550 West Adams Street
Chicago, IL 60661-3676
Telephone: 312-436-4134

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

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

D. Performance

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

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

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

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

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

E. Access

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that USG has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing USG'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 USG. USG shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by USG 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 where USG has access unless an emergency prevents such notice. All persons who access the Site pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

F. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, USG 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, USG shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by USG pursuant to implementation of

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

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

G. Public Participation

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

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

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

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

USG that do not receive prior Ecology approval, USG 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. Pierce County Library
1000 Laurel Street
Milton, WA 98354
(253) 922-2870
- b. Tacoma Main Library
1102 Tacoma Ave. South
Tacoma, WA 98402
(253) 591-5666
- c. Citizens for a Healthy Bay
917 Pacific Ave., Suite 100
Tacoma, WA 98402
(253) 383-2429
- d. WA State Department of Ecology
Southwest Regional Office
Toxics Cleanup Program
300 Desmond Drive
Lacey, WA 98503
(360) 407-6365

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 Southwest Regional Office in Lacey, Washington.

H. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, USG 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, USG 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 USG may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If USG withholds any requested records based on an assertion of privilege, USG shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

I. Resolution of Disputes

1. In the event that USG elects to invoke dispute resolution USG must utilize the procedure set forth below. Failure to timely abide by Ecology's directive or invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable and completion of the deliverable by Ecology under Section VII.E (Work to be Performed) or Enforcement under Section X (Enforcement).

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

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

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

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute ("Decision on Dispute") within thirty (30) calendar days of receipt of the Formal Dispute Notice. The Decision on Dispute shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

J. Extension of Schedule

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

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

2. The burden shall be on USG 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 USG 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 USG;
- 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 USG.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give USG written notification of any extensions granted pursuant to this Order. A

requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.K (Amendment of Order) when a schedule extension is granted.

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

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

K. Amendment of Order

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

Except as provided in Section VIII.M (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and USG. USG shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.I (Resolution of Disputes).

L. Endangerment

In the event Ecology determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment on or

surrounding the Site, Ecology may direct USG to cease such activities for such period of time as it deems necessary to abate the danger. USG shall immediately comply with such direction.

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

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

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

M. Reservation of Rights

This Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against USG to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against USG regarding remedial actions required by this Order, provided USG 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, USG does not admit to any liability for the Site. Although USG is committing to conducting the work required by this Order under the terms of this Order, USG expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

N. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by USG 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 USG's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, USG shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, USG shall notify Ecology of said transfer. Upon transfer of any interest, USG shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

O. Compliance with Applicable Laws

1. All actions carried out by USG 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), USG 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, USG 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.

USG 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 USG 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 USG shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, USG 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 USG and on how USG must meet those requirements. Ecology shall inform USG in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. USG 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 USG shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

P. Land Use Restrictions

In consultation with USG and the relevant current Owner/Operator for the Site, Ecology will prepare the Environmental (Restrictive) Covenant consistent with WAC 173-340-440 and RCW 64.70. After approval by Ecology, the current Owner/Operator shall record the Environmental (Restrictive) Covenant with the office of the Pierce County Auditor within ten (10)

days of completion of field activities identified in this CAP. The Environmental (Restrictive) Covenants shall restrict future activities and uses of the Site as agreed to by Ecology, USG, and the current Owner/Operator for the Site. The current Owner/Operator shall provide Ecology with the original recorded Environmental (Restrictive) Covenant within thirty (30) days of the recording date.

Q. Financial Assurances

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

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

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

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

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

anniversary date established under this section to become the date of issuance of such revised or modified CAP.

R. Periodic Review

As remedial action, including groundwater monitoring, continues at the Site, the Parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of monitoring the Site as often as is necessary and appropriate under the circumstances. At least every five (5) years after the initiation of cleanup action at the Site the Parties shall meet to discuss the status of the Site and the need, if any, for further remedial action at the Site. At least ninety (90) days prior to each periodic review, USG shall submit a report to Ecology that documents whether human health and the environment are being protected based on the factors set forth in WAC 173-340-420(4). Ecology reserves the right to require further remedial action at the Site under appropriate circumstances. This provision shall remain in effect for the duration of this Order.

S. Indemnification

USG agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions of USG, its officers, employees, agents, or contractors in entering into and implementing this Order. However, USG 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.

T. Precedence of this Order

This Order shall supersede any previous Agreed Orders between Ecology and USG relating to the Highway 99 site.

IX. SATISFACTION OF ORDER

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

X. ENFORCEMENT

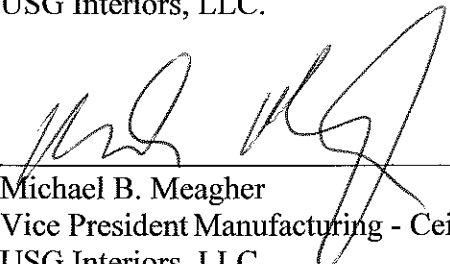
Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

- A. The Attorney General may bring an action to enforce this Order in a state or federal court.
- B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
- C. A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:
 - 1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply.
 - 2. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.
- D. This Order is not appealable to the Washington Pollution Control Hearings Board.

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

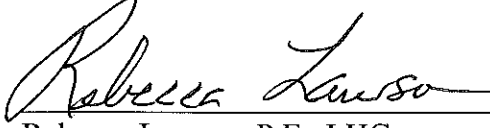
Effective date of this Order: 6/24/16

USG Interiors, LLC.



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Vice President Manufacturing - Ceilings
USG Interiors, LLC
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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



Rebecca Lawson, P.E., LHG
Section Manager
Toxics Cleanup Program
Southwest Regional Office
Telephone: (360) 407-6241

anniversary date established under this section to become the date of issuance of such revised or modified CAP.

R. Periodic Review

As remedial action, including groundwater monitoring, continues at the Site, the Parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of monitoring the Site as often as is necessary and appropriate under the circumstances. At least every five (5) years after the initiation of cleanup action at the Site the Parties shall meet to discuss the status of the Site and the need, if any, for further remedial action at the Site. At least ninety (90) days prior to each periodic review, USG shall submit a report to Ecology that documents whether human health and the environment are being protected based on the factors set forth in WAC 173-340-420(4). Ecology reserves the right to require further remedial action at the Site under appropriate circumstances. This provision shall remain in effect for the duration of this Order.

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T. Precedence of this Order

This Order shall supersede any previous Agreed Orders between Ecology and USG relating to the Highway 99 site.

EXHIBIT A – SITE DIAGRAMS

Figure No. 1: Vicinity Map

Figure No. 2: Site Plan

Figure No. 3: Core Remediation Area

P:\19921\65021\ FIG-1 10/31/13 14:21 riehtepj



Source: GOOGLE EARTH PRO, 2009



0 1200
Scale in Feet



Washington

USG INTERIORS/HIGHWAY 99 SITE
MILTON, WASHINGTON

Figure No. 1
Vicinity Map



P:\19921\77628\Hylebos Creek\EXPANDED SITE\FIGURE-2 05/10/13 11:02 r1e1epj xREFS: SITEBASE-EXPANDED, HC-SITEBASE, S_1117
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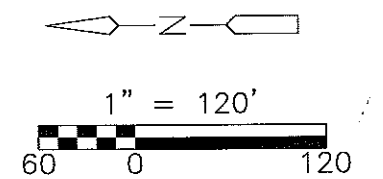
REFERENCE: GOOGLE EARTH PRO, 2012, IMAGE DATE AUGUST 20, 2011

LEGEND:

- MW-12 ● MONITORING WELL
- GW-3 ● PHASE 2 DPT BORING
- - - - - PROPERTY LINE

NOTE:

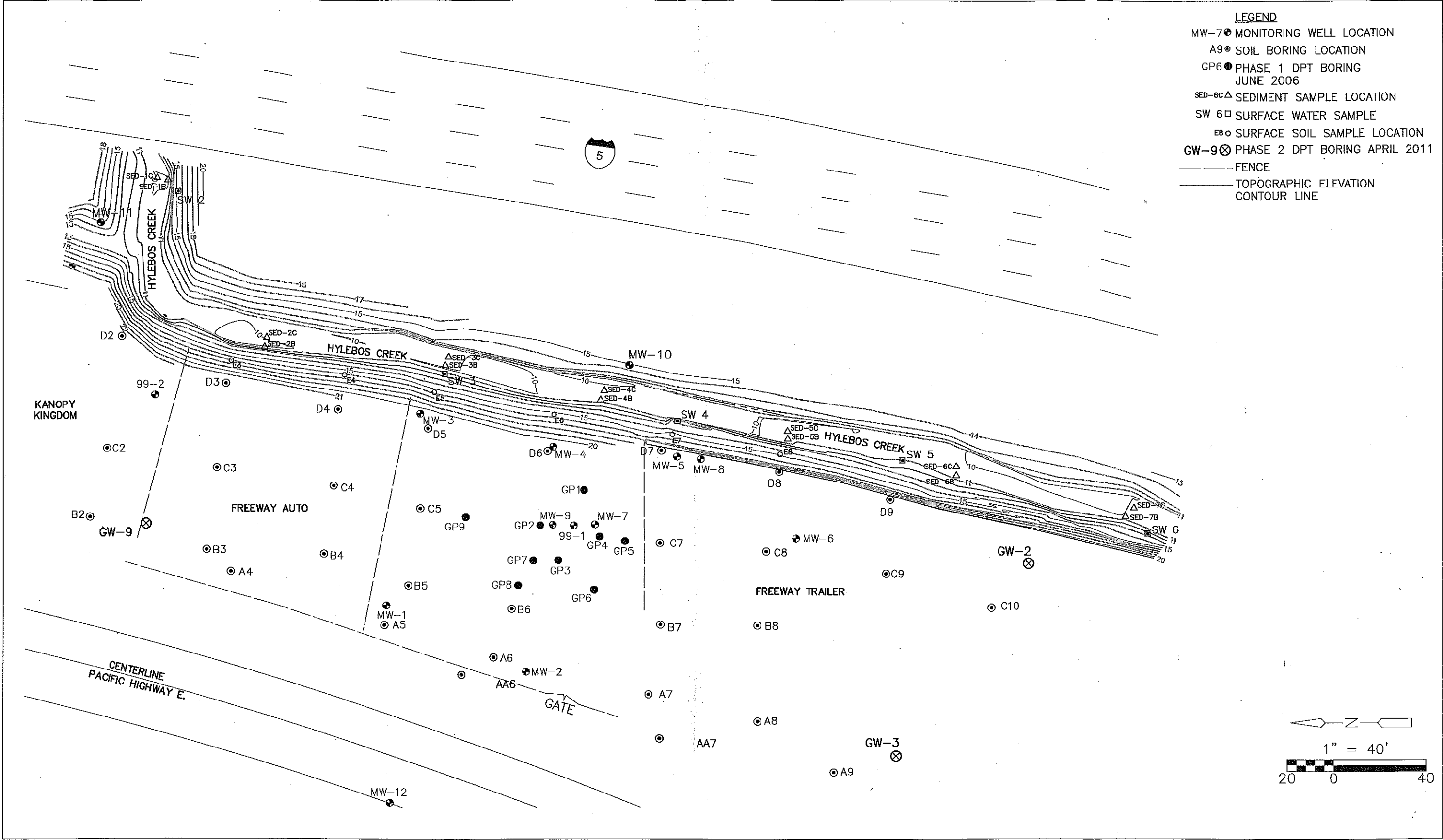
MONITORING WELL MW-14 WAS DRILLED AT THE LOCATION OF GW-6



USG INTERIORS
 HIGHWAY 99 SITE
 MILTON, WASHINGTON

Figure No. 2
 Site Plan

P:\19921\77628\Hylebos Creek\EXPANDED SITE\FIGURE-3 04/01/13 13:13 r1ehlepj XREFS: HC-SITEBASE, S_1117, 36146-SURV-TP01
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USG INTERIORS
 HIGHWAY 99 SITE
 MILTON, WASHINGTON

Figure No. 3
 Site Plan - Core Remediation Area