



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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March 13, 2012

Keith Lund  
Director of Permitting  
Burlington Environmental, LLC  
1701 E. Alexander Avenue  
Tacoma, WA-98421

RE: Tacoma Final Permit (WAD020257945)

Dear Mr. Lund:

I am enclosing the final dangerous waste management facility permit being issued to Burlington Environmental, LLC (PSC) Tacoma Facility at 1701 E. Alexander Avenue, Tacoma, WA- 98421. This permit will go into effect on March 22, 2012.

Ecology gave public notice of their tentative decision to issue this dangerous waste permit for public comments on December 30, 2011. The public comment period ended on February 15, 2012. Citizens for a Healthy Bay (CHB), and Port of Tacoma submitted comments on the draft permit. The enclosed responsiveness summary includes comments by the above organizations and Ecology's responses to them. These comments didn't result in any changes to the draft permit.

I appreciate the hard work and cooperation from you and your co-workers while developing the application for this permit. If you have any questions, please contact Pallavi Mukerjee at (360) 407-7018 or [Pallavi.Mukerjee@ecy.wa.gov](mailto:Pallavi.Mukerjee@ecy.wa.gov); or Leslie Morris at (360)-407-6343 or [Leslie.Morris@ecy.wa.gov](mailto:Leslie.Morris@ecy.wa.gov).

Sincerely,

Ava Edmonson  
Manager, Southwest Regional Office  
Hazardous Waste & Toxics Reduction Program

Enclosures:



Cc: Doug Bryson, PSC  
Leslie Ann Rose, Citizens for a Healthy Bay  
Jason Jordan, Port of Tacoma  
Bill Sullivan, Puyallup Tribe  
Holly Arrigoni, EPA Region 10  
Martin Werner, Department of Ecology  
Nancy Farman, Department of Ecology  
Kimberly Goetz, Department of Ecology  
Kaia Peterson, Department of Ecology  
Leslie Morris, Department of Ecology  
Michelle Underwood, Department of Ecology  
Pallavi Mukerjee, Department of Ecology

Effective Date: 03.22.2012  
Expiration Date: 03.22.2022

Permit No.: WAD 020257945  
Page 1 of 26

## PERMIT FOR THE STORAGE AND TREATMENT OF DANGEROUS WASTE

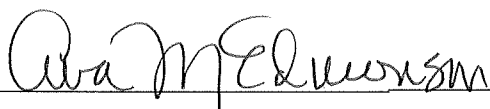
Department of Ecology  
PO Box 47600  
Olympia, Washington 98504-7600  
Telephone: (360) 407-6700

Issued in accordance with the applicable provisions of the Hazardous Waste Management Act, Chapter 70.105 Revised Code of Washington (RCW), and the regulations promulgated there under in Chapter 173-303 Washington Administrative Code (WAC).

ISSUED TO: Burlington Environmental, LLC.  
1701 E. Alexander Avenue  
Tacoma, Washington 98421  
WAD 020257945

This Permit is effective **March 22, 2012** and will remain in effect until **March 22, 2022** unless revoked and reissued, or terminated under WAC 173-303-830 or continued in accordance with WAC 173-303-806(7) or as provided at condition 1.2.3 of this Permit.

ISSUED BY: WASHINGTON DEPARTMENT OF ECOLOGY



3-13-12

Southwest Regional Office Section Manager  
Hazardous Waste & Toxics Reduction Program  
Washington Department of Ecology

Date

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## INTRODUCTION

**Permittee:** Burlington Environmental, LLC.  
**EPA/state identification number:** WAD 020257945

Pursuant to:

Chapter 70.105 Revised Code of Washington (RCW), the Hazardous Waste Management Act of 1976, as amended, and regulations codified in Chapter 173-303 Washington Administrative Code (WAC); and the Solid Waste Disposal Act (SWDA), as amended

A Permit is issued to Burlington Environmental, LLC (hereinafter called the Permittee), to operate a dangerous waste storage and treatment facility located at 1701 E. Alexander Avenue, Tacoma, Washington, 98421, latitude 47 degrees, 16 minutes, and 17 seconds North and longitude 122 degrees, 23 minutes, and 33 seconds West. Pursuant to RCW 70.105D.030(1)(d), the Washington State Department of Ecology (Ecology) is designated by the Washington State Legislature to carry out all State programs authorized by the United States Environmental Protection Agency (EPA) pursuant to the federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6901 et. seq., as amended. Pursuant to Section 3006 of RCRA, 42 U.S.C. Section 6926, the hazardous waste program in the State of Washington and revisions to that program were authorized as specified by EPA. Ecology has authority to issue this Permit in accordance with the authorized program and with RCW 70.105.130 and is responsible for enforcement of all conditions of this Permit.

The Permittee must comply with all terms and conditions set forth in this Permit, including all of the "ATTACHMENTS INCORPORATED BY REFERENCE."

Chapter 173-303 WAC state regulations specified in the Permit are those state regulations in effect on the date of permit issuance

The Permittee must also comply with requirements identified at WAC 173-303-810(8)(a)(i) through (iv) that are not included in the Permit, including but not limited to, self implementing statutory and regulatory requirements.

This Permit is based upon the administrative record, as required by WAC 173-303-840. The Permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts or the Permittee's misrepresentation of any relevant facts at any time are grounds for the termination, revocation and reissuance, or modification of this Permit and/or initiation of an enforcement action, including criminal proceedings.

The Department will enforce all conditions of this Permit. Any challenge of a permit condition must be appealed to the Pollution Control Hearings Board in accordance with WAC 173-303-845.

The Agency has the authority to enforce any condition in this Permit that is based on federal regulations for which the State of Washington's dangerous waste management program is authorized.

#### ATTACHMENTS INCORPORATED BY REFERENCE

The following documents are incorporated by reference into this Permit. Except for Chapter 173-303 WAC and the Public Participation Plan, these documents are from Burlington Environmental, LLC, Dangerous Waste Permit Application (most recently amended 12.01.2011). These incorporated documents are enforceable conditions of this Permit.

Part A of Permit Application - Dangerous Waste Permit Forms, including topographic map, figures, photographs, and Facility Location Map.

Section C of Permit Application - Waste Analysis Plan, including tables and figures and Appendices C 1 through C 6.

Section D of Permit Application - Process Information, including tables and figures and Appendices D-1 through D-12.

Section F of Permit Application - Inspection Plan, including tables and figures and Appendix F-1 and F-2.

Section G of Permit Application – Contingency Plan, including tables and figures and Appendix G1 through G3.

Section H of Permit Application - Training Plan, including tables and figures and Appendix H1 and H 2.

Section I of Permit Application - Closure Plan, including tables and figures, and Appendix I1 through I5.

Chapter 173-303 WAC (June 30, 2009).

Public Participation Plan

#### DEFINITIONS

All definitions in WAC 173-303-040 are incorporated by reference into this Permit. If any definition in WAC 173-303-040 differs from the following definition in this Permit, the Permit's definition prevails.

Any term used in this Permit which has not been defined in the Permit or in WAC 173-303-040 shall have the same meaning as set forth in Title 40 CFR Parts 260, 264, 270, and 124. All other terms shall have their standard, technical meaning.

Some terms are specifically defined in Part 2, Corrective Action, for the purposes of that section of the Permit only.

For this Permit, except where a specific definition applies under Part 2, Corrective Action, the following definitions apply:

**"Agency"** means the United States Environmental Protection Agency, Region 10.

**"Days"** means calendar days unless otherwise defined for a condition or section of this Permit.

**"Tribe"** means the Puyallup Tribe of Indians or a designated representative.

## 1. STANDARD CONDITIONS

### 1.1. EFFECT OF PERMIT

- 1.1.1. The Permittee is authorized to store and treat dangerous waste in accordance with the conditions of this Permit which include applicable requirements of Chapter 173-303 WAC specified in the Permit, and any self-implementing regulations in Chapter 173-303 WAC, and self-implementing statutory provisions and related regulations which are automatically applicable to the Permittee's dangerous waste management activities according to the Hazardous Waste Management Act, as amended, or other laws.
- 1.1.2. Any storage, treatment, or disposal of dangerous waste that requires a permit under Chapter 173-303 WAC is prohibited at this facility unless that activity is authorized by this Permit, including any temporary authorization by the Department under WAC 173-303-830(4)(e).
- 1.1.3. Conducting an activity at the facility that requires a permit under Chapter 173-303 WAC and is not authorized by this Permit or a temporary authorization under WAC 173-303-830(4)(e) is subject to enforcement of all applicable state and federal laws and regulations.
- 1.1.4. The Permittee is authorized to continue to manage newly regulated dangerous wastes or to continue to use newly regulated dangerous waste management units subject to all limits, conditions and procedures in WAC 173-303-830(4)(g)(i)(A) through (E). For this condition to apply, the unit must have been in existence as a dangerous waste facility with respect to the newly listed or identified waste or newly regulated waste management unit on the effective date of the final rule listing or identifying the wastes, or regulating the unit according to WAC 173-303-830(4)(g)(i)(A).
- 1.1.5. Pursuant to WAC 173-303-810(8), compliance with this Permit during its term constitutes compliance for the purpose of enforcement with Chapter 173-303 WAC for waste management activities covered under this Permit except as provided for in WAC 173-303-810(8)(a)(i) through (iv). Compliance with this Permit does not constitute a defense to any order issued or any action brought under other state or federal laws or regulations.
- 1.1.6. The Permittee is subject to requirements in Chapter 173-303 for any activity not authorized by this Permit or for activities not subject to a permit under Chapter 173-303 WAC, including but not limited to generator and transporter requirements at WAC 173-303-170 through -270.
- 1.1.7. Issuance of this Permit does not convey any property rights of any sort or any exclusive privilege.
- 1.1.8. Issuance of this Permit does not authorize any injury to persons or property, any invasion of other private rights, or any infringement of state or local law or regulations.

### 1.2. PERMIT ACTIONS

#### 1.2.1. Permit Modification, Revocation, Re-issuance, and Termination

- 1.2.1.1. The Department may modify, revoke and reissue, or terminate this Permit if there is cause as specified in WAC 173-303-830(3) and (5).
  - 1.2.1.1.1. When a permit is modified only the conditions subject to modification are reopened. All other aspects of the existing permit remain in effect for the duration of the permit.
  - 1.2.1.1.2. If a permit is revoked and reissued the entire permit is reopened and subject to revision and the permit is reissued as a new permit. The Permittee must comply with all conditions of the existing permit until a new final permit is reissued.

1.2.1.1.3. If the Department tentatively decides to terminate the permit it will issue a notice of intent to terminate and follow procedures in WAC 173-303-840(2).

1.2.1.2. Permit modifications at the request of the Permittee must comply with procedures and other requirements of the three-tiered modification system specified in WAC 173-303-830(4).

1.2.1.3. The filing of a request by the Permittee for a permit modification, revocation and re-issuance, termination, notification of planned changes, or anticipated noncompliance does not stay any permit condition.

#### 1.2.2. Transfer of Permit

1.2.2.1. In accordance with WAC 173-303-810(14)(c), this Permit is not transferable to any person except after notice to the Department.

1.2.2.2. This Permit may be transferred to a new owner or operator only if it has been modified or revoked and reissued in accordance with WAC 173-303-830(2)(a) and (b) or WAC 173-303-830(3) to identify the new permittee and incorporate such other requirements as may be necessary.

1.2.2.3. Before transferring ownership or operation of the Facility, the Permittee must notify the new owner or operator in writing of the requirements of this Permit and Chapter 173-303 WAC in accordance with WAC 173-303-290(2).

1.2.2.4. In accordance with WAC 173-303-830(2), the Permittee must maintain financial assurance conforming to the requirements of WAC 173-303-620 until the Department notifies the Permittee that the new owner or operator has demonstrated compliance with the financial requirements.

#### 1.2.3. Duty to Reapply and Permit Continuation

1.2.3.1. If the Permittee wishes to continue an activity regulated by this Permit after its expiration date, the Permittee must apply for and obtain a new permit. In addition, the Permittee must apply for and obtain a new permit if corrective action or closure required by this Permit has not or will not be completed by this Permit's expiration date. Department review of any application for a permit re-issuance will consider improvements in the state of control and measurement technology, as well as changes in applicable regulations.

1.2.3.1.1. To continue an activity allowed by this Permit after the Permit's expiration date or to complete closure or corrective action, the Permittee must submit to the Department a new permit application at least 180 days before this Permit's expiration date, unless the Department grants a later date provided that such date will never be later than the expiration date of the effective permit.

1.2.3.1.2. In accordance with WAC 173-303-806(7), if the Permittee submits a timely, complete application and the Department has not made a final permit determination as set forth in WAC 173-303-840, this Permit will remain in effect beyond this Permit's expiration date until the Department does make a final permit determination (issuing or denying a new permit).

1.2.3.2. If the Permittee fails to submit a timely, complete application as required under Permit Condition 1.2.3.1, then those permit terms and conditions necessary to conduct and complete closure and corrective action will remain in effect beyond this Permit's expiration date until the Department terminates the terms and/or conditions or the permit is revoked and reissued.



### 1.3. DUTIES AND REQUIREMENTS

#### 1.3.1. Duty to Comply

The Permittee must comply with all conditions of this Permit except to the extent, and for the duration, such noncompliance is authorized by an Emergency Permit issued under WAC 173-303-804. Other than as authorized by an Emergency Permit, any permit noncompliance constitutes a violation of Chapter 173-303 WAC and/or Chapter 70.105 RCW and is grounds for: a) enforcement action; b) termination of permit; c) revocation and re-issuance of permit; d) modification of permit; or e) denial of a permit renewal application.

#### 1.3.2. Need to Halt or Reduce Activity Not a Defense

If any enforcement action is taken because of Permittee's noncompliance with this Permit, the necessity to halt or reduce the permitted activity to maintain compliance with the conditions of this Permit is not a defense for the Permittee.

#### 1.3.3. Duty to Mitigate

The Permittee must take all steps required by the Department to minimize or correct any adverse impact on the environment resulting from noncompliance with this Permit. That the Permittee took such mitigation is not a defense to enforcement for noncompliance with this Permit.

#### 1.3.4. Proper Operation and Maintenance

The Permittee must at all times properly operate and maintain all facilities and systems of treatment and control which are installed or used by the Permittee to achieve compliance with the conditions of this Permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures (this includes quality assurance and quality control). This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of this Permit.

#### 1.3.5. Duty to Provide Information

The Permittee must furnish to the Department, within a reasonable time, any information which the Department requests to determine whether cause exists for modifying, revoking and reissuing, or terminating this Permit or for determining compliance with this Permit. The Permittee must also furnish to the Department, upon request, copies of records required to be kept by this Permit.

#### 1.3.6. Inspection and Entry

1.3.6.1. Pursuant to WAC 173-303-810(10), the Permittee must allow authorized representatives of the Department upon the presentation of credentials to:

1.3.6.1.1. Enter upon the Permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this Permit;

1.3.6.1.2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Permit;

1.3.6.1.3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Permit; and

1.3.6.1.4. Sample or monitor, at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by Chapter 173-303 WAC any substances or parameters at any location.

#### 1.3.7. Reporting Planned Changes

1.3.7.1. In accordance with WAC 173-303-810(14)(a), the Permittee must give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Such physical alterations or additions must be in compliance with this Permit. The Permittee must not manage dangerous waste in the new or physically changed portions of the facility until:

1.3.7.1.1. The Permit has been modified or the Permittee has obtained a temporary authorization for the physical change and for any change in the way waste is managed.

1.3.7.1.2. The Permittee has submitted to the Department by certified mail or hand delivery a letter signed by the Permittee and a registered professional engineer stating the facility has been constructed or modified in compliance with the Permit, and either

1.3.7.1.3. The Department has inspected the modified or newly constructed facility and finds it in compliance with the Permit, or

1.3.7.1.4. Within fifteen days of the date of the submission of the certified mail or hand delivered letter specified in Permit Condition 1.3.7.1.2, the Permittee has not received notice from the Department of its intent to inspect.

#### 1.3.8. Reporting Noncompliance with the Permit and Reporting Emergencies

1.3.8.1. The Permittee must meet requirements for immediate reporting and written submissions in WAC 173-303-810(14)(f) for noncompliance which may endanger health or the environment.

1.3.8.2. In accordance with WAC 173-303-810(14)(g), the Permittee must report instances of noncompliance not reported under WAC 173-303-810(14)(d), (e), and (f) (as specified in permit conditions 1.3.11.1, 1.3.10, and 1.3.8.1) at the time of the next monitoring report or within six months of the date of noncompliance, whichever is sooner.

1.3.8.3. The Permittee must give advance notice to the Department as soon as possible of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements. Such changes require a permit modification pursuant to WAC 173-303-830 before they can be implemented.

1.3.8.4. In the event of spills, releases and other emergencies, the Permittee must meet requirements for reporting and written submissions in Section G of the Permit Application.

#### 1.3.9. Reporting Relevant Facts and Incorrect Information

Pursuant to WAC 173-303-810(14)(h), if the Permittee becomes aware that he/she failed to submit any relevant facts in the permit application, or submitted incorrect information in the permit application or in any report to the Department, the Permittee must promptly submit the relevant and correct information.

#### 1.3.10. Reporting Compliance Schedules

Reports of permit compliance or noncompliance or any progress reports on interim and final permit requirement contained in any compliance schedules must be submitted no later than 14 days following each scheduled compliance date.

#### 1.3.11. Other Reporting

1.3.11.1. Monitoring Reports: Monitoring results must be reported at intervals specified elsewhere in this Permit.

1.3.11.2. The following reports are required:

- a. Manifest discrepancy report as specified at WAC 173-303-370(4).
- b. Unmanifested waste report as specified at WAC 173-303-390(1).
- c. Annual report as specified at WAC 173-303-390(2).
- d. Additional reports as specified at WAC 173-303-390(3).

1.3.12. Information Repository

The Permittee must establish and maintain an information repository at any time the Department requires based on the factors set forth in WAC 173-303-281(6)(b). The information repository will be governed by the provisions in WAC 173-303-281(6)(c) through (f).

1.4. MONITORING AND RECORDS

1.4.1. Samples and measurements taken for the purpose of monitoring must be representative of the monitored activity.

1.4.2. As provided at WAC 173-303-810(11)(c), the Permittee must retain records of all monitoring information for a minimum of three years from the date of the sample, measurement, report or application. The record retention period may be extended by request of the Department at any time.

1.4.2.1. The Permittee must maintain specific monitoring records for longer than three years when that is specified in other parts of this Permit.

1.4.2.2. The Permittee must maintain records from all ground water monitoring wells and associated ground water surface elevations for the active life and post closure period of the facility.

1.4.3. Pursuant to WAC 173-303-810(11)(d), records of monitoring information must include all of the following:

- a. The dates, exact place, and times of sampling or measurements.
- b. The individuals who performed the sampling or measurements.
- c. The dates analyses were performed.
- d. The individuals who performed the analyses.
- e. The analytical techniques or methods used.
- f. The results of such analyses.

1.4.4. In addition, the Permittee must meet specific monitoring and record keeping requirements when those are specified in other parts of this Permit.

1.5. SIGNATURE AND CERTIFICATION REQUIREMENTS

1.5.1. All applications, reports, or information submitted to the Department must be signed in accordance with WAC 173-303-810 (12) and must be certified according to WAC 173-303-810 (13).

1.5.2. Except as otherwise specified in this Permit, all applications, reports, notifications or other submissions that are required by this Permit to be submitted to the Department must be sent by certified mail to the following address or other address as specified by the Department:

Supervisor/Section Manager, Hazardous Waste and Toxics Reduction Section  
Department of Ecology

Southwest Regional Office  
PO Box 47775  
Olympia, WA 98504-7775

Or hand delivered to the following address or other address as specified by the Department:

Supervisor/Section Manager, Hazardous Waste and Toxics Reduction Section  
Department of Ecology  
Southwest Regional Office  
300 Desmond Drive  
Lacey, WA 98503

A change in this address does not require a permit modification under WAC 173-303-830.

1.6. CONFIDENTIAL INFORMATION

1.6.1. Information submitted by the Permittee to the Department identified as confidential by the Permittee will be treated in accordance with applicable provisions of WAC 173-303-810(15), Chapter 42.17 RCW, and RCW 43.21A.160.

1.7. WASTE MINIMIZATION

1.7.1. In accordance with WAC 173-303-380(1)(q), the Permittee must place a certification in the operating record on an annual basis that:

- 1.7.1.1. A program is in place to reduce the volume and toxicity of hazardous waste generated to the degree determined by the Permittee to be economically practicable.
- 1.7.1.2. Proposed methods of treatment, storage or disposal are those practicable methods currently available to the Permittee which minimize the present and future threat to human health and the environment.

1.7.2. The Permittee must report waste minimization efforts in their annual report as required by Permit Condition 1.3.11.2.

1.8. PERFORMANCE STANDARDS

The Permittee shall design, construct, operate and maintain the facility to the maximum extent practicable given the limits of technology in a manner to ensure performance standards in WAC 173-303-283 are met.

1.9. DOCUMENTS AND RECORDS TO BE MAINTAINED AT THE FACILITY SITE

1.9.1. The following documents must be maintained at the facility:

- a. This Permit, including all of its attachments and addendums and all amendments, revisions, and modifications to these documents.
- b. Records required by this Permit (commonly called the operating record).
- c. Other permits and approvals that authorize actions which affect safety and environmental protection (including, but not limited to, Air Quality Program registrations, Toxic Substance Control Act (TSCA) authorizations, State Environmental Policy Act (SEPA) decision documents).

1.10. NOTIFICATION OF THE TRIBE

1.10.1. The Permittee must notify the Tribe, in addition to the Department, for the following permit conditions: 1.2.1.2, 1.2.2.1, 1.3.7.1, 1.3.8, 1.3.9, 2.3.4.14, 2.3.12.3, and 2.3.14.1.

1.10.2. Notification to the Tribe must be sent or hand delivered to the following address:

Bill Sullivan, Department Director

Effective Date: 03.22.2012  
Expiration Date: 03.22.2022

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Natural/Environmental Resources  
3009 E. Portland Avenue  
Tacoma, WA 98404

1.11 PSC will provide financial assurance in accordance with WAC 173-303-620.”

## 2. CORRECTIVE ACTION

2.1. Within five (5) years of the effective date of this Permit, the Department will issue an Order requiring the Permittee to institute corrective action at the Facility according to the requirements of WAC 173-303-646 for releases of dangerous wastes and dangerous constituents including releases from solid waste management units. The Order shall include schedules of compliance for corrective action. The Order shall be incorporated by reference into this Permit.

### 2.2. DEFINITIONS

Unless otherwise specified, the definitions set forth in Chapter 70.105 RCW, Chapter 173-303 WAC, Chapter 70.105D RCW, and Chapter 173-340 WAC, undertaken in whole or in part to fulfill the requirements of WAC 173-303-646, control the meanings of the terms used in Part 2 of this Permit. Additional or modified definitions are as follows:

- 2.2.1. **“Agreed Order”** or **“Order”** means the Order incorporated by reference into this Permit and each of the exhibits to the Order. All exhibits are integral and enforceable parts of the Order. The terms “Agreed Order” or “Order” shall include all exhibits to the Order.
- 2.2.2. **“Area of Concern (AOC)”** means any area of the Facility where a release of dangerous constituents (including dangerous waste and hazardous substances) has occurred, is occurring, is suspected to have occurred, or threatens to occur.
- 2.2.3. **“Cleanup Action Plan (CAP)”** means the document issued by the Department under WAC 173-340-360, which selects Facility-specific corrective measures and specifies cleanup standards (cleanup levels, points of compliance, and other requirements for the corrective measures).
- 2.2.4. **“Cleanup Standards”** means the standards promulgated under RCW 70.105D.030(2)(e) and include: (1) hazardous substance concentrations (cleanup levels) that protect human health and the environment; (2) the location at the Facility where cleanup levels must be attained (points of compliance); and (3) additional regulatory requirements that apply to a corrective action because of the type of action and/or the location of the Facility.
- 2.2.5. **“Corrective Action”** means any activities including investigations, studies, characterizations, and corrective measures, including actions taken pursuant to Chapter 70.105D RCW and Chapter 173-340 WAC, undertaken in whole or in part to fulfill the requirements of WAC 173-303-64620.
- 2.2.6. **“Corrective Measure”** means any measure or action to control, prevent, or mitigate releases and/or potential releases of dangerous constituents (including dangerous waste and hazardous substances) reviewed and approved by the Department for the Facility and set forth in a Facility-specific CAP prepared in compliance with the requirements of Chapter 173-340 WAC, including WAC 173-340-360. Corrective measures may include interim actions as defined by Chapter 173-340 WAC. Interim actions will not necessarily be set forth in a Facility-specific CAP.
- 2.2.7. **“Dangerous Constituent”** or **“Dangerous Waste Constituent”** means any constituent identified in WAC 173-303-9905 or 40 CFR Part 264 Appendix IX, any constituent which caused a waste to be listed or designated as dangerous under the provisions of Chapter 173-303 WAC, and any constituent defined as a hazardous substance at RCW 70.105D.020(10).
- 2.2.8. **“Dangerous Waste”** means any solid waste designated in WAC 173-303-070 through 173-303-100 as dangerous or extremely hazardous or mixed waste. Dangerous wastes are considered hazardous substances under RCW 70.105D.020(10).
- 2.2.9. **“Dangerous Waste Management Unit (DWMU)”** means a contiguous area of land on or in which dangerous waste is placed, or the largest area in which there is a significant likelihood of mixing dangerous waste constituents in the same area, as defined in WAC

173-303-040, e.g., a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area.

- 2.2.10. **“Facility,”** under this Permit and for the purposes of implementing corrective action under WAC 173-303-64620 or WAC 173-303-64630, means all contiguous property under control of the Permittee under the provisions of Chapter 70.105 RCW or Chapter 173-303 WAC. “Facility” also includes the definition of facility found in RCW 70.105D.020(5).
- 2.2.11. **“Feasibility Study (FS)”** means the investigation and evaluation of potential corrective measures performed in accordance with the FS requirements of WAC 173-340-350, which includes the substantive requirements of a RCRA corrective measures study, undertaken in whole or in part to fulfill the corrective action requirements of WAC 173-303-64620.
- 2.2.12. **“Interim Action”** means a remedial action conducted under WAC 173-303-430.
- 2.2.13. **“Permit or Permitting Requirement,”** in addition to the meaning in the “Definitions” section of this Permit, and, unless otherwise specified, means the requirements of Chapter 173-303 WAC for applying for, obtaining, maintaining, modifying, and terminating Dangerous Waste Management Facility permits.
- 2.2.14. **“RCRA”** means the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*
- 2.2.15. **“RCRA Facility Assessment (RFA)”** means the EPA-conducted investigation of releases and potential releases at the Facility and the information contained in the report entitled *RCRA Facility Assessment PR/VSI Report - Chemical Processors, Inc., Northwest Processing, Inc., Sol-Pro, Inc., Chemical Processors, Parcel A, Tacoma, Washington*, dated February 1990 (“RFA Report”).
- 2.2.16. **“Release”** means any intentional or unintentional spilling, leaking, pouring, emitting, emptying, discharging, injecting, pumping, escaping, leaching, dumping, or disposing of hazardous substances, including dangerous waste and dangerous constituents into the environment. It also includes the abandonment or discarding of barrels, containers, and other receptacles containing dangerous waste or dangerous constituents and includes the definition of release at RCW 70.105D.020(25).
- 2.2.17. **“Remedial Action”** or **“Remedy”** means any action or expenditure consistent with the purposes of Chapter 70.105D RCW to identify, eliminate, or minimize any threat or potential threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effect studies conducted in order to determine the risk or potential risk to human health.
- 2.2.18. **“Remedial Investigation (RI)”** means a facility-wide investigation and characterization performed in accordance with the requirements of Chapter 173-340 WAC, which includes the substantive requirements for a RCRA facility investigation, undertaken in whole or in part to fulfill the corrective action requirements of WAC 173-303-64620.
- 2.2.19. **“Site,”** under this Permit and the incorporated Order, means the Taylor Way and Alexander Avenue (TWAA) Fill Area Site.
- 2.2.20. **“Solid Waste Management Unit (SWMU)”** means any discernible location at the Dangerous Waste Management Facility where solid wastes have been placed at any time, irrespective of whether the location was intended for the management of solid or dangerous waste. Such locations include any area at the Dangerous Waste Management Facility at which solid wastes, including spills, have been routinely and systematically released and include regulated units as defined by Chapter 173-303 WAC.

### 2.3. TERMS AND CONDITIONS

### 2.3.1. Public Involvement

#### 2.3.1.1. Public Notices and Participation

The Permittee must comply with the public involvement and participation requirements of WAC 173-303-900. For Part 2 of this Permit, the Permittee must also comply with public notice and participation requirements of WAC 173-340-600. For Part 2 of this Permit, the Department will take responsibility for the facility mailing list, the production and distribution of fact sheets, and the publication of notices in the appropriate local newspaper and the site register.

#### 2.3.1.2. Public Participation Plan

A Public Participation Plan is required for this Facility for activities under Part 2 of this Permit. The Department will review the existing Public Participation Plan to determine its continued appropriateness and whether it requires amendment.

The Department will maintain the responsibility for public participation at the Facility under Part 2 of this Permit. However, the Permittee must cooperate with the Department, and must:

2.3.1.2.1. If agreed to by the Department, 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, the Department will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of the Department's presentations and meetings.

2.3.1.2.2. Notify the Department's Project Manager prior to the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, the Department will notify the Permittee 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 Permittee that do not receive prior approval from the Department, the Permittee must clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by the Department.

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

2.3.1.2.4. When requested by the Department under Part 2 of this Permit, arrange and/or continue information repositories to be located at the following locations:

Citizens for a Healthy Bay  
917 Pacific Avenue, Suite 100  
Tacoma, Washington 98402  
253/383-2429

Department of Ecology  
Southwest Regional Office  
300 Desmond Drive  
Lacey, Washington 98503



360/407-6300

Tacoma Public Library  
Northwest Room  
1102 Tacoma Avenue S  
Tacoma, Washington 98402  
253/591-5666

The Permittee must promptly place in these repositories, 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 Permit.

2.3.1.3. SEPA

For any proposal under Part 2 of this Permit that includes activities that require preparation of a State Environmental Policy Act (SEPA) checklist, the Permittee must prepare a SEPA checklist, per Chapter 197-11 WAC (SEPA Rules). Such activities may include demolishing or constructing structures, excavating or filling, and capping contaminated soils. Changes to procedure usually will not require compliance with SEPA. SEPA compliance must occur before the Department makes its first decision on the proposal.

2.3.2. Remedial Action Costs

The Permittee must adhere to the independent agreement, Payment Agreement #8R22, between the Department and the Permittee, dated January 4, 2000 for recovery of the Department's costs reasonably attributable to corrective action activities at a facility per WAC 173-340-550 and WAC 173-303-64630. Permit termination or satisfaction of all corrective action requirements is necessary to terminate the agreement.

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

2.3.3. Implementation of Corrective Action

In the event that the corrective actions performed pursuant under this Permit or the incorporated Order fail to meet the requirements of Chapter 173-303 WAC, the Department reserves the right to require the Permittee to submit a permit modification to ensure that the Facility continues to comply with the corrective action requirements under Chapter 173-303 WAC. If the permit modification represents a substantial change to the work to be performed, Ecology will provide public notice and opportunity to comment in accordance with Permit Condition 2.3.1 (Public Involvement).

If the Department determines that the Permittee has failed without good cause to implement corrective action, in whole or in part, the Department may perform any or all portions of corrective action that remain incomplete. The Department will provide prior written notice of the bases for the Department's determination, unless an emergency prevents such notice. If the Department performs all or portions of corrective action because of the Permittee's

failure to comply with its obligations under this Permit or the incorporated Order, the Permittee must reimburse the Department for the costs of doing such work.

Except where necessary to abate an emergency situation, the Permittee must not perform any remedial actions outside those remedial actions required by this Permit or the incorporated Order, unless the Department concurs in writing with such remedial actions.

#### 2.3.4. Financial Assurance for Corrective Action

2.3.4.1. Financial assurance for corrective action is required by WAC 173-303-64620.

The Department's Financial Assurance Officer shall determine when the Permittee's actions and submissions meet the requirements of WAC 173-303-64620.

2.3.4.2. The Permittee must submit the original executed or otherwise finalized financial assurance instruments or documents to the Department's Financial Assurance Officer; facsimiles or photocopies are not acceptable to meet this requirement. In addition, the Permittee must also submit copies of financial assurance instruments or documents to the Department's Project Manager.

2.3.4.3. Unless otherwise specified, the definitions and requirements for allowable financial assurance mechanisms set forth in the current financial assurance rules covering closure and post-closure (40 CFR 264.141, 40 CFR 264.142, 40 CFR 264.143, 40 CFR 264.145, 40 CFR 264.148, 40 CFR 264.151, and WAC 173-303-620) will be the definitions and requirements for allowable financial assurance for corrective action under this Permit. It is the intention of the Parties that these definitions and requirements will apply to this corrective action, and the words "corrective action" are hereby substituted for the words "closure," "post closure," "post-closure," or "postclosure" in the above listed regulations as needed to produce this result.

2.3.4.4. In the absence of final federal regulations governing financial assurance for corrective action, the Department's Financial Assurance Officer will use the following resources as guidance:

- a. The Financial Assurance for Corrective Action Proposed Rule, 51 FR 37853 (October 24, 1986);
- b. The financial assurance provisions of Corrective Action for Releases from Solid Waste Management Units Advance Notice of Proposed Rulemaking, 61 FR 19432 (May 1, 1996); and
- c. The Interim Guidance on Financial Responsibility for Facilities Subject to RCRA Corrective Action (U.S. EPA, September 30, 2003); and/or
- d. Any other guidance applicable to financial assurance and corrective action that may be available at the time.

The financial assurance provisions of the Corrective Action for Solid Waste Management Units at Hazardous Waste Management Facilities, 55 FR 30798 (July 27, 1990), may be used as secondary guidance at the discretion of the Department. Unless otherwise specified herein, where the language of this Permit conflicts with these rules, proposed rules, notices, and guidance documents, the language of this Permit will prevail.

2.3.4.5. Within thirty (30) days from the effective date of the Order incorporated by reference into this Permit, the Permittee must submit to the Department for review and approval a written cost estimate to cover the cost of the Permittee's activities in

the incorporated Order. If the Department rejects the Permittee's cost estimate as submitted, the Department shall provide to the Permittee a revised cost estimate amount that will be the approved cost estimate. The Department will, if requested by the Permittee in writing, provide a written explanation of the variance between the Permittee's proposed cost estimate and the Department's approved cost estimate. Within thirty (30) days after the Department's final approval of the Permittee's cost estimate amount or the Permittee's receipt of the Department's approved cost estimate amount, the Permittee must establish and maintain continuous coverage of financial assurance in the amount of the approved cost estimate and submit the applicable financial assurance documentation per Permit Condition 2.3.4.2. If the Department does not accept, reject, or revise the Permittee's cost estimate within sixty (60) days after submittal, the Permittee's cost estimate will be deemed approved for purposes of this Permit condition. The Department reserves the right to review and revise the Permittee's cost estimate after the 60-day review period. If the Department revises the Permittee's cost estimate after the 60-day review period, the Permittee must provide an updated financial assurance instrument within sixty (60) days after the revision. If the Permittee disagrees with the Department's cost estimate, they may enter into "Resolution of Disputes" procedures pursuant to Permit Condition 2.3.9

- 2.3.4.6. If the Permittee is required to submit an additional work plan(s) under this Permit or the incorporated Order, or to conduct activities related to corrective action not previously part of the original cost estimate, the process outlined in Permit Condition 2.3.4.5 will apply in the submission process of an additional work plan(s).
- 2.3.4.7. If the Permittee believes that the estimated cost of work to complete activities under this Permit or the incorporated Order has diminished below the amount covered by existing financial assurance provided under this Permit or the incorporated Order, the Permittee may submit a written proposal to the Department to reduce the amount of the financial assurance provided under this Section so that the amount of the financial assurance is equal to the estimated cost of the remaining work to be performed. The written proposal must specify, at a minimum, the cost of the remaining work to be performed and the basis upon which such cost was calculated. If the Department decides to accept such a proposal, the Department will notify the Permittee of its decision in writing. After receiving the Department's written decision, the Permittee may reduce the amount of financial assurance only in accordance with and to the extent permitted by such written decision. Within thirty (30) days after receipt of the Department's written decision, the Permittee must submit the applicable financial assurance documentation per Permit Condition 2.3.4.2. No change to the form or terms of any financial assurance provided under Permit Condition 2.3.4, other than a reduction in amount, is authorized under this Permit condition.
- 2.3.4.8. Within thirty (30) days of written notice that the Department has selected a final remedy, the Permittee must prepare a detailed written estimate of the cost for the remaining amount of work to be completed by the Permittee under this Permit or the incorporated Order including, but not limited to, the final remedy, and submit the same to both the Department's Financial Assurance Officer and Project Manager for review and approval. The process outlined in Permit Condition 2.3.4.5 will apply in the submission of cost estimates.
- 2.3.4.9. All cost estimates must be based on the costs to the owner or operator of hiring a third party to complete the work. A third party is neither a parent nor a subsidiary of

the Permittee. On a case-by-case basis, the Department may also determine that a company which shares a common higher-tier corporate parent or subsidiary might not qualify as a third party. A cost estimate may not incorporate any salvage value that may be realized with the sale of wastes, Facility structures or equipment, land, or other assets associated with the Facility. The Permittee may also not incorporate a zero cost for wastes that might have economic value.

- 2.3.4.10. The Permittee must annually adjust all cost estimates for inflation. Adjustments for inflation must be calculated in accordance with the procedure outlined in WAC 173-303-620(3)(c).
- 2.3.4.11. Acceptable financial assurance mechanisms are trust funds, surety bonds, letters of credit, insurance, the financial test, and the corporate guarantee. The Department may allow other financial assurance mechanisms if they are consistent with the laws of Washington and if the Permittee demonstrates to the satisfaction of the Department that those mechanisms provide adequate financial assurance.
- 2.3.4.12. If the Permittee is using the financial test or corporate guarantee to meet their financial assurance obligation, the annual inflationary adjustment must occur within ninety (90) days after the close of the Permittee's fiscal year. If the Permittee is using any mechanism other than the financial test or corporate guarantee, this adjustment must occur each year within thirty (30) days after the anniversary of the effective date of this Permit or the incorporated Order.
- 2.3.4.13. If the Permittee seeks to establish financial assurance by using a surety bond for payment or a letter of credit, the Permittee must at the same time establish and thereafter maintain a standby trust fund acceptable to the Department into which funds from the other financial assurance instrument can be deposited, if the financial assurance provider is directed to do so by the Department, pursuant to the terms of this Permit.
- 2.3.4.14. The Permittee must notify the Department's Project Manager and Financial Assurance Officer by certified mail of the commencement of a voluntary or involuntary bankruptcy proceeding, naming the Permittee as debtor, within ten (10) days after commencement of the proceeding. A guarantor of a corporate guarantee must make such a notification if it is named as debtor as required under the terms of the corporate guarantee.
- 2.3.4.14.1. Once the Permittee has established financial assurance with an acceptable mechanism as described above, the Permittee will be deemed to be without the required financial assurance:
- a. In the event of bankruptcy of the trustee or issuing institution; or
  - b. If the authority of the trustee institution to act as trustee has been suspended or revoked; or
  - c. If the authority of the institution issuing the surety bond, letter or credit, or insurance policy has been suspended or revoked.
- 2.3.4.14.2. In the event of bankruptcy of the trustee or a suspension or revocation of the authority of the trustee institution to act as a trustee, the Permittee must establish a replacement financial assurance mechanism by any means specified in WAC 173-303-620 or other financial instrument as approved by the Department within sixty (60) days after such an event.
- 2.3.4.15. The Department's Financial Assurance Officer is:

Kimberly Goetz  
Department of Ecology  
Hazardous Waste and Toxics Reduction Program  
P.O. Box 47600  
Olympia, Washington 98504-7600  
Telephone: (360) 407-6754  
FAX: (360) 407-6715  
E-mail: [kimberly.goetz@ecy.wa.gov](mailto:kimberly.goetz@ecy.wa.gov)

2.3.5. Designated Project Managers:

The Project Manager for the Department is:

Kaia Petersen  
Department of Ecology  
Southwest Regional Office  
PO Box 47775  
Olympia, WA 98504-7775  
360/407-6359  
[kaia.petersen@ecy.wa.gov](mailto:kaia.petersen@ecy.wa.gov)

The Project Manager for the Permittee is:

William Beck  
PSC Environmental Services, LLC  
1800 – 72<sup>nd</sup> Avenue S, Suite 217  
Kent, WA 98032-1035  
425/227-6149  
[w.beck@pscnow.com](mailto:w.beck@pscnow.com)

The project managers will be responsible for overseeing the implementation of Part 2 of this Permit. To the maximum extent possible, communications between the Department and the Permittee, and all documents, including reports, approvals, and other correspondence concerning activities performed pursuant to the conditions of Part 2 of this Permit, will be directed through the project managers. These phone numbers and addresses may change and such changes will not require a permit modification. Should the Department or the Permittee change project managers, written notification by certified mail or other means establishing proof of delivery will be provided to the Department or the Permittee at least ten (10) days prior to the change, if possible. A revised page(s) of this Permit must also be prepared. If these provisions are met within reason, a permit modification following the procedures of WAC 173-303-830(3) or (4) and 40 CFR §§ 270.41 and 270.42 will not be required.

2.3.6. Performance

- 2.3.6.1. Once approved in writing by the Department, all submittals to the Department as required by Part 2 of this Permit become enforceable parts of this Permit. During the performance of work under an approved submittal, field modifications may be agreed to verbally by the Department's and the Permittee's project managers. In such a case, the Permittee must submit a description of the modification to the Department's Project Manager in writing within seven (7) days after the verbal agreement. The

Department's Project Manager will confirm in writing that the Permittee's description conforms to the agreed-upon modification.

- 2.3.6.2. The Permittee must provide this Permit and the incorporated Order to all agents, contractors, and subcontractors retained to perform work required by Part 2 of this Permit and must ensure that all work undertaken by such agents, contractors, and subcontractors will be in compliance with Part 2 of this Permit.
- 2.3.6.3. All geologic and hydrogeologic work performed pursuant to Part 2 of this Permit 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.
- 2.3.6.4. All engineering work performed pursuant to Part 2 of this Permit 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.
- 2.3.6.5. All construction work performed pursuant to Part 2 of this Permit shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of professional engineer. The professional engineer must be registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.
- 2.3.6.6. Any documents submitted containing geologic, hydrogeologic, or engineering work shall under the seal of an appropriately licensed professional as required by Chapter 18.220 RCW or RCW 18.43.130.
- 2.3.6.7. The Permittee must notify the Department in writing of the identity of any engineer(s), geologist(s), contractor(s), and subcontractor(s), and others to be used in carrying out the terms of Part 2 of this Permit, in advance of their involvement at the Facility.
- 2.3.6.8. The Permittee must provide seven (7) days notice to the Department's Project Manager prior to conducting work activities that the Department identifies at the Facility, including sampling activities and installation(s) of new monitoring wells. The Permittee must provide seven (7) days notice of all excavation activities conducted by the Permittee at the Facility and on neighboring properties. Without limitation of the Department's rights under Permit Condition 2.3.7 (Access), the Department will attempt to notify the Permittee prior to any sample collection activity at the Facility unless an emergency prevents such notice.

#### 2.3.7. Access

In addition to Permit Condition 1.3.6. (Inspection and Entry), the Permittee must grant the Department or any of the Department's authorized representatives full authority to enter and freely move about the Facility that Permittee 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 the work being performed pursuant to Part 2 of this Permit; reviewing the progress in carrying out the provisions of Part 2 of this Permit; conducting such tests or collecting samples as the Department or the Department's Project Manager may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to Part 2 of this Permit; and verifying the data submitted to the Department by the Permittee. The Permittee shall make all reasonable efforts to secure access rights for those properties within the Facility not owned or controlled by the Permittee where remedial activities or investigations will be performed pursuant to Part 2 of this Permit. This permit condition constitutes

reasonable notice of access, and the Permittee must allow access to the Facility at all reasonable times for purposes of overseeing work performed under Part 2 of this Permit.

2.3.8. Retention of Records:

In addition to Permit Condition 1.4 (Monitoring and Records), during the pendency of this Permit and for ten (10) years from the date of issuance by the Department of written notification that all requirements of Part 2 of this Permit and the incorporated Order have been satisfactorily completed, the Permittee must preserve in a readily retrievable fashion, all records, reports, documents, and underlying data in its possession relevant to the implementation of Part 2 of this Permit and the incorporated Order. The Permittee must insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of the Department, the Permittee must make all records available to the Department and allow access for review within a reasonable time.

2.3.9. Resolution of Disputes

- 2.3.9.1. In the event a dispute arises as to an approval, disapproval, proposed change or other formal opinion or action by the Department's Project Manager under Part 2 of this Permit, the Department and the Permittee will utilize the dispute resolution procedure set forth below.
- a. Upon receipt of the Department Project Manager's written decision, the Permittee has fourteen (14) days within which to notify in writing the Department's Project Manager of its objection to the decision.
  - b. The Department's and the Permittee's project managers will then confer in an effort to resolve the dispute. If the project managers cannot resolve the dispute within fourteen (14) days of the Department's receipt of the written objection, the Department's Project Manager will issue a written decision.
  - c. The Permittee may then request regional management review of the decision. This request must be submitted to the Supervisor of the Hazardous Waste and Toxics Reduction (HWTR) Section at the Department's Southwest Regional Office within seven (7) days of receipt of the Department Project Manager's written decision.
  - d. The Section Supervisor will conduct a review of the dispute and endeavor to issue a written decision regarding the dispute within thirty (30) days of the Permittee's request for review. The Section Supervisor's decision will be the Department's final opinion on the disputed matter.
- 2.3.9.2. The Department and the Permittee 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.
- 2.3.9.3. Implementation of these dispute resolution procedures must not provide a basis for delay of any activities required in Part 2 of this Permit, unless the Department agrees in writing to a schedule extension.

2.3.10. Extensions of Schedule:

- 2.3.10.1. The Department may grant an extension of schedule if the Permittee submits a request for an extension 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 must be requested in writing. The request must 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.

2.3.10.2. The burden shall be on the Permittee to demonstrate to the satisfaction of the Department 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 Permittee including delays caused by unrelated third parties or the Department, such as (but not limited to) delays by the Department in reviewing, approving, or modifying documents submitted by the Permittee;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Permit Condition 2.3.11.

However, neither increased costs of performance of the terms of this Permit nor changed economic circumstances will be considered circumstances beyond the reasonable control of the Permittee.

2.3.10.3. The Department will act upon any written request for extension in a timely fashion. The Department will give the Permittee written notification of any extensions granted pursuant to this Permit. A requested extension will not be effective until approved by the Department. Such revisions to the schedules will not require a permit modification, except when required by WAC 173-303-830(4)(i)(N)(5) to incorporate a substantial change requiring public comment under WAC 173-340-600.

2.3.10.4. The Department will grant an extension only for such period of time as the Department determines is reasonable under the circumstances. The Department 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 the Department; or
- c. Endangerment as described in Permit Condition 2.3.11. Copies of all correspondence pursuant to this permit condition must be kept in the Facility's operating record.

#### 2.3.11. Endangerment:

2.3.11.1. In the event the Department determines that any activity being performed at the Facility is creating or has the potential to create a danger to human health or the environment, the Department may order the Permittee to stop such activities of Part 2 of this Permit for such period of time as it deems necessary to abate the danger. The Permittee must immediately comply with such directions

2.3.11.2. In the event the Permittee determines that any activity being performed at the Facility is creating or has the potential to create a danger to human health or the environment, the Permittee may cease such activities. The Permittee must notify the



Department's Project Manager as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon the Department's direction, the Permittee must provide the Department with documentation of the basis for the determination or cessation of such activities. If the Department disagrees with the Permittee's cessation of activities, it may direct the Permittee to resume such activities.

- 2.3.11.3. If the Department concurs with or orders a work stoppage pursuant to Part 2 of this Permit, the Permittee's obligations with respect to the ceased activities will be suspended until the Department 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, will be extended in accordance with Permit Condition 2.3.10 (Extensions of Schedule) for such period of time as the Department determines is reasonable under the circumstances.
- 2.3.11.4. Nothing in this Permit limits the authority of the Department, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

2.3.12. Transfer of Interest in Property:

- 2.3.12.1. The Permittee must not consummate any voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Facility without provision for continued implementation of all requirements of Part 2 of this Permit and implementation of any remedial actions found to be necessary as a result of this Permit or the incorporated Order.
- 2.3.12.2. In addition to the requirements of Permit Condition 1.2.2. (Transfer of Permit), prior to transfer of any interest in all or any portion of the Facility, the Permittee must provide a copy of Part 2 of this Permit and the incorporated Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest. Upon transfer of any interest, the Permittee must restrict uses and activities to those consistent with this Permit and the incorporated Order and notify all transferees of the restrictions on use of the property.
- 2.3.12.3. At least thirty (30) days prior to any transfer, the Permittee must notify the Department, the Agency, and the Tribe of the said transfer and provide the Department, the Agency, and the Tribe with a plan for continued implementation of Part 2 of this Permit and the incorporated Order. The Permittee must also submit a request for modification of the permit per WAC 173-303-830(2), (3) and (4) and 40 CFR §§ 270.41 and 270.42.
- 2.3.12.4. If there is a lessee(s) on the Facility at the effective date of this Permit, the Permittee must serve a copy of this Permit and the incorporated Order upon any current lessee(s) within fifteen (15) days of the effective date of this Permit and the incorporated Order. Within thirty (30) days of the effective date of this Permit or the incorporated Order, the Permittee must amend the current lease(s), if necessary, to ensure that the Department, any authorized representative of the Department, or any party or entity directed or authorized by the Department, has access to all property at the Facility that the Permittee either owns, controls, or has access rights to at all reasonable times for the purpose of investigating and remediating the release of hazardous substances at the Facility, consistent with Permit Condition 2.3.7 (Access).

2.3.13. Compliance with Other Applicable Laws:

All actions carried out by the Permittee pursuant to this Permit must be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits.

#### 2.3.14. Newly Identified Releases

##### 2.3.14.1. Notification

The Permittee must continuously consider and evaluate information regarding releases, suspected releases, or potential releases, at the Facility of hazardous substances, including dangerous waste and dangerous constituents as defined by WAC 173-303-64610(4). The Permittee must notify the Department's Project Manager, in writing, of any newly-identified SWMU(s), newly-discovered releases from previously identified or newly identified SWMU(s), and newly-discovered AOC(s) at or from the Facility, no later than fifteen (15) days after discovery. The Permittee must provide information specified in WAC 173-303-806(4)(a)(xxiii) and 806(4)(a)(xxiv)(A).

##### 2.3.14.2. Corrective Action

After receiving notification of any newly identified releases at the Facility, the Department will determine whether the Permittee must fulfill corrective action responsibilities as required by Chapter 173-303 WAC. The Department will specify in writing the basis for its determination that the additional work is necessary. Any such corrective action will be incorporated into this Permit by a permit modification or into the incorporated Order by an order amendment. Upon written approval of the permit modification or order amendment, the Permittee must implement the work plan in accordance with the schedule contained therein. The actions taken must meet or exceed all substantive corrective action requirements of Chapter 70.105 RCW and Chapter 173-303 WAC.

To ensure that corrective action will be conducted as necessary to protect human health and the environment, the Permittee must conduct corrective action in a manner that is consistent with the following provisions of Chapter 173-340 WAC:

- a. As necessary to select a cleanup action in accordance with WAC 173-340-360, WAC 173-340-350 State Remedial Investigation and Feasibility Study.
- b. WAC 173-340-360 Selection of Cleanup Actions.
- c. WAC 173-340-400 Cleanup Actions.
- d. WAC 173-340-410 Compliance Monitoring Requirements.
- e. WAC 173-340-420 Periodic Site Reviews.
- f. WAC 173-340-440 Institutional Controls.
- g. WAC 173-340-700 through -760 Cleanup Standards.

#### 2.3.15. Quality Assurance, Sampling, Data Submittal, and Availability

- 2.3.15.1. For all sampling activities and analytical procedures performed pursuant to Part 2 of this Permit, the Permittee must use quality assurance, quality control, and chain-of-custody procedures as identified in relevant Department- or Agency-approved guidance documents. Specifically, the Permittee must follow the provisions specified in WAC 173-340-820 (Sampling and analysis plans), WAC 173-340-830 (Analytical procedures), Guidance on Sampling and Data Analysis Methods (Ecology Publication No. 94-049), Guidelines for Preparing Quality Assurance Project Plans for

Environmental Studies (Ecology Publication No. 04-03-030) and any revisions or amendments thereto), or other guidance approved by the Department.

- 2.3.15.2. Groundwater monitoring wells must be designed, constructed, maintained, and abandoned in accordance with Chapter 173-160 WAC (Minimum Standards for Construction and Maintenance of Wells) and the *RCRA Ground-Water Monitoring: Draft Technical Guidance* (EPA/530-R-93-001, PB93-139350, November 1992) and any revisions and amendments thereto. The Department and the Permittee may also use as guidance the publication *Statistical Analysis of Groundwater Monitoring Data at RCRA Facilities Unified Guidance* (EPA/530-R-09-007, March 2009). Groundwater monitoring well design, construction material, installation, and development methods must be documented.
- 2.3.15.3. In accordance with WAC 173-340-830(2)(a), for all hazardous substances analyses under Part 2 of this Permit, the Permittee must use a laboratory accredited by the Department under Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by the Department.
- 2.3.15.4. In preparing any work plan and/or report for this Facility, the Permittee may use information and analytical data from previous investigations at the Facility, with the condition that the previous information and data are in accordance with the above mentioned regulations and Department or Agency guidance documents for sampling and analytical procedures.
- 2.3.15.5. The Permittee must report all laboratory methods, detection limits, and practical quantitation limits (PQLs) for all constituents included in the analyses pursuant to WAC 173-340-830. With respect to the implementation of Part 2 of this Permit, the Permittee must make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to the Department. Pursuant to WAC 173-340-840(5), all sampling data must be submitted to the Department in both printed and electronic formats in accordance with the Department's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by the Department for data submittal. Additionally, the Department may request raw laboratory data to be submitted. All other provisions specified in WAC 173-340-840 (General submittal requirements) must also be followed.
- 2.3.15.6. If requested by the Department, the Permittee must allow the Department and/or the Department's authorized representative to take split or duplicate samples of any collected by the Permittee pursuant to implementation of Part 2 of this Permit. The Department may, upon request, allow the Permittee and/or the Permittee's authorized representative to take split or duplicate samples of any samples collected by the Department pursuant to implementation of Part 2 of this Permit, provided that doing so does not interfere with the Department's sampling.

2.3.16. Amendment of Incorporated Order

Following formal amendment of the incorporated Order, the Permittee must submit a written request for modification of this Permit. The Permit modification shall comply with requirements in Permit Condition 1.2.1 (Permit Modification, Revocation, Re-issuance, and Termination).

2.3.17. Land Use Restriction

If a restrictive covenant is required under WAC 173-340-440(4), the Permittee must record a restrictive covenant meeting the requirements of WAC 173-340-440(9) with the

office of the Pierce County Auditor within ten (10) days of completion of the remedial action. The Permittee must provide the Department with a copy of the recorded Restrictive Covenant within thirty (30) days of the recording date. The Permittee must also comply with the requirements of WAC 173-303-610(9) and -610(10).

2.3.18. Periodic Review

If periodic reviews are required under WAC 173-340-420(2), the Department will conduct periodic reviews at least every five years after the initiation of a cleanup action. At least ninety (90) days prior to each periodic review, the Permittee must submit a report to the Department that documents whether human health and the environment are being protected based on factors set forth in WAC 173-340-420(4). The Department reserves the right to require the Permittee to conduct further corrective action to comply with the corrective action requirements under Chapter 173-303 WAC. After reviewing information obtained from the Permittee and other sources, if the Department determines that substantial changes in the cleanup action are necessary to protect human health and the environment, the Permittee must submit a revised draft cleanup action plan for Department review and approval. The Department will provide opportunities for public review and comment on the draft cleanup action plan in accordance with WAC 173-340-830 and WAC 173-340-600. Approved corrective action plans will be incorporated into this Permit in accordance with the permit modification procedures under WAC 173-303-830.