

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

Seattle Iron & Metals Corporation  
  
730 Myrtle LLC

AGREED ORDER

No. DE 13458

TO: Alan Sidell  
Seattle Iron & Metals Corp.  
601 South Myrtle Street  
Seattle, WA 98108

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## I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Seattle Iron & Metals Corporation Corp. (SIM) and 730 Myrtle LLC 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 SIM and 730 Myrtle LLC to complete a Data Summary Report, Interim Action, Remedial Investigation (RI), Feasibility Study (FS), and prepare a preliminary Draft Cleanup Action Plan (DCAP) for the site located at 730 South Myrtle Street in Seattle, Washington. 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. SIM and 730 Myrtle LLC agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter SIM's and 730 Myrtle's responsibility under this Order. SIM and 730 Myrtle LLC shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

## IV. DEFINITIONS

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

A. Site: The Site is referred to as Whitehead Tyee and is generally located at 730 South Myrtle Street, Seattle, WA 98108. The Site is defined by the extent of contamination caused

by the release of hazardous substances at the Site. Based upon factors currently known to Ecology, the Site is generally described in the Site Diagram (Exhibit A). The Site constitutes a facility under RCW 70.105D.020(8).

B. Parties: Refers to Ecology, SIM, and 730 Myrtle LLC.

C. Potentially Liable Person (PLP): Refers to SIM and 730 Myrtle 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 SIM and 730 Myrtle LLC:

A. The Site is generally located at 730 South Myrtle Street, Seattle, Washington in the Georgetown area of Seattle. The Facility Site ID and Facility Site Name are 9809 and Seattle Iron & Metals Truck Parking, respectively. The 3.22-acre property (Whitehead Tye Property) formerly owned by King County, Whitehead Company, Reliable Transfer and Storage, and Tye Lumber and Manufacturing is approximately 625 feet east of the Lower Duwamish Waterway (LDW).

B. The property associated with the Site has been operated by SIM. The property has been used for materials storage and truck parking. The current owner of the property is 730 Myrtle, LLC.

C. Prior to approximately 1989, the Site was operated as a lumber treatment, finishing, sawing, and handling facility. Historic owners have included King County (prior to 1953), Tye Lumber and Manufacturing (1953 to 1982), and the Whitehead Company/Reliable Transfer & Storage (1982 to 2015). Historical ownership and operations are identified in a 2013 Phase I Environmental Site Assessment prepared by Sound Earth Strategies, dated December 12, 2013.

D. A release of pentachlorophenol to soil and groundwater was identified during subsurface investigation in 1992 near a former pentachlorophenol dip tank and associated



underground storage tank (UST) located in the adjacent Myrtle Street area near the southern boundary of the Whitehead Tyee Property. Pentachlorophenol was detected in soil and groundwater sampled at boring location B-38 at concentrations of 71 milligrams per kilogram (mg/kg) and 11,500 micrograms per liter ( $\mu\text{g/L}$ ), respectively, which exceed MTCA standards.

E. The Fox Avenue Building site, the adjacent northern property, is a known source of volatile organic compounds (VOCs) and semi-volatile organic compounds (SVOCs) with impacts to soil and groundwater at the Whitehead Tyee Site. The Fox Avenue Building site is managed by Fox Avenue Building LLC, and cleanup activities are in progress under an Agreed Order with Ecology. Data from the 2011 Fox Avenue Building RI/FS indicate there are total chlorinated volatile organic compounds (cVOCs) in deeper groundwater at concentrations above 10,000  $\mu\text{g/L}$  at locations on the Whitehead Tyee property (MW-10 and GP-25), which exceed MTCA standards. Recent data from the Fox Avenue 2015 Annual Report indicate there are total cVOCs in shallow and deeper groundwater in wells MW-9 and MW-10 on the Whitehead Tyee property at concentrations greater than the Fox Avenue remediation level of 250  $\mu\text{g/L}$ ; groundwater data from wells B-45 and B-49 also contain cVOCs at concentrations greater than MTCA cleanup standards.

## VI. ECOLOGY DETERMINATIONS

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by SIM or 730 Myrtle LLC.

A. SIM and 730 Myrtle LLC are “owners or operators” as defined in RCW 70.105D.020(22) of a “facility” as defined in RCW 70.105D.020(8).

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 SIM dated November 23, 2015, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. By letter



dated December 16, 2015, SIM voluntarily waived its rights to notice and comment and accepted Ecology's determination that SIM is a PLP under RCW 70.105D.040.

D. Based upon credible evidence, Ecology issued a PLP status letter to 730 Myrtle LLC dated February 18, 2016, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. By letter dated March 2, 2016, 730 Myrtle LLC voluntarily waived its rights to notice and comment and accepted Ecology's determination that 730 Myrtle LLC is a PLP under RCW70.105D.040.

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

F. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan. Operations at the property are currently covered under an Industrial Stormwater General Permit (ISGP; WAR-125002) issued by Ecology in 2011. Compliance with the terms of the permit require grading, paving, and installation of a stormwater conveyance and treatment system at the Site to mitigate poor quality stormwater. Elevated contaminant concentrations in soil and groundwater in the vicinity of the planned stormwater improvements will need to be addressed to ensure that Site improvements do not impede future remediation of the Site. Based on these circumstances, Ecology has determined that an interim action is warranted under WAC 173-340-430.

Either party may propose an additional interim action under this Order. If the Parties are in agreement concerning the additional interim action, the Parties will follow the process in Section VII.E. If the Parties are not in agreement, Ecology reserves its authority to require additional

interim action(s) under a separate order or other enforcement action under RCW 70.105D, or to undertake the interim action(s) itself.

## VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that SIM and 730 Myrtle LLC take the following remedial actions at the Site and that these actions be conducted in accordance with WAC 173-340 unless otherwise specifically provided for herein:

A. SIM and 730 Myrtle LLC shall prepare a Data Summary Report that describes general facility information, history and conditions, and past investigations including data collection and results.

B. SIM and 730 Myrtle LLC will conduct an interim action under this Order to address remedial actions that will occur as part of construction activities necessary to bring the Site into compliance with an Industrial Stormwater General Permit (ISGP; WAR-125002) issued by Ecology in 2011. Upon Ecology's written request, SIM and 730 Myrtle LLC will prepare an Agency Review Draft Interim Action Work Plan. SIM and 730 Myrtle LLC shall incorporate Ecology's comments into a Public Review Draft Interim Action Work Plan which will be subject to public notice and comment. SIM and 730 Myrtle LLC will prepare and submit to Ecology a State Environmental Policy Act (SEPA) Checklist. Subsequent to the public notice and comment period, Ecology will approve a Final Interim Action Work Plan. SIM and 730 Myrtle LLC shall implement the Final Interim Action Work Plan.

C. SIM and 730 Myrtle LLC shall prepare a Work Plan to conduct a Remedial Investigation (RI). After approval of the Final RI Work Plan by Ecology, SIM and 730 Myrtle LLC shall implement the RI Work Plan.

D. SIM and 730 Myrtle LLC shall provide Ecology with an Agency Review RI Report and an Agency Review Feasibility Study (FS). SIM and 730 Myrtle LLC shall incorporate Ecology's comments into a Public Review RI Report and Public Review FS.

E. SIM and 730 Myrtle LLC will prepare an Agency Review preliminary draft Cleanup Action Plan (dCAP).

F. These deliverables will be prepared in accordance with Exhibit B, "Scope of Work", which is incorporated by reference as an enforceable part of this Order.

G. The timing of these deliverables will be done as described in Exhibit C, "Schedule of Deliverables", which is incorporated by reference as an enforceable part of this Order.

H. All plans or other deliverables submitted by SIM and 730 Myrtle LLC for Ecology's review and approval under the Scope of Work and Schedule (Exhibits B and C) shall, upon Ecology's approval, become integral and enforceable parts of this Order.

I. SIM and 730 Myrtle LLC shall submit Monthly Progress Reports electronically, unless directed by Ecology in writing to submit progress reports under a different timeline. Progress reports shall be submitted to Ecology until satisfaction of the AO in accordance with Section IX of the AO. Progress Reports shall be submitted to the Ecology project coordinator by the 15<sup>th</sup> of the month following the reporting period. If this day is a weekend or holiday, deliverables will be submitted to Ecology on the next business day. At a minimum, progress reports shall contain the following information regardless of the reporting period:

- A description of the actions which have been taken to comply with the AO.
- Summaries of sampling and testing reports and other data reports received by the SIM and 730 Myrtle LLC.
- Summaries of deviations from approved work plans.
- Summaries of contacts with representatives of the local community, public interest groups, press, and federal, state, or tribal governments regarding activities taking place under this Order.
- Summaries of problems or anticipated problems in meeting the schedule of objectives set forth in the SOW and Work Plan.
- Summaries of solutions developed and implemented or planned to address any actual or anticipated problems or delays.
- Changes in key personnel.
- A description of work planned for the next reporting period.



J. If the Parties agree on an additional interim action under Section VI.E, SIM and 730 Myrtle LLC shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). SIM and 730 Myrtle LLC shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and SIM and 730 Myrtle LLC are required to conduct the interim action in accordance with the approved Interim Action Work Plan.

K. If Ecology determines that SIM and 730 Myrtle LLC have failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to SIM and 730 Myrtle LLC, perform any or all portions of the remedial action or at Ecology's discretion allow SIM and 730 Myrtle LLC the opportunity to correct. SIM and 730 Myrtle LLC shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

L. Except where necessary to abate an emergency situation, SIM and 730 Myrtle LLC shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

## VIII. TERMS AND CONDITIONS

### A. Remedial Action Costs

SIM and 730 Myrtle LLC shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under RCW 70.105D, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2).

Ecology has accumulated \$11,026.56 in remedial action costs related to this Site as of March 31, 2016. 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, 2016, SIM and 730 Myrtle LLC shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

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

**B. Designated Project Coordinators**

The project coordinator for Ecology is:

Ronald Timm  
Washington Department of Ecology  
Northwest Regional Office  
Toxics Cleanup Program  
3190 160<sup>th</sup> Avenue SE  
Bellevue, WA 98008  
Telephone: (425) 649 7185  
rtim461@ecy.wa.gov

The project coordinator for SIM and 730 Myrtle LLC is:

Allison Geiselbrecht, PhD  
Floyd | Snider  
Two Union Square  
601 Union Street, Suite 600  
Seattle, WA 98101  
Telephone: (206) 292 2078  
allison.geiselbrecht@floydsnyder.com

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To

the maximum extent possible, communications between Ecology and SIM and 730 Myrtle LLC, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

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

**C. Performance**

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

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

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

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

SIM and 730 Myrtle LLC shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Site.



**D. Access**

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that SIM and 730 Myrtle LLC 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 this Order; reviewing SIM's and 730 Myrtle LLC'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 SIM and 730 Myrtle LLC. SIM and 730 Myrtle LLC shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by SIM and 730 Myrtle LLC where remedial activities or investigations will be performed pursuant to this Order. If SIM and 730 Myrtle LLC cannot obtain access to such non-owned properties after making all reasonable efforts, Ecology may assist SIM and 730 Myrtle LLC in obtaining the necessary access. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by SIM and 730 Myrtle LLC unless an emergency prevents such notice. All persons who access the Site pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

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

With respect to the implementation of this Order, SIM and 730 Myrtle LLC 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, SIM and 730 Myrtle LLC shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by SIM and 730 Myrtle LLC pursuant to implementation of this Order. SIM and 730 Myrtle LLC shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site, unless an emergency prevents such notice. Ecology shall, upon request, allow SIM and 730 Myrtle LLC 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.D (Access), Ecology shall notify SIM and 730 Myrtle LLC prior to any sample collection activity unless an emergency prevents such notice.

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

**F. Public Participation**

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

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 SIM and 730 Myrtle LLC.

Ecology shall maintain the responsibility for public participation at the Site. However, SIM and 730 Myrtle LLC 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 SIM and 730 Myrtle LLC 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 SIM that do not receive prior Ecology approval, SIM and 730 Myrtle LLC 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. Seattle Public Library – South Park Branch  
8604 Eighth Ave S. at South Cloverdale St  
Seattle, WA 98108
- b. Ecology's Northwest Regional Office  
3190 160<sup>th</sup> Avenue SE  
Bellevue, WA 98008

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 Northwest Regional Office in Bellevue, Washington.

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

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, SIM and 730 Myrtle LLC 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, SIM and 730 Myrtle LLC 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 SIM and 730 Myrtle LLC may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If SIM and 730 Myrtle LLC withholds any requested records based on an assertion of privilege, SIM and 730 Myrtle LLC shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

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

1. In the event that SIM and 730 Myrtle LLC elects to invoke dispute resolution SIM and 730 Myrtle LLC must utilize the procedure set forth below.

a. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), SIM and 730 Myrtle LLC 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; the SIM and 730 Myrtle LLC position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

c. SIM and 730 Myrtle LLC may then request regional management review of the dispute. This request ("Formal Dispute Notice") must be submitted in writing to the

Northwest Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

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

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

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

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

#### **I. Extension of Schedule**

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

- a. The deadline that is sought to be extended;
- b. The length of the extension sought;
- c. The reason(s) for the extension; and

d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on SIM and 730 Myrtle LLC 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 SIM and 730 Myrtle LLC 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 SIM and 730 Myrtle LLC;

b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or

c. Endangerment as described in Section VIII.K (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of SIM and 730 Myrtle LLC.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give SIM and 730 Myrtle LLC written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.J (Amendment of Order) when a schedule extension is granted.

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

a. Delays in the issuance of a necessary permit which was applied for in a timely manner;

b. Other circumstances deemed exceptional or extraordinary by Ecology; or

c. Endangerment as described in Section VIII.K (Endangerment).



**J. Amendment of Order**

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

Except as provided in Section VIII.L (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and SIM and 730 Myrtle LLC. SIM and 730 Myrtle LLC shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.H (Resolution of Disputes).

**K. Endangerment**

In the event Ecology determines that any activity being performed at the Site 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 SIM and 730 Myrtle LLC to cease such activities for such period of time as it deems necessary to abate the danger. SIM and 730 Myrtle LLC shall immediately comply with such direction.

In the event SIM and 730 Myrtle LLC 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, SIM and 730 Myrtle LLC may cease such activities. SIM and 730 Myrtle LLC 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, SIM and 730 Myrtle LLC shall provide Ecology with documentation of the basis for the determination or

cessation of such activities. If Ecology disagrees with SIM's and 730 Myrtle LLC's cessation of activities, it may direct SIM and 730 Myrtle LLC to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, SIM's and 730 Myrtle LLC'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.I (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

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

**L. Reservation of Rights**

This Order is not a settlement under RCW 70.105D. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against SIM and 730 Myrtle LLC to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against SIM and 730 Myrtle LLC regarding remedial actions required by this Order, provided SIM and 730 Myrtle LLC complies with this Order.

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

By entering into this Order, SIM and 730 Myrtle LLC do not admit to any liability for the Site. Although SIM and 730 Myrtle LLC are committing to conducting the work required by this Order under the terms of this Order, SIM and 730 Myrtle LLC 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.

**M. Transfer of Interest in Property**

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by SIM and 730 Myrtle LLC 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 SIM's and 730 Myrtle LLC's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, SIM and 730 Myrtle LLC 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, SIM and 730 Myrtle LLC shall notify Ecology of said transfer. Upon transfer of any interest, SIM and 730 Myrtle LLC shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

**N. Compliance with Applicable Laws**

1. All actions carried out by SIM and 730 Myrtle LLC 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), SIM and 730 Myrtle LLC is exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, SIM and 730 Myrtle LLC 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.

SIM and 730 Myrtle LLC 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 SIM and 730 Myrtle LLC



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 SIM and 730 Myrtle LLC shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, SIM and 730 Myrtle LLC 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 SIM and 730 Myrtle LLC and on how SIM and 730 Myrtle LLC must meet those requirements. Ecology shall inform SIM and 730 Myrtle LLC in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. SIM and 730 Myrtle LLC 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 SIM and 730 Myrtle LLC shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

**O. Indemnification**

SIM and 730 Myrtle LLC 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 SIM and 730 Myrtle LLC, its officers, employees, agents, or contractors in entering into and implementing this Order. However, SIM and 730 Myrtle LLC shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any

claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

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

The provisions of this Order shall be deemed satisfied upon SIM's and 730 Myrtle LLC's receipt of written notification from Ecology that SIM and 730 Myrtle LLC has completed the remedial activity required by this Order, as amended by any modifications, and that SIM and 730 Myrtle LLC 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.

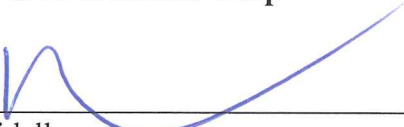
2. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board.

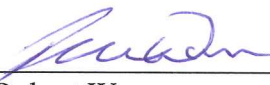
This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: 8-25-16

**Seattle Iron & Metals Corp**

  
\_\_\_\_\_  
Alan Sidell  
President of Seattle Iron and Metals Corp.  
601 South Myrtle Street, Seattle, WA 98108  
(206) 682-0040

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

  
\_\_\_\_\_  
Robert Warren  
Section Manager  
Toxics Cleanup Program  
NWRO Regional Office  
(425) 649-7054

**730 Myrtle LLC**

  
\_\_\_\_\_  
Alan Sidell  
President of 730 Myrtle LLC  
601 South Myrtle Street  
Seattle, WA 98108  
(206) 682-0040

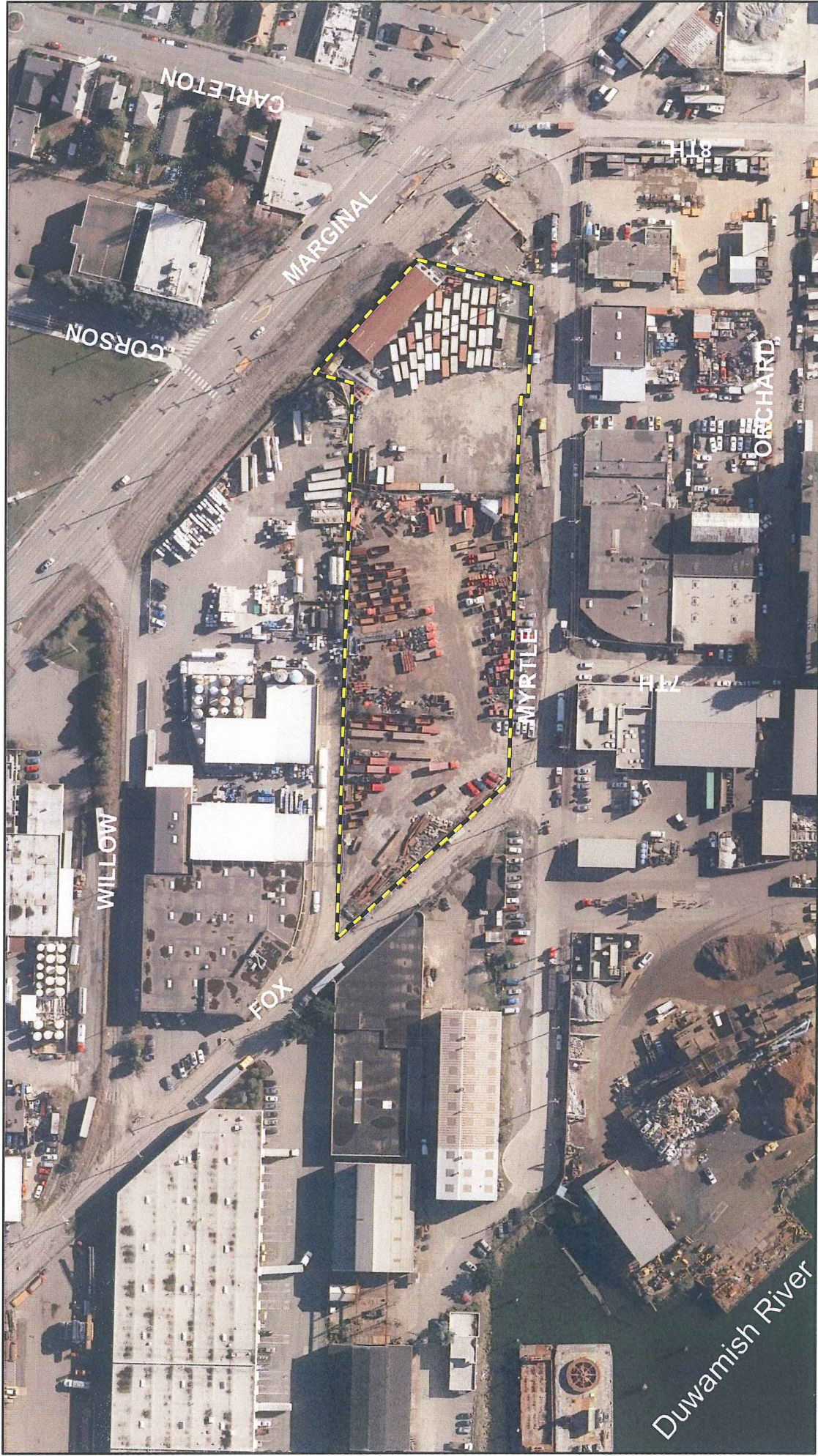
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JUL 11 2016

DEPT OF ECOLOGY  
TCP - NWRO



Exhibit A  
Whitehead Tye Site  
A.K.A. Seattle Iron & Metal Truck Parking  
730 South Myrtle Street  
Seattle, WA

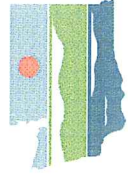
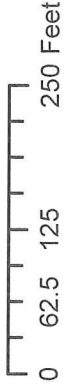


Legend

Whitehead Tye Site



Seattle Iron & Metals Corp. Truck Parking



WASHINGTON STATE  
DEPARTMENT OF  
ECOLOGY



## **EXHIBIT B – SCOPE OF WORK (SOW) Whitehead Tyee Site**

### **PURPOSE**

The work under this Agreed Order (AO) involves conducting a Data Summary Report, Interim Action, Remedial Investigation (RI) and Feasibility Study (FS), and preparing a preliminary Draft Cleanup Action Plan (DCAP). The purpose of the RI, FS, and preliminary DCAP for the Site is to provide sufficient data, analysis, and evaluations to enable Ecology to select a final cleanup alternative for the Site.

The PLPs shall coordinate with Ecology throughout the development of the Data Summary Report, Interim Action, RI/FS and preliminary DCAP and shall keep Ecology informed of changes to any Work Plan or other project plans, and of any issues or problems as they develop.

The SOW is divided into nine major tasks as follows:

- Task 1. Data Summary Report
- Task 2. Interim Actions
- Task 3. RI Work Plan
- Task 4. Remedial Investigation
- Task 5. Feasibility Study
- Task 6. SEPA Compliance
- Task 7. Public Participation
- Task 8. DCAP
- Task 9. Progress Reports

### **TASK 1. DATA SUMMARY REPORT**

The PLPs shall prepare a Data Summary Report that describes general facility information, history and conditions, past investigations including data collection and results, preliminary conceptual contaminant migration pathways, ecological receptors, hazardous substances sources etc. It will also describe, to the extent known, the location of potential contaminant sources that affect or potentially affect the area proposed to be addressed in the Interim Action. The Data Summary Report will include data in tabular and figure form, and will indicate exceedances of industrial and residential screening levels.

### **TASK 2. INTERIM ACTIONS**

Remedial actions implemented prior to completion of the RI/FS, including those that:

- that are technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance;
- that correct a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed; or
- that are needed to provide for completion of the remedial investigation/feasibility study or design of the cleanup action

will be considered interim actions, will be implemented in accordance with WAC 173-340-430 and the AO, and will be designed in a manner that will not foreclose reasonable alternatives for any final cleanup action that may be required. Remedial actions for contaminated sediments will be designated partial cleanup actions and will be implemented pursuant to WAC 173-204-550(3)(d).

As required by the Order, the PLPs will implement an interim action at the Site. The PLPs will prepare and submit for Ecology approval an Agency Review Draft Interim Action Work Plan (IAWP) with detail commensurate with the work to be performed. The Agency Review Draft IAWP shall include, as appropriate:

- Description of the interim action including its purpose, general requirements, and relationship to the (final) cleanup action (to the extent known);
- Summary of relevant site information, including at a minimum existing site conditions and alternative interim actions considered;
- Information regarding design and construction requirements, including a proposed schedule and personnel roles and responsibilities;
- Compliance Monitoring Plan;
- SAP/QAPP;
- Permits required.

The PLPs will also submit a copy of the Health and Safety Plan for the project. The PLPs will incorporate Ecology's required changes into the IAWP and provide Ecology with a Public Review Draft IAWP.

The PLPs or their contractors shall submit all new sampling data generated under this SAP and any other recently collected soil or groundwater data to Ecology in excel format suitable for entry into the Environmental Information Management System (EIM) in accordance with WAC 173-340-840(5) and Ecology's Toxics Cleanup Program Policy 840: Data Submittal Requirements. Only validated data will be entered into the EIM database within 30 days of submittal.

The PLPs will be responsible for complying with the State Environmental Policy Act (SEPA) Rules including preparing and submitting an environmental checklist for the interim action, and will assist Ecology with presentations at any additional meetings or hearings that might be necessary for SEPA compliance or as part of the Public Participation Plan.



After a public notice and comment period for the Public Review Draft IAWP (and SEPA determination), Ecology will approve the IAWP (if appropriate) and the document will be considered Final. Once approved by Ecology, the PLPs will implement the interim action according to the Schedule (Exhibit C).

The PLPs shall prepare two (2) copies of the Agency Review Draft Interim Action Work Plan and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review. The PLPs shall incorporate Ecology's comments and then prepare two (2) copies of the Public Review Draft Interim Action Work Plan and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology. After the public notice and comment period, incorporating Ecology's and the public's comments on the Public Review Draft Interim Action Work Plan, and after Ecology approval, The PLPs shall prepare three (3) copies of the Final Interim Action Work Plan submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats.

Upon successful completion of the work, an Agency Review Draft Interim Action Report will be prepared as a separate deliverable. The PLPs shall prepare two (2) copies of the Agency Review Draft Interim Action Report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and approval. After incorporating Ecology's comments on the Agency Review Draft Interim Action Report and after Ecology approval, The PLPs shall prepare three (3) copies of the Final Interim Action Report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology.

If required by Ecology, or proposed by the PLPs and approved by Ecology, the PLPs will implement an additional interim action. Based upon information contained in the Data Summary Report or the RI report, additional interim action(s) may be needed to expedite control of releases to sediments or other environmental media pursuant to WAC 173-340-430.

The scope of the additional interim actions may include, but not be limited to, typical source control or containment elements such as:

- Soil or sediment removal
- Groundwater remediation
- Expedited LNAPL removal
- Repair, slip lining, replacement, or closure of stormwater conveyances or other structures such as conduit, vaults, catch basins, etc.
- Removal of underground storage tanks and pipes
- Removal of old drain fields or former surface impoundments
- Proper abandonment of old wells
- Removal of contaminated building or other structural material
- Construction of a treatment facility

- Shoreline stabilization such as bulkhead repair, erosion or seepage control, and grading or clearing.

### **TASK 3. RI WORK PLAN**

The PLPs shall prepare a Remedial Investigation Work Plan (Work Plan). The Work Plan shall include an overall description and schedule of all RI activities. The Work Plan shall clearly describe the project management strategy for implementing and reporting on RI activities. The responsibility and authority of all organizations and key personnel involved in conducting the RI will be outlined.

A Key Project Meeting will be held prior to submittal of the RI Work Plan. The purpose of the Remedial Investigation Planning Meeting is to review requirements for the Work Plan and plan Remedial Investigation field work, discuss the preliminary Conceptual Site Model, and identify project data needs and possible interim actions.

The Work Plan shall describe general facility information; site history and conditions; including previous operations; past field investigations, including any data collection and analysis of soils, air, groundwater, surface water, and sediments; a conceptual site model showing contaminants, migration pathways in all environmental media, potential receptors, and screening levels based on the conceptual site model; geology and groundwater system characteristics; past, current, and future land use; identification of natural resources and ecological receptors; hazardous substances and their sources, etc., in compliance with WAC 173-340-350 and WAC 173-204-560.

As part of the project background, existing environmental data on site soil, groundwater, surface water, and sediments will be compiled and evaluated for data gaps. The data gaps will be used as the basis for conducting additional site investigations, if necessary. The Work Plan will also identify specific data collection procedures in a Sampling and Analysis Plan (SAP) and Quality Assurance Project Plan (QAPP) as part of the Work Plan in compliance with WAC 173-340-820 and WAC 173-204-600 for defining the nature and extent of contamination. The PLPs will also submit a copy of the Health and Safety Plan (HASP) for the project.

The SAP identifies the proposed number and location of all environmental samples and methods, including soil borings, groundwater monitoring wells, soil, groundwater, stormwater, seep, catch basin and In-Line Solids and water, approximate depths, and includes a quality assurance project plan. The SAP will describe the sampling objectives, the rationale for the sampling approach (based upon the identified data gaps), and plans for data use, and shall provide a detailed description of sampling tasks. The SAP shall describe specifications for sample identifiers; sampling equipment; the type, number, and location of samples to be collected; the analyses to be performed; descriptions of sampling equipment and methods to be used; sample documentation; sample containers, collection and handling; data and records management; and schedule.



The Quality Assurance Project Plan (QAPP) will be prepared in accordance with the Guidance for Preparation of Quality Assurance Project Plans, EPA Region 10, Quality Data Management Program, QA/R-5 and requirements of the EPA Contract Laboratory Program. The QAPP will also follow Ecology's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies (July 2004)<sup>1</sup> and, if necessary, Sediment Sampling and Analysis Plan Appendix (February 2008).<sup>2</sup> Laboratories must meet the accreditation standards established in WAC 173-50. Data quality objectives will reflect the criteria or threshold values used for the source control evaluation as modified by EPA analytical methods.

The PLPs will provide Ecology with an Agency Review Draft Work Plan. Once Ecology reviews and approves the Work Plan, it will be considered the Final Work Plan. The Work Plan shall not be implemented until approved by Ecology. Once approved by Ecology, The PLPs will implement the Final Work Plan according to the schedule contained in Exhibit C.

The PLPs shall prepare two (2) copies of the Agency Review Draft RI Work Plan and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and comment. After incorporating Ecology's comments on the Agency Review Draft Work Plan and after Ecology approval, The PLPs shall prepare three (3) copies of the Final Work Plan and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology.

#### **TASK 4. REMEDIAL INVESTIGATION**

The PLPs shall conduct an RI that meets the requirements of WAC 173-340-350(7) and WAC 173-204-560 according to the Work Plan as approved by Ecology. The RI will determine the nature and extent of contamination exceeding preliminary Model Toxics Control Act (MTCA) cleanup levels, preliminary SMS cleanup standards, and other regulatory requirements. The RI must provide sufficient data and information to define the nature and extent of contamination to select a cleanup action.

Field sampling and analysis will be completed in general accordance with the SAP and QAPP. Deviation(s) from the approved SAP and QAPP must be communicated to Ecology immediately and documented as required by Ecology.

The PLPs shall provide interim data reports and updates to Ecology as new site data and information become available. Laboratory analysis data shall also be provided in electronic format when it has been validated. Raw laboratory data will be provided to Ecology upon request.

The PLPs or their contractors shall submit all new sampling data generated under this SAP and any other recently collected soil or groundwater data to Ecology in excel format

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<sup>1</sup> Found at <http://www.ecy.wa.gov/biblio/0403030.html>



suitable for entry into the Environmental Information Management System (EIM) in accordance with WAC 173-340-840(5) and Ecology's Toxics Cleanup Program Policy 840: Data Submittal Requirements. Only validated data will be entered into the EIM database within 30 days of submittal.

Prior to submittal of the Agency Review Draft RI Report, a Key Project Meeting will be held. During the Remedial Investigation Pre-Report Check-In, Ecology and the PLPs will review available data and an updated conceptual site model and discuss the content and organization of the Draft RI Report.

The PLPs shall compile the results of the Site investigation into an Agency Review Draft RI Report. The PLPs shall prepare two (2) copies of the Agency Review Draft RI Report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and comment.

After incorporating Ecology's comments on the Agency Review Draft RI Report, The PLPs shall prepare three (3) copies of a Public Review Draft RI Report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment. Electronic survey data for monitoring locations, electronic lab data, and GIS maps of contaminant distribution shall also be provided for both the Agency Review Draft RI Report and Public Review Draft RI Reports either in the report or as attachments. The RI Report will not be considered Final until after a public review and comment period.

If the data collected during this investigation is insufficient to define the nature and extent of contamination, and/or to select a cleanup action plan an additional phase of investigation shall be conducted to define the extent of contamination.

#### **TASK 5. FEASIBILITY STUDY**

The PLPs shall use the information obtained in the RI to prepare an Agency Review Draft Feasibility Study (FS) Report that meets the applicable requirements of WAC 173-340-350(8) according to the Schedule (Exhibit C).

The Agency Review Draft FS Report will evaluate remedial alternatives for site cleanup, consistent with MTCA to ensure protection of human health and the environment by eliminating, reducing, or otherwise controlling risk posed through each exposure pathway and migration route.

Prior to beginning the FS, a Key Project Meeting will be held to review ARARs, potential remedial alternatives and establish points of compliance.

The Agency Review Draft FS Report will provide a detailed analysis of each remedial alternative according to the applicable requirements of WAC 173-340-350, MTCA Remedial Investigation and Feasibility Study. The remedial alternatives will be evaluated for compliance with the applicable requirements of WAC 173-340-360, Selection of

Cleanup Actions, including a detailed evaluation of remedial alternatives relative to the following criteria:

- Compliance with Cleanup Standards and Applicable Laws
- Protection of Human Health
- Protection of the Environment
- Provision for a Reasonable Restoration Time Frame
- Use of Permanent Solutions to the Maximum Extent Practicable
- The Degree to which Recycling, Reuse, and Waste Minimization are Employed
- Short-Term Effectiveness
- Long-Term Effectiveness
- Net Environmental Benefit
- Implementability
- Provision for Compliance Monitoring
- Cost-Effectiveness
- Prospective Community Acceptance

The remedial alternative that is judged to best satisfy the evaluation criteria will be identified. Justification for the selection will be provided, and the recommended remedial alternative further developed, in the FS Report.

The PLPs shall prepare two (2) copies of the Agency Review Draft FS Report and submit them, including one electronic copy in Word (.doc) and Adobe (.pdf) formats, to Ecology for review.

After incorporating Ecology's comments on the Agency Review Draft FS Report, the PLPs shall prepare three (3) copies of the Public Review Draft FS Report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment. The FS Report will not be considered Final until after a public review and comment period.

#### **TASK 6. SEPA COMPLIANCE**

The PLPs shall be responsible for complying with the State Environmental Policy Act (SEPA) Rules including preparing and submitting an environmental checklist. If the result of the threshold determination is a determination of significance (DS), The PLPs shall be responsible for the preparation of Draft and final environmental impact statements. The PLPs shall assist Ecology with coordinating SEPA public involvement requirements with MTCA public involvement requirements whenever possible, such that public comment periods and meetings or hearings can be held concurrently.

#### **TASK 7. PUBLIC PARTICIPATION**

The PLPs shall assist Ecology with preparation of a draft Public Participation Plan that complies with the provisions of WAC 173-340-600(9).



The PLPs shall support Ecology in presenting the Public Review Draft RI and Public Review Draft FS Reports and SEPA evaluations at one public meeting or hearing. The PLPs will assist Ecology with presentations at any additional meetings or hearings that might be necessary for SEPA compliance or as part of the Public Participation Plan.

After the public comment periods are completed, at Ecology's request The PLPs shall prepare a Draft Responsiveness Summary that addresses public comments and prepare a second Public Review Draft FS Report that addresses public comments. The PLPs shall prepare two (2) copies of the Draft Responsiveness Summary and second Public Review Draft FS Report and submit them to Ecology for review and approval, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology.

After incorporating Ecology's comments and after Ecology approval, The PLPs shall prepare three (3) copies of the Final Responsiveness Summary after public comments are incorporated and submit them to Ecology for distribution, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats.

#### **TASK 8. PRELIMINARY DRAFT CLEANUP ACTION PLAN**

Upon Ecology approval of the Public Review Draft Remedial Investigation and Public Review Draft Feasibility Study Report, a Key Project Meeting will be held regarding the Cleanup Action Plan. The Cleanup Action Plan Meeting will be used to review public comments received on the RI and FS Reports, and to review plans for developing the Agency Review preliminary Draft Cleanup Action Plan (DCAP),

The PLPs shall prepare an Agency Review preliminary DCAP in accordance with WAC 173-340-380 that provides a proposed remedial action to address the contamination present on the Site. Where contaminated sediments are included in the remedial action, the cleanup plan will comply with WAC 173-204-580, in addition to the MTCA requirements cited above. The Agency Review preliminary DCAP shall include a general description of the proposed remedial actions, cleanup standards developed from the Remedial Investigation/Feasibility Study and rationale regarding their selection, a schedule for implementation, description of any institutional controls proposed, and a summary of applicable local, state, and federal laws pertinent to the proposed cleanup actions.

The PLPs will submit an Agency Review preliminary DCAP for Ecology's review and approval. The Agency Review preliminary DCAP will include, but not be limited to, the information listed under WAC 173-340-380. The PLPs shall prepare two (2) copies of the Agency Review preliminary DCAP and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and approval.



**TASK 9. PROGRESS REPORTS**

The PLPs shall submit Progress Reports in accordance with the schedule set out in the Agreed Order. Progress Reports shall be submitted electronically as an independent document to Ecology until satisfaction of the AO in accordance with Section IX of the AO. Progress Reports shall be submitted to the Ecology project coordinator by the 15<sup>th</sup> of the month following the reporting period. If this day is a weekend or holiday, deliverables will be submitted to Ecology on the next business day. At a minimum, Progress Reports shall contain the following information regarding the preceding reporting period:

- A description of the actions which have been taken to comply with the AO.
- Summaries of sampling and testing reports and other data reports received by the PLPs
- Summaries of deviations from approved Work Plans
- Summaries of contacts with representatives of the local community, public interest groups, press, and federal, state, or tribal governments relevant to the implementation of the AO.
- Summaries of problems or anticipated problems in meeting the schedule or objectives set forth in the SOW and Work Plan
- Summaries of solutions developed and implemented or planned to address any actual or anticipated problems or delays
- Changes in key personnel
- A description of work planned for the next reporting period.

Progress reports will be submitted as separate documents or as an attachment to email.

## **EXHIBIT C – SCHEDULE OF DELIVERABLES**

### **Whitehead Tyee Site**

The schedule for notifications to Ecology or submission of major deliverables to Ecology for this Schedule of Deliverables is described below. If the date for submission of any item or notification required by this Schedule of Deliverables occurs on a weekend, state or federal holiday, the date for submission of that item or notification is extended to the next business day following the weekend or holiday. Where a deliverable due date is triggered by Ecology notification, comments or approval, the starting date for the period shown is the date the parties listed in the AO received such notification, comments or approval by certified mail, return receipt requested, unless otherwise noted below. Where triggered by Ecology receipt of a deliverable, the starting date for the period shown is the date Ecology receives the deliverable by certified mail, return receipt requested, or the date of Ecology signature on a hand-delivery form.

Table 1 - Schedule for Submission of Major Deliverables

**Table 1**

**Schedule for Submission of Major Deliverables**



	<i>Deliverable</i>	<i>Due Date<sup>a</sup></i>
1.	Data Summary Report	7 calendar days after the AO <sup>b</sup> effective date
2.	Agency Review Interim Action Work Plan	30 calendar days after Ecology's written request
3.	Public Review Interim Action Work Plan and State Environmental Policy Act Checklist for the Interim Action Work Plan <sup>c</sup>	30 calendar days after receipt of Ecology comments on the Agency Review Interim Action Work Plan
4.	Implement Interim Action Work Plan	No Later than July 1, 2017
5.	Agency Review Interim Action Report	90 calendar days after the Interim Action construction is complete or by January 1, 2018 (whichever date is earliest)
6.	Agency Review Remedial Investigation Work Plan	120 calendar days after the Construction Complete on the Interim Action or by February 1, 2018 (whichever date is earliest)
7.	Final Interim Action Report	30 calendar days after receipt of Ecology comments on the Agency Review Interim Action Report
8.	Draft Final Remedial Investigation Work Plan	30 calendar days after receipt of Ecology comments on the Agency Review Remedial Investigation Work Plan
9.	Implement Remedial Investigation Work Plan	30 calendar days after Ecology's written approval of the Final Remedial Investigation Work Plan
10.	Agency Review Remedial Investigation Report and Agency Review Feasibility Study	120 calendar days following receipt of remedial investigation validated data
11.	Public Review Remedial Investigation Report and Public Review Feasibility Study	30 calendar days after receipt of Ecology comments on the Agency Review Remedial Investigation Report and Agency Review Feasibility Study

12.	Agency Review preliminary Draft Cleanup Action Plan	90 days following Ecology's approval of the Public Review Remedial Investigation Report and Public Review Feasibility Study
13.	Public Review Draft Cleanup Action Plan	Ecology document, following Ecology approval of the Agency Review preliminary Draft Cleanup Action Plan

<sup>a</sup> Due dates shown are for initial draft and final deliverables. This schedule assumes only a single revised document will be submitted following receipt of comments from Ecology. Documents become final only upon approval by Ecology.

<sup>b</sup> AO (Agreed Order) is effective upon signature by both Ecology and PLPs.

<sup>c</sup> These public comment periods can be combined.