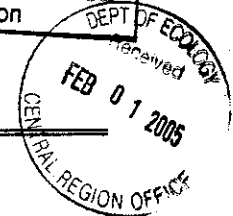
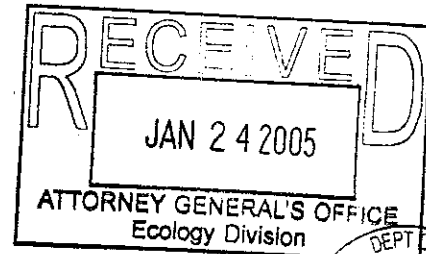




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Benton County

Filed for Recording at the Request of  
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McElroy Law Firm, PLLC  
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601 Union Street, Suite 3700  
Seattle, WA 98101



**DOCUMENT TITLE:** RESTRICTIVE COVENANT

**GRANTOR:** DAN ALEXANDER and HARRIET ALEXANDER,  
husband and wife

**GRANTEE:** State of Washington

**LEGAL DESCRIPTION** Lot 2 of Short Plat No. 2011, in section 30 of  
Township 9 North, Range 24 East, Benton County  
Washington.

That portion of Government Lots 1 and 2, lying  
Southwest of Sunnyside Canal and North of  
Northern Pacific Railway Company right-of-way,  
in Section 30 of Township 9 North, Range 24  
East, Benton County, Washington.

**ASSESSOR'S TAX  
PARCEL NUMBER:** 1-3094-201-2011-002; 1-3094-200-0001-004

**RESTRICTIVE COVENANT**

A remedial action occurred at the property that is the subject of this Restrictive Covenant. The remedial action conducted at the property is described in the following document: *State of Washington, Department of Ecology v. Alexander, Consent Decree*, Thurston County Superior Court 2004, and Cleanup Action Plan. These documents are on file at the Department of Ecology's Central Regional Office.

Upon completion of the remedial action, residual concentrations of Dinoseb in groundwater are below the Model Toxics Control Act Method B cleanup level for potable groundwater established under WAC 173-340-720(4). This restrictive covenant is required to ensure that potential purchasers of the property are aware of information that may be needed to comply with the minimum standards for construction and maintenance of wells, chapter 173-160 WAC.

The undersigned, Dan Alexander and Harriet Alexander, are the fee owners of real property in the county of Benton, state of Washington, which is subject to this Restrictive Covenant. The property is legally described as follows:



FOR THE PROCESSING AREA: Lot 2 of Short Plat No. 2011, in Section 30 of Township 9 North, Range 24 East, Benton County, Washington.

FOR THE SOUTH HOP FIELD: That portion of Government Lots 1 and 2, lying Southwest of Sunnyside Canal and North of Northern Pacific Railway Company right-of-way, in Section 30 of Township 9 North, Range 24 East, Benton County, Washington.

Dan Alexander and Harriet Alexander make the following declaration as to limitations, restrictions, and uses to which the property may be put and specify that such declarations shall constitute covenants to run with the land, as provided by law, and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the property.

**Section 1. Requirements for Proposed Well.** Before any person constructs a water well on the property, the person shall consult with the Department of Ecology to ensure that the well is not located within 100 feet of any sampling point where the concentration of Dinoseb in groundwater exceeds 7.0 ug/l and that the proposed well complies with all applicable requirements of chapter 173-160 WAC.

**Section 2. Expiration of Restrictive Covenant.** The owners of the property, and parties or persons claiming under them, reserve the right to record an instrument that provides that this restrictive covenant shall no longer limit the use of the property or be of any further force or effect. However, such an instrument may be recorded only if the Department of Ecology, after public notice and opportunity for comment, concurs. The Department of Ecology shall not withhold its concurrence if representative sampling of the groundwater under the property detects no concentration of Dinoseb in excess of the 7.0 ug/l.

DATED this 8<sup>th</sup> day of December, 2004.

*Dan Alexander*  
DAN ALEXANDER

*Harriet H. Alexander*  
HARRIET ALEXANDER

OCT 29 2004

STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

DAN ALEXANDER and HARRIET  
ALEXANDER, husband and wife,  
formerly dba YAKIMA CHIEF  
RANCHES,

Defendants.

NO. 04-2-02240-9

CONSENT DECREE

*Ecology Docket # 1796*

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15 **I. INTRODUCTION**

16 A. In entering into this Consent Decree (Decree), the mutual objective of the  
 17 Washington State Department of Ecology (Ecology), and Dan and Harriet Alexander (the  
 18 Alexanders) is to provide for remedial action at a facility where there has been a release or  
 19 threatened release of hazardous substances. This Decree requires the Alexanders to undertake  
 20 the following remedial action(s):

- 21 (1) Soil removal and disposal per the Cleanup Action Plan (CAP) (Exhibit
- 22 A).
- 23 (2) Groundwater monitoring per the CAP.

24 Ecology has determined that these actions are necessary to protect human health and  
 25 the environment and the Alexanders do not contest this determination.

26 B. The Complaint in this action is being filed simultaneously with this Decree. An  
 Answer has not been filed, and there has not been a trial on any issue of fact or law in this case.  
 However, the Parties wish to resolve the issues raised by Ecology's Complaint. In addition, the

1 Parties agree that settlement of these matters without litigation is reasonable and in the public  
2 interest, and that entry of this Decree is the most appropriate means of resolving these matters.

3 C. In signing this Decree, the Parties agree to its entry and agree to be bound by its  
4 terms.

5 D. By entering into this Decree, the Parties do not intend to discharge any non-  
6 settling Parties from any liability they may have with respect to matters alleged in the  
7 Complaint. This Decree shall not affect the right, if any right may exist, of any Party to seek  
8 contribution from any liable persons for sums expended under this Decree.

9 E. The Alexanders shall not challenge the authority of the Attorney General and  
10 Ecology to enforce this Decree; however, this statement is not intended to create any limit on  
11 the Alexanders' rights to seek enforcement of this Decree according to its terms.

12 F. The Court is fully advised of the reasons for entry of this Decree, and good  
13 cause having been shown:

14 Now, Therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as  
15 follows:

16 **II. JURISDICTION**

17 A. This Court has jurisdiction over the subject matter and over the Parties pursuant  
18 to Chapter 70.105D RCW, the Model Toxics Control Act (MTCA).

19 B. Authority is conferred upon the Washington State Attorney General by RCW  
20 70.105D.040(4)(a) to agree to a settlement with any potentially liable person if, after public  
21 notice and any required hearing, Ecology finds the proposed settlement would lead to a more  
22 expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that such a  
23 settlement be entered as a Consent Decree issued by a court of competent jurisdiction.

24 C. Ecology has determined that a release or threatened release of hazardous  
25 substances has occurred at the Site that is the subject of this Decree.

1 D. Ecology provided notice to the Alexanders of Ecology's determination that the  
2 Alexanders were potentially liable persons for the Site, as required by RCW 70.105D.020(16)  
3 and WAC 173-340-500. In a prior judgment, the Benton County Superior Court determined  
4 and entered findings, conclusions, orders, and a judgment declaring that the Alexanders were  
5 liable parties for the Site under MTCA. *Dan Alexander and Harriet Alexander v Washington*  
6 *State Department of Ecology*, No. 98-2-01679-2, Benton County Superior Court. The  
7 Alexanders filed an appeal of that decision. Mediation taking place in October 2003 resulted  
8 in a settlement agreement that was not an admission of liability on the part of the Alexanders  
9 and which was entered for purposes of resolving disputed claims and avoiding the costs of  
10 litigation.

11 E. The actions to be taken pursuant to this Decree are necessary to protect public  
12 health and the environment.

13 F. In order to resolve disputed claims and avoid the costs of litigation, the parties  
14 have by separate agreement stipulated to the dismissal of the appeals, and the Alexanders have  
15 agreed to undertake the actions specified in this Decree and consent to the entry of this Decree  
16 under MTCA.

### 17 III. PARTIES BOUND

18 This Decree shall apply to and be binding upon the Parties to this Decree, their  
19 successors and assigns. The undersigned representative of each party hereby certifies that he  
20 or she is fully authorized to enter into this Decree and to execute and legally bind such party to  
21 comply with the Decree. The Alexanders agree to undertake all actions required by the terms  
22 and conditions of this Decree. No change in ownership or corporate status shall alter the  
23 Alexanders' responsibility under this Decree. The Alexanders shall provide a copy of this  
24 Decree to all agents, contractors, and subcontractors retained to perform work required by this  
25 Decree, and shall ensure that all work undertaken by such agents, contractors, and  
26 subcontractors complies with this Decree.

1 **IV. DEFINITIONS**

2 Except as specified herein, all definitions in RCW 70.105D.020 and WAC 173-340-200  
3 apply to the terms in this Decree.

4 A. Site: The Alexander Farms Facility (Site) located in Benton County,  
5 Washington, includes all areas where dinoseb contaminated soil and groundwater originating at  
6 the West King Tull Road site has come to be located, including but not limited to, Benton  
7 County Parcel No. 1-3094-201-2011-001 located at 179301 West King Tull Road (the former  
8 Alexander/Tobin residence), Benton County Parcel No. 1-3094-201-2011-002 located at  
9 179101 West King Tull Road (the former Yakima Chief Ranches Hop processing facility), the  
10 parcel located between the SVID main canal and the Burlington Northern Santa Fe railroad  
11 tracks - Benton County Parcel No. 1-3094-200-0001-004 (the hop yard owned by the  
12 Alexanders), and Benton County Parcel No. 1-3194-200-0010-000 located at 4902 North  
13 Hicks Road (the Etzel residence).

14 Notwithstanding this definition of the site, the Cleanup Action Plan that this Consent  
15 Decree provides for will not require action at Benton County Parcel No. 1-3194-200-0010-000  
16 located at 4902 North Hicks Road (the Etzel residence). Ecology has determined, based on  
17 available information, that no further action is required at the North Hicks Road parcel.

18 B. Parties: Refers to the Washington State Department of Ecology and to Dan  
19 Alexander and to Harriet Alexander.

20 C. The Alexanders: Refers to Dan Alexander and to Harriet Alexander.

21 D. Consent Decree or Decree: Refers to this Consent Decree and each of the  
22 exhibits to the Decree. All exhibits are integral and enforceable parts of this Consent Decree.  
23 The terms "Consent Decree" or "Decree" shall include all exhibits to the Consent Decree.

24 **V. STATEMENT OF FACTS**

25 This Consent Decree is based on the following facts.  
26

1 (1) From 1977 until 1991, the Alexanders owned and operated a hop ranch, known  
2 as the Grandview South Ranch, near Grandview, Washington. During this time, the  
3 Alexanders resided in a ranch house at the Grandview South Ranch, located at the present  
4 address of 179301 West King Tull Road. Also during this time, hop processing, ranch  
5 management and ranch support activities for the Grandview South Ranch took place at the  
6 farm's operational headquarters, located at the present address of 179101 West King Tull  
7 Road. These activities included the storage, mixing, handling and cleaning of pesticides and  
8 herbicides.

9 (2) Hops were grown in adjacent fields surrounding 179101 and 179301 West King  
10 Tull Road. No hops were grown at 179101 or 179301 West Tull Road.

11 (3) From 1977 until 1985, the herbicide dinoseb was used by the Alexanders, and  
12 by the Alexanders' employees and agents, to control downy mildew on hop plants grown at the  
13 Grandview South Ranch. Dinoseb products for the Grandview South Ranch, purchased from  
14 local farm supply stores, generally came in 30-gallon barrels. Dinoseb was mixed with water  
15 and diesel, and loaded into tractor-pulled spray rigs at the part of the site known as 179101  
16 West King Tull Road, which was considered the farm operational headquarters for such  
17 purposes.

18 (4) In 1979, a concrete pad with a center drain leading to a dry well was constructed  
19 at the farm operational headquarters area, with an above ground water tank; thereafter, the  
20 mixing and loading of dinoseb occurred on the concrete pad. After dinoseb was mixed and  
21 loaded, the spray rig was pulled to the adjacent hop fields by tractor, and dinoseb was sprayed  
22 on the hop plants through spray nozzles on the rig operating under hydraulic pressure.

23 (5) Periodically, the spray rigs required repair and maintenance, which took place  
24 in or near a maintenance shop located at the farm operational headquarters area.  
25  
26



1 (6) As a result of historic dinoseb mixing and loading, and the cleaning and  
2 maintenance of dinoseb application equipment, dinoseb was released into the environment at  
3 the 179101 and 179301 West King Tull Road properties.

4 (7) On April 22, 1998, Thomas L. Mackie, an Ecology employee, collected water  
5 samples from two domestic wells serving the ranch house and the former farm operational  
6 headquarters area, and a soil sample from the former farm operational headquarters area. On  
7 April 29, 1998, Ecology's Manchester Laboratory reported to Mr. Mackie that: (1) duplicate  
8 analyses of the soil sample showed dinoseb at concentrations of 345 and 425 mg/kg (parts per  
9 million), respectively; (2) the water sample from one well contained dinoseb at a concentration  
10 of 274 ug/l (parts per billion); and (3) the water sample from the second well did not contain  
11 dinoseb. The final written report, dated May 7, 1998, reported dinoseb in the soil sample at a  
12 concentration of 345,300 ug/kg (parts per billion) and 425,500 ug/kg respectively, and reported  
13 a concentration of 290 ug/l in the first well water sample.

14 (8) The source of the dinoseb found in the water and soil samples taken by Mr.  
15 Mackie on April 22, 1998, was the dinoseb released into the environment at the farm  
16 operational headquarters area of the Grandview South Ranch as a result of historic dinoseb  
17 mixing and loading, and the cleaning and maintenance of dinoseb application equipment.

18 (9) On April 23, 1998, Mr. Mackie collected a water sample from a domestic well  
19 serving the Etzel residence at 4902 North Hicks Road, approximately 1¼ mile southeast of the  
20 plaintiffs' former operational farm headquarters area on West King Tull Road. This sample  
21 was sent to the Washington State University Food and Environmental Quality Laboratory in  
22 Prosser, Washington. On April 25, 1998, the Food and Environmental Quality Laboratory  
23 provided Mr. Mackie with a preliminary report that the water sample contained dinoseb at a  
24 concentration of 100 ug/l.

25 (10) By letter dated May 6, 1998, the Department of Ecology provided to the  
26 Alexanders a notice that it considered them to be "potentially liable persons" for remedial

1 action costs resulting from the release and threatened release of dinoseb at the plaintiffs'  
2 former residence, the farm operational headquarters area, the Etzel site, and any area where  
3 dinoseb released at the plaintiffs' property has come to be located. On May 7, 1998, the  
4 Department of Ecology issued Emergency Enforcement Order No. 98TC-C138 to the  
5 plaintiffs, requiring the Alexanders to undertake investigative and remedial actions with  
6 respect to the release of dinoseb to soil and ground water at plaintiffs' property located at  
7 179101 and 179301 West King Tull Road and at the property at 4902 North Hicks Road.

8 (11) By letter dated August 25, 1998, the Department of Ecology provided to the  
9 Alexanders final notice that it considered them to be "potentially liable persons" for remedial  
10 action costs resulting from the release of dinoseb at the farm operational headquarters area.

11 (12) On September 25, 1998, the Alexanders filed a lawsuit titled *Dan Alexander*  
12 *and Harriet Alexander v. Washington State Department of Ecology*, No. 98-2-01679-2, Benton  
13 County Superior Court. This lawsuit sought to recover cleanup costs incurred by the  
14 Alexanders (who were plaintiffs in that suit) on the basis that the Alexanders claimed they  
15 were not liable persons under MTCA RCW 70.105D.040, and claiming that the costs they had  
16 incurred up to that point had been reasonably incurred consistent with Ecology's order. The  
17 Alexanders also alleged that the department acted in an arbitrary and capricious manner with  
18 regard to certain investigative and remedial decisions and that they were entitled to a remedy  
19 for incurring costs as a result of those allegedly arbitrary and capricious decisions. That lawsuit  
20 was resolved after trial to the Honorable Craig J. Matheson with Findings and Conclusions  
21 determining, among other things, that the Alexanders were liable parties under MTCA.  
22 Although that judgment was appealed by the Alexanders, their appeal was dismissed along  
23 with all other litigation by the Alexanders making claims against Ecology and the State in  
24 connection with the Site and remediation of the Site.

25 (13) Dinoseb is a hazardous substance for purposes of MTCA and dinoseb that was  
26 released to the environment is a proper subject for a CAP under MTCA.

1 (14) The Benton County Superior Court in Cause Number 98-2-01679-2 concluded  
2 that the Alexanders are liable parties for the releases of dinoseb. The Alexanders in this  
3 Consent Decree agree to take on the following remedial actions and remedies at the Site in  
4 accordance with the provisions of MTCA.

5 **VI. WORK TO BE PERFORMED**

6 This Decree contains a program designed to protect human health and the environment  
7 from the known release, or threatened release, of hazardous substances or contaminants at, on,  
8 or from the Site. Based on the foregoing Facts, the Alexanders shall undertake the remedial  
9 actions described in the Final Cleanup Action Plan, Exhibit A. These actions shall be  
10 conducted in accordance with Chapter 173-340 of the Washington Administrative Code  
11 (WAC) and the Final Cleanup Action Plan (Exhibit A), unless otherwise specifically provided  
12 for herein. These actions shall be completed by the dates to be specified in the Schedule for  
13 Remedial Action under the Final Cleanup Action Plan. The Schedule for Remedial Action  
14 under the Final CAP is an integral and enforceable part of this Decree. The remedial action  
15 required in the Final CAP includes, but is not limited to, the following actions:

16 (1) The Alexanders shall submit, for Ecology approval, an Engineering Design  
17 Report written in accordance with WAC 173-340-400(4)(a) and Construction Plans and  
18 Specifications written in accordance with WAC 173-340-400(4)(b).

19 (2) The Alexanders shall excavate all soils within the facility boundaries  
20 contaminated with dinoseb exceeding the MTCA soil cleanup level of 1.6 milligram (mg) of  
21 dinoseb per kilogram (kg) of soil.

22 (3) Waste soils shall be disposed of off-site in accordance with Washington State  
23 Dangerous Waste Regulations (WAC 173-303) as applicable.

24 (4) The Alexanders shall monitor the groundwater contaminated with dinoseb.

25 (5) The Alexanders shall submit sampling data in accordance with Ecology's  
26 Environmental Information Management (EIM) guidelines. The Environmental Information

1 Management System (EIM) guidelines can be viewed on line at  
2 <http://www.ecy.wa.gov/services/as/iip/eim/index.htm>.

3 (6) The Alexanders shall dispose of all investigation derived waste at an off-site  
4 location in accordance with Washington State Dangerous Waste Regulations (WAC 173-303).

5 (7) The Alexanders shall submit an "as built" report that documents all aspects of  
6 the cleanup and an opinion of the engineer as to whether the cleanup was constructed in  
7 compliance with the Engineering and Design Report and the Construction Plans and  
8 Specifications.

9 (8) All work shall be conducted under the oversight of a professional engineer  
10 licensed in the state of Washington.

11 (9) The Alexanders agree not to perform any remedial actions outside the scope of  
12 this Decree unless the Parties agree to modify the Scope of Work in the CAP to cover these  
13 actions.

14 To the extent there is any conflict between this summary of the work and the details in  
15 the Final CAP, the provisions of the Final CAP shall control the obligations of the Alexanders  
16 and Ecology.

## 17 VII. DESIGNATED PROJECT COORDINATORS

18 The project coordinator for Ecology is:

19 Name: Thomas L. Mackie, P.G.  
20 Address: Department of Ecology  
21 15 West Yakima Avenue, Suite 200  
22 Yakima, Washington 98902  
Phone (509) 454-7834

23 The project coordinator for Alexanders is:

24 Name: Ron Hicks  
25 Address: Riverside Consulting  
6722 W. Kennewick Ave., Suite C  
26 Kennewick, Washington 99336  
Phone (509) 783-2077

1 E-mail: ron@riversideconsultinginc.com

2 Each project coordinator shall be responsible for overseeing the implementation of this  
3 Decree. The Ecology project coordinator will be Ecology's designated representative for the  
4 Site. To the maximum extent possible, communications between Ecology and the Alexanders  
5 and all documents, including reports, approvals, and other correspondence concerning the  
6 activities performed pursuant to the terms and conditions of this Decree, shall be directed  
7 through the project coordinators. The project coordinators may designate, in writing, working  
8 level staff contacts for all or portions of the implementation of the remedial work required by  
9 this Decree. The project coordinators may agree to minor changes to the work to be performed  
10 without formal amendments to this Decree. Minor changes will be documented in writing by  
11 Ecology. Substantial changes shall require amendment of this Consent Decree.

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

#### 14 VIII. PERFORMANCE

15 All work performed pursuant to this Decree shall be under the direction and  
16 supervision, as necessary, of a licensed professional engineer or licensed professional  
17 hydrogeologist, with experience and expertise in hazardous waste site investigation and  
18 cleanup. Any construction work must be under the supervision of a professional engineer.  
19 The Alexanders shall notify Ecology in writing of the identity of such engineer(s) or  
20 hydrogeologist(s), or others, and of any contractors and subcontractors to be used in carrying  
21 out the terms of this Decree, in advance of their involvement at the Site.

#### 22 IX. ACCESS

23 Ecology or any Ecology authorized representative shall have full authority to enter and  
24 freely move about all property at the Site that the Alexanders either own, control, or have  
25 access rights to at all reasonable times, and with reasonable frequency, for the purposes of,  
26 *inter alia*: inspecting records, operation logs, and contracts related to the work being performed

1 pursuant to this Decree; reviewing the Alexanders' progress in carrying out the terms of this  
2 Decree; conducting such tests or collecting such samples as Ecology may deem necessary;  
3 using a camera, sound recording, or other documentary type equipment to record work done  
4 pursuant to this Decree; and verifying the data submitted to Ecology by the Alexanders. The  
5 Alexanders shall make all reasonable efforts to secure access rights for those properties within  
6 the Site not owned or controlled by the Alexanders where remedial activities or investigations  
7 will be performed pursuant to this Decree. Ecology or any Ecology authorized representative  
8 shall give reasonable notice before entering any Site property owned or controlled by the  
9 Alexanders unless an emergency prevents such notice. All Parties who access the Site  
10 pursuant to this paragraph shall comply with the approved Health and Safety Plans.

11 **X. SAMPLING, DATA REPORTING, AND AVAILABILITY**

12 With respect to the implementation of this Decree, the Alexanders shall make the  
13 results of all sampling, laboratory reports, and/or test results generated by them or on their  
14 behalf available to Ecology and shall submit these results in accordance with Section XI of this  
15 Decree.

16 Ground water sampling data shall be submitted to Ecology according to the  
17 requirements of Exhibit B and WAC 173-340-840(5). These submittals shall be provided to  
18 Ecology within thirty (30) days after their receipt by the Alexanders.

19 If requested by Ecology, the Alexanders shall allow split or duplicate samples to be  
20 taken by Ecology and/or its authorized representative of any samples collected by the  
21 Alexanders pursuant to the implementation of this Decree. The Alexanders shall notify  
22 Ecology seven (7) days in advance of any sample collection or work activity at the Site.  
23 Ecology shall, upon request, allow split or duplicate samples to be taken by the Alexanders or  
24 their authorized representative of any samples collected by Ecology pursuant to the  
25 implementation of this Decree provided it does not interfere with Ecology's sampling. Without  
26

1 limitation on Ecology's rights under Section IX, Ecology shall notify the Alexanders prior to  
2 any sample collection activity unless an emergency prevents such notice.

### 3 XI. PROGRESS REPORTS

4 During the time the Alexanders are conducting excavation and disposal of  
5 contaminated soils, the Alexanders shall submit to Ecology written monthly Progress Reports  
6 that describe the actions taken during the previous month to implement the requirements of this  
7 Decree. The Progress Reports shall include the following:

8 A. A list of on-site activities that have taken place during the month;

9 B. Detailed description of any deviations from required tasks not otherwise  
10 documented in project plans or amendment requests;

11 C. Description of all deviations from the Schedule (Exhibit C) during the current  
12 month and any planned deviations in the upcoming month;

13 D. For any deviations in schedule, a plan for recovering lost time and maintaining  
14 compliance with the schedule;

15 E. All raw data (including laboratory analyses) received by the Alexanders during  
16 the past month and an identification of the source of the sample; and

17 F. A list of deliverables for the upcoming month if different from the Schedule.

18 All Progress Reports shall be submitted by the tenth (10) day of the month in which  
19 they are due after the effective date of this Decree. Unless otherwise specified, Progress  
20 Reports and any other documents submitted pursuant to this Decree shall be sent by certified  
21 mail, return receipt requested, to Ecology's project coordinator.

22 After the time of excavation and disposal of soils but while the Alexanders are  
23 conducting monitoring of natural attenuation of groundwater, the Alexanders shall submit  
24 written Progress Reports to Ecology on a quarterly basis to describe items A to D related to the  
25 groundwater remediation during the prior quarter and raw data (element E above) shall be  
26 submitted in accordance with part X of this Decree.

1 **XII. RETENTION OF RECORDS**

2 During the pendency of this Decree and for ten (10) years from the date this Decree is  
3 no longer in effect as provided in Section XXVIII, the Alexanders shall preserve all records,  
4 reports, documents, and underlying data in their possession relevant to the implementation of  
5 this Decree and shall insert a similar record retention requirement into all contracts with project  
6 contractors and subcontractors. Upon request of Ecology, the Alexanders shall make all non-  
7 archived records available to Ecology and allow access for review. All archived records shall  
8 be made available to Ecology within a reasonable period of time.

9 **XIII. TRANSFER OF INTEREST IN PROPERTY**

10 During the effective period of this Decree, no voluntary conveyance or relinquishment  
11 of title, easement, leasehold, or other interest in any portion of the Site shall be consummated  
12 by the Alexanders without provision for continued operation and maintenance of any  
13 containment system, treatment system, and/or monitoring system installed or implemented  
14 pursuant to this Decree.

15 Prior to transfer of any interest in all or any portion of the Site by the Alexanders, or by  
16 either Dan Alexander or Harriet Alexander individually, and during the effective period of this  
17 Decree, the Alexanders shall serve a copy of this Decree upon any prospective purchaser,  
18 lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days  
19 prior to any transfer, the Alexanders shall notify Ecology of said transfer. Upon transfer of any  
20 interest, the Alexanders shall restrict uses and activities to those consistent with this Consent  
21 Decree and notify all transferees of the restrictions on the use of the property.

22 **XIV. RESOLUTION OF DISPUTES**

23 A. In the event a dispute arises as to an approval, disapproval, proposed change, or  
24 other decision or action by Ecology's project coordinator, the Parties shall utilize the dispute  
25 resolution procedure set forth below.  
26



1 (1) Upon receipt of the Ecology project coordinator's decision, the  
2 Alexanders have fourteen (14) days within which to notify Ecology's project coordinator of its  
3 objection to the decision.

4 (2) The Parties' project coordinators shall then confer in an effort to resolve  
5 the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days,  
6 Ecology's project coordinator shall issue a written decision.

7 (3) The Alexanders may then request Ecology management review of the  
8 decision. This request shall be submitted in writing to the Toxics Cleanup Program Manager  
9 within seven (7) days of receipt of Ecology's project coordinator's decision.

10 (4) Ecology's Program Manager shall conduct a review of the dispute and  
11 shall issue a written decision regarding the dispute within thirty (30) days of the Alexanders'  
12 request for review. The Program Manager's decision shall be Ecology's final decision on the  
13 disputed matter.

14 B. If Ecology's final written decision is unacceptable to the Alexanders, the  
15 Alexanders have the right to submit the dispute to the Court for resolution. The Parties agree  
16 that one judge should retain jurisdiction over this case and shall, as necessary, resolve any  
17 dispute arising under this Decree. In the event the Alexanders present an issue to the Court for  
18 review, the Court shall review the action or decision of Ecology related to any investigative  
19 and remedial decision under this Decree on the basis of whether such action or decision was  
20 reasonable and render a decision based on such standard of review. The Alexanders agree that  
21 this is the applicable standard of review for such actions under RCW 70.105D.060.

22 C. The Parties agree to only utilize the dispute resolution process in good faith and  
23 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.  
24 Where either Party utilizes the dispute resolution process in bad faith or for purposes of delay,  
25 the other Party reserves the right to seek sanctions from the Court if the action is in contempt  
26 of this Decree.

1 Implementation of these dispute resolution procedures shall not provide a basis for  
2 delay of any activities required in this Decree, unless Ecology agrees in writing to a schedule  
3 extension or the Court so orders.

#### 4 **XV. AMENDMENT OF CONSENT DECREE**

5 This Decree may only be amended by a written stipulation among the Parties that is  
6 entered by the Court, or by order of the Court. Such amendment shall become effective upon  
7 entry by the Court. Agreement to amend the Decree shall not be unreasonably withheld by any  
8 Party.

9 The Alexanders shall submit any request for an amendment to Ecology for approval.  
10 Ecology shall indicate its approval or disapproval in a timely manner after the request for  
11 amendment is received. If the amendment to the Decree represents a substantial change,  
12 Ecology will provide public notice and opportunity for comment. Reasons for the disapproval  
13 of a proposed amendment to the Decree shall be stated in writing. If Ecology does not agree to  
14 any proposed amendment, the disagreement may be addressed through the dispute resolution  
15 procedures described in Section XIV of this Decree.

#### 16 **XVI. EXTENSION OF SCHEDULE**

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

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

25 (1) Delays in the issuance of a necessary permit which was applied for in a  
26 timely manner; or

1 (2) Delays caused by action(s) or inaction(s) by Ecology; or

2 (3) Other circumstances deemed exceptional or extraordinary by Ecology;

3 or

4 (4) Endangerment as described in Section XVII.

5 A requested extension shall not be effective until approved by Ecology (unless  
6 otherwise approved by the Court after a dispute between the parties and compliance with  
7 dispute resolution processes). Ecology shall act upon any written request for extension in 10  
8 business days of receipt of a written request, or it shall within that time indicate how it will  
9 respond in a reasonable time period. Ecology shall give the Alexanders written notification in  
10 a timely fashion of any extensions granted pursuant to this Decree. Unless the extension is a  
11 substantial change, it shall not be necessary to amend this Decree pursuant to Section XV when  
12 a schedule extension is granted.

13 B. The burden shall be on the Alexanders to demonstrate to the satisfaction of  
14 Ecology that the request for such extension has been submitted in a timely fashion and that  
15 good cause exists for granting the extension. Good cause includes, but is not limited to:

16 (1) Circumstances beyond the reasonable control and despite the due  
17 diligence of Alexanders including delays caused by unrelated third parties or Ecology, such as  
18 (but not limited to) delays by Ecology in reviewing, approving, or modifying documents  
19 submitted by Alexanders; or

20 (2) Acts of God, including fire, flood, blizzard, extreme temperatures,  
21 storm, or other unavoidable casualty; or

22 (3) Endangerment as described in Section XVII.

23 However, neither increased costs of performance of the terms of the Decree nor  
24 changed economic circumstances shall be considered circumstances beyond the reasonable  
25 control of the Alexanders.

1 **XVII. ENDANGERMENT**

2 If, for any reason, Ecology determines that any activity being performed at the Site is  
3 creating or has the potential to create a danger to human health or the environment, Ecology  
4 may direct the Alexanders to cease such activities for such period of time as it deems necessary  
5 to abate the danger. The Alexanders shall immediately comply with such direction.

6 If, for any reason, the Alexanders determine that any activity being performed at the  
7 Site is creating or has the potential to create a danger to human health or the environment, the  
8 Alexanders may cease such activities. The Alexanders shall provide notice to Ecology's  
9 project coordinator as soon as possible. Such notice may be given orally, but shall be reduced  
10 to writing as soon as practicable. Upon Ecology's direction the Alexanders shall provide  
11 Ecology with documentation of the basis for the determination or cessation of such activities.  
12 If Ecology disagrees with the Alexanders' cessation of activities, it may direct the Alexanders  
13 to resume such activities.

14 If Ecology concurs with or orders a work stoppage pursuant to this section, the  
15 Alexanders' obligations with respect to the ceased activities shall be suspended until Ecology  
16 determines the danger is abated, and the time for performance of such activities, as well as the  
17 time for any other work dependent upon such activities, shall be extended, in accordance with  
18 Section XVI, for such period of time as Ecology determines is reasonable under the  
19 circumstances.

20 **XVIII. COVENANT NOT TO SUE**

21 A. Covenant Not to Sue: In consideration of the Alexanders' compliance with the  
22 terms and conditions of this Decree, Ecology covenants not to institute legal or administrative  
23 actions against the Alexanders regarding the release or threatened release of hazardous  
24 substances covered by this Decree.

25 This Decree covers only the Site specifically identified in Section IV(A) of this decree  
26 and those hazardous substances that Ecology knows are located at the Site as of the date of

1 entry of this Decree. This Decree does not cover any other hazardous substance or area.  
2 Ecology retains all of its authority relative to any substance or area not covered by this Decree.

3 This Covenant Not to Sue shall have no applicability whatsoever to:

- 4 (1) Criminal liability;  
5 (2) Liability for damages to natural resources;  
6 (3) Any Ecology action, including cost recovery, against potentially liable  
7 persons not a party to this Decree.

8 If factors not known to Ecology at the time of entry of the settlement agreement are  
9 discovered and present a previously unknown threat to human health or the environment, the  
10 covenant not to sue shall have no effect to bar Ecology from exercising any and all authority  
11 granted by law to address that newly discovered or previously unknown threat to human health  
12 or the environment.

13 B. Reopeners: Ecology specifically reserves the right to institute legal action or  
14 administrative action against the Alexanders, including but not limited to seeking judicial  
15 enforcement of this decree, to require the Alexanders to perform additional remedial actions at  
16 the Site, and to pursue cost recovery and remedies available to Ecology under RCW  
17 70 105D.050(1) under the following circumstances:

18 (1) Upon Ecology's reasonable determination that Defendants have failed to  
19 meet the requirements of this Decree, including, but not limited to, failure of the remedial  
20 action to meet the cleanup standards identified in the CAP or make any payments required by  
21 that CAP and this Decree;

22 (2) Upon Ecology's reasonable determination that action beyond the terms  
23 of this Decree is necessary to abate an imminent and substantial endangerment to human health  
24 or the environment;

25 (3) If, Ecology determines, based on new information regarding factors  
26 previously unknown to Ecology, including the nature or quantity of hazardous substances at

1 the Site, that further remedial action is necessary at the Site to protect human health or the  
2 environment; or.

3 (4) Upon Ecology's reasonable determination that additional remedial  
4 actions are necessary to achieve cleanup standards within the reasonable restoration time frame  
5 set forth in the CAP.

6 C. Except in the case of an emergency, prior to instituting legal or administrative  
7 action against the Alexanders pursuant to paragraph B above, Ecology shall provide the  
8 Alexanders with thirty (30) calendar days notice of such action.

### 9 XIX. CONTRIBUTION PROTECTION

10 Contribution Protection: With regard to claims for contribution against the Alexanders,  
11 the Parties agree that the Alexanders are entitled to protection against claims for contribution  
12 for matters addressed in this Decree as provided by RCW 70.105D.040(4)(d).

### 13 XX. LAND USE RESTRICTIONS

14 Notwithstanding compliance with this Decree and the CAP, residual concentrations of  
15 hazardous substances at the Site may exceed residential cleanup levels following completion of  
16 the remedial action. The Alexanders therefore agree they shall record a Restrictive Covenant  
17 (Exhibit E) with the office of the Benton County Auditor within ten (10) days of the entry of  
18 this Consent Decree by the court. The Restrictive Covenant shall restrict future uses of the  
19 Site. The Alexanders shall provide Ecology with a copy of the recorded Restrictive Covenant  
20 within thirty (30) days of the recording date.

### 21 XXI. FINANCIAL ASSURANCES

22 Pursuant to WAC 173-340-440(11), the Alexanders shall provide the following  
23 financial assurance for compliance with this Decree. The purpose of these provisions is to  
24 ensure that the Alexanders maintain sufficient resources to cover qualified costs needed for  
25 implementation of this Decree and the Cleanup Action Plan at the Site; therefore, the  
26 Alexanders shall be considered to be beneficiaries of the trust fund established pursuant to this

1 section. The Alexanders shall choose the trustee who will control the frozen securities account  
2 and cash trust fund, described below, and Ecology shall have the right to approve the selection  
3 of the trustee but Ecology's approval shall not be unreasonably withheld.

4 (1) **Frozen securities account.** Within thirty (30) days after entry of this Decree,  
5 the Alexanders shall place the municipal bonds identified in Exhibit F in a frozen securities  
6 account. For purposes of this consent decree, the Parties agree that the principal amount of  
7 these municipal bonds, as of the date of entry of this Decree, is no less than four hundred  
8 thousand dollars (\$400,000.00). As provided below, the account shall be subject to control by  
9 a trustee, and the trustee shall have the power to (a) sell bonds from the account and deposit the  
10 proceeds there from in the cash trust account, and (b) release bonds from the account and  
11 return to the Alexanders' control. In addition, the trustee shall distribute to the Alexanders any  
12 and all earnings from the bonds as those earnings arise. The Frozen Securities Account shall  
13 be irrevocable except that it may be distributed and terminated according to the terms of this  
14 decree.

15 (2) **Cash trust fund.** Within thirty (30) days after entry of this Decree, the  
16 Alexanders shall deposit one hundred thousand dollars (\$100,000.00) in a cash trust fund,  
17 establishing themselves as beneficiaries of the trust, with instructions authorizing the trustee to  
18 disburse funds from the account to pay qualified costs. From time to time thereafter, the  
19 Alexanders may, in their discretion, deposit additional sums in the cash trust fund. If the cash  
20 trust fund does not have sufficient cash to pay a qualified cost, the trustee shall so notify the  
21 Alexanders. If the Alexanders do not deposit additional sums in the cash trust fund within a  
22 time sufficient for the trustee to make timely payment of a qualified cost, the trustee shall sell  
23 such bonds from the frozen securities account as may be necessary to generate funds adequate  
24 to pay the qualified cost(s), and deposit the proceeds from such sale into the cash trust fund.  
25 The cash trust fund shall be irrevocable, except that it shall be distributed and terminated  
26 according to the terms of this decree.

1 Subject to the limitations on expenditures from the cash trust fund established under the  
2 schedule for remedial actions expenses in paragraph (4) below, the trustee shall be authorized  
3 to disburse money from the trust fund after reviewing each invoice submitted for payment  
4 where the Alexanders or their agents confirm or demonstrate that the expenditure is a qualified  
5 cost, as defined below. The Trustee may also disburse or release control of money or  
6 securities according to the release and termination provisions of paragraph (4) below.

7 **(3) Definition of "Qualified Costs"** For purposes of this consent decree, the term  
8 "qualified costs" means (a) all costs actually, necessarily and appropriately incurred by the  
9 Alexanders, and their employees, agents, and contractors, in performing the requirements of  
10 the CAP and this Decree, and (b) all costs actually, necessarily and appropriately incurred by  
11 Ecology as oversight costs consistent with the Model Toxics Control Act. A reasonable fee for  
12 the trustee may also be paid from the trust fund.

13 **(4) Partial Release and Termination of Trusts and Frozen Securities Account.**  
14 When Ecology determines that the Alexanders have completed the remedial action described in  
15 paragraph 5.1 of the cleanup action plan (the "soil removal" part of the remedial action),  
16 Ecology shall inform the Alexanders in writing. Upon receipt of that written determination, a  
17 portion of the frozen securities account and cash trust fund as chosen by the Alexanders may  
18 be released or paid to the Alexanders so long as there remains money or securities in excess of  
19 \$100,000 at the time of this partial release. The Trust agreement shall provide that the Trustee  
20 shall inform Ecology when it has released any cash or frozen securities under this provision. If  
21 the combined value the frozen securities account and cash trust fund has already fallen below  
22 \$100,000 due to prior payments of qualified costs, then the Trustee shall not release any money  
23 to the Alexanders under this provision.

24 When Ecology determines in writing that no further action is required by this Decree  
25 and provides that determination to the Alexanders or the trustee, then the Trust shall provide  
26 that the trustee shall terminate the trust and distribute any remaining money in the trust fund to



1 the Alexanders and release any remaining securities in the frozen securities account to the  
2 Alexanders' control.

3 At any time, Ecology may also exercise discretion to waive in writing all or part of the  
4 financial assurances provided by this section, which may authorize distribution of the cash trust  
5 fund to the Alexanders or release of the frozen securities account to the Alexanders' control, if  
6 Ecology determines that all or part of the financial assurance is not required for remaining  
7 compliance with this Decree. A determination under this paragraph shall not be unreasonably  
8 delayed or withheld.

9 (5) **Manner of Holding the Fund.** The cash trust fund created by this section of  
10 this Decree shall be held by a trustee in an interest-bearing trust fund in a commercial  
11 institution qualified to hold such funds. The commercial institution shall provide monthly  
12 statements to the trustee and the Alexanders. The trust account number and accountings of that  
13 trust account shall be available to Ecology upon reasonable request made to the Alexanders.  
14 The trustee and commercial institution may be selected by the Alexanders, subject to approval  
15 by Ecology which shall be withheld only if the trustee is not qualified under Washington law.  
16 The fees of the trustee shall be the responsibility of the Alexanders but may be paid out of the  
17 fund. The rate and total amount of the fees shall be determined by the trust agreement, which  
18 shall incorporate these terms of the Decree regarding financial assurance. Interest that accrues  
19 on money held in the trust fund shall be retained in the fund and available for disbursement by  
20 the trustee in the same manner as cash deposited by the Alexanders.

## 21 **XXII. INDEMNIFICATION**

22 The Alexanders agree to indemnify and save and hold the State of Washington, its  
23 employees, and agents harmless from any and all claims or causes of action for death or  
24 injuries to persons or for loss or damage to property arising from or on account of acts or  
25 omissions of the Alexanders, or their employees, agents, or contractors in entering into and  
26 implementing this Decree. However, the Alexanders shall not indemnify the State of

1 Washington nor save nor hold its employees and agents harmless from any claims or causes of  
2 action arising out of the negligent acts or omissions of the State of Washington, or the  
3 employees or agents of the State, in implementing the activities pursuant to this Decree.

#### 4 **XXIII. COMPLIANCE WITH APPLICABLE LAWS**

5 A. All actions carried out by Alexanders pursuant to this Decree shall be done in  
6 accordance with all applicable federal, state, and local requirements, including requirements to  
7 obtain necessary permits, except as provided in paragraph B of this section.

8 B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters  
9 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing  
10 local government permits or approvals for the remedial action under this Decree that are  
11 known to be applicable at the time of entry of the Decree have been included in Exhibit B, the  
12 CAP, and are binding and enforceable requirements of the Decree.

13 The Alexanders have a continuing obligation to determine whether additional permits  
14 or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial  
15 action under this Decree. In the event either the Alexanders or Ecology determines that  
16 additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be  
17 required for the remedial action under this Decree, that party shall promptly notify the other  
18 party of this determination. Ecology shall promptly determine whether Ecology or the  
19 Alexanders shall be responsible to contact the appropriate state and/or local agencies. If  
20 Ecology so requires, the Alexanders shall promptly consult with the appropriate state and/or  
21 local agencies and provide Ecology with written documentation from those agencies of the  
22 substantive requirements those agencies believe are applicable to the remedial action. Ecology  
23 shall promptly make the final determination on the additional substantive requirements that  
24 must be met by the Alexanders and on how the Alexanders must meet those requirements.  
25 Ecology shall promptly inform the Alexanders in writing of these requirements. Once  
26 established by Ecology, the additional requirements shall be enforceable requirements of this

1 Decree. The Alexanders shall not begin or continue the remedial action potentially subject to  
2 the additional requirements until Ecology makes its final determination.

3 Ecology shall ensure that notice and opportunity for comment is provided to the public  
4 and appropriate agencies prior to establishing the substantive requirements under this section.

5 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the  
6 exemption from complying with the procedural requirements of the laws referenced in RCW  
7 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary  
8 for the State to administer any federal law, the exemption shall not apply and the Alexanders  
9 shall comply with both the procedural and substantive requirements of the laws referenced in  
10 RCW 70.105D.090(1), including any requirements to obtain permits.

11 **XXIV. REMEDIAL AND INVESTIGATIVE COSTS**

12 The Alexanders agree to pay all qualified costs incurred by Ecology pursuant to this  
13 Decree. These costs shall include work performed by Ecology or its contractors for, or on, the  
14 Site under Chapter 70.105D RCW both prior to and subsequent to the issuance of this Decree  
15 for investigations, remedial actions, and Decree preparation, negotiations, oversight and  
16 administration. Ecology costs shall include costs of direct activities and support costs of direct  
17 activities as defined in WAC 173-340-550(2). The Alexanders agree to pay the required  
18 amount within ninety (90) days of receiving from Ecology an itemized statement of costs that  
19 includes a summary of costs incurred, an identification of involved staff, a description of work  
20 performed, and the amount of time spent by involved staff members on the project. Itemized  
21 statements shall be prepared quarterly. Failure to pay Ecology's costs within ninety (90) days  
22 of receipt of the itemized statement will result in interest charges which are qualified costs  
23 under this decree for which the Alexanders will be liable.

24 Subject to the terms of the financial assurance provisions above, Ecology's qualified  
25 costs may be paid from the trust fund set up as financial assurance.

1                   **XXV.   IMPLEMENTATION OF REMEDIAL ACTION**

2           If Ecology determines that the Alexanders have failed, without good cause, to  
3 implement the remedial action, in whole or in part, Ecology may seek a remedy from this  
4 Court or, after notice to the Alexanders, Ecology may perform any or all portions of the  
5 remedial action that remain incomplete and seek a remedy under RCW 70.105D.050(1). If  
6 Ecology performs all or portions of the remedial action because of the Alexander's failure to  
7 comply with its obligations under this Decree, the Alexanders shall promptly reimburse  
8 Ecology for the costs of doing such work in accordance with Section XXIV. Nothing in this  
9 Decree shall make the Alexanders obligated to reimburse Ecology for costs incurred for work  
10 done by Ecology that is inconsistent with the provisions of this Decree.

11                   **XXVI.   FIVE YEAR REVIEW**

12           As remedial action, including ground water monitoring, continues at the Site, the  
13 Parties agree to review the progress of remedial action at the Site, and to review the data  
14 accumulated as a result of monitoring the Site as often as is necessary and appropriate under  
15 the circumstances. At least every five years the Parties shall meet to discuss the status of the  
16 Site and the need, if any, for further remedial action at the Site. Ecology reserves the right to  
17 require further remedial action at the Site under appropriate circumstances. This provision  
18 shall remain in effect for the duration of the Decree.

19                   **XXVII.   PUBLIC PARTICIPATION**

20           Ecology shall maintain the responsibility for public participation at the Site. However,  
21 the Alexanders shall cooperate with Ecology and, if agreed to by Ecology, shall:

22           A.    Prepare drafts of public notices and fact sheets at important stages of the  
23 remedial action, such as the submission of work plans, and engineering design reports. As  
24 appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and  
25 distribute public notices of Ecology's presentations and meetings.

1 B. Notify Ecology's project coordinator prior to the preparation of all press releases  
2 and fact sheets, and before major meetings with the interested public and local governments.  
3 Likewise, Ecology shall notify the Alexanders prior to the issuance of all press releases and  
4 fact sheets, and before major meetings with the interested public and local governments. For  
5 all press releases, fact sheets, meetings, and other outreach efforts by the Alexanders that do  
6 not receive Ecology approval, the Alexanders shall clearly indicate to their audience that the  
7 press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by  
8 Ecology.

9 C. Participate in public presentations on the progress of the remedial action at the  
10 Site. Participation may be through attendance at public meetings to assist in answering  
11 questions, or as a presenter.

12 D. In cooperation with Ecology, arrange and/or continue information repositories  
13 to be located at Grandview Library, the Prosser Library, and Ecology's Central Regional Office  
14 at Yakima Washington. At a minimum, copies of all public notices, fact sheets, and press  
15 releases; all quality assured ground water, surface water, soil sediment, and air monitoring  
16 data; remedial actions plans, supplemental remedial planning documents, and all other similar  
17 documents relating to performance of the remedial action required by this Decree shall be  
18 promptly placed in these repositories.

19 **XXVIII. DURATION OF DECREE**

20 The remedial program described in the Decree shall be maintained and continued until  
21 the Alexanders have received written notification from Ecology that the requirements of this  
22 Decree have been satisfactorily completed. Ecology shall not unreasonably withhold or delay  
23 notification under the preceding sentence. This Decree shall remain in effect until dismissed  
24 by this Court. When dismissed, Section XVIII, Covenant Not to Sue and Section XIX,  
25 Contribution Protection shall survive.  
26

1 Further, Ecology shall notify the United States EPA when the excavation actions in the  
2 Cleanup Action Plan have been completed to its satisfaction according to the terms of this  
3 Decree. Ecology's notice to EPA shall not be unreasonably delayed or withheld.

4 **XXIX. CLAIMS AGAINST THE STATE**

5 The Alexanders hereby agree that they will not seek to recover any costs accrued in  
6 implementing the remedial action required by this Decree from the State of Washington or any  
7 of its agencies; and further, that the Alexanders will make no claim against the State Toxics  
8 Control Account or any Local Toxics Control Account for any costs incurred in implementing  
9 this Decree. Except as provided above, however, the Alexanders expressly reserves their right  
10 to seek to recover any costs incurred in implementing this Decree from any other potentially  
11 liable person.

12 **XXX. EFFECTIVE DATE**


13 This Decree is effective upon the date it is entered by the Court.

14 **XXXI. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

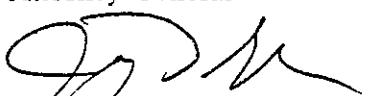
15 This Decree has been the subject of public notice and comment under RCW  
16 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will lead to  
17 a more expeditious cleanup of hazardous substances in compliance with cleanup standards and  
18 with any remedial orders issued by Ecology at the Site.

19 If the Court withholds or withdraws its consent to this Decree, it shall be null and void  
20 at the option of any party and the accompanying Complaint shall be dismissed without costs  
21 and without prejudice. In such an event, no party shall be bound by the requirements of this  
22 Decree.

23 STATE OF WASHINGTON  
24 DEPARTMENT OF ECOLOGY

25   
26 JAMES PENDOWSKI, Program Manager  
Toxics Cleanup Program

CHRISTINE O. GREGOIRE  
Attorney General


  
JAY D. GECK, WSBA #17916  
Senior Counsel

1 Date: \_\_\_\_\_

Date: \_\_\_\_\_

3 McELROY LAW FIRM, PLLC

4   
5 DAN ALEXANDER

  
MICHAEL B. GILETY, WSBA #11038  
Attorneys for the Alexanders

7 Date: 10/23/04

Date: 10/26/2004

8  
9   
10 HARRIET ALEXANDER

11 Date: \_\_\_\_\_

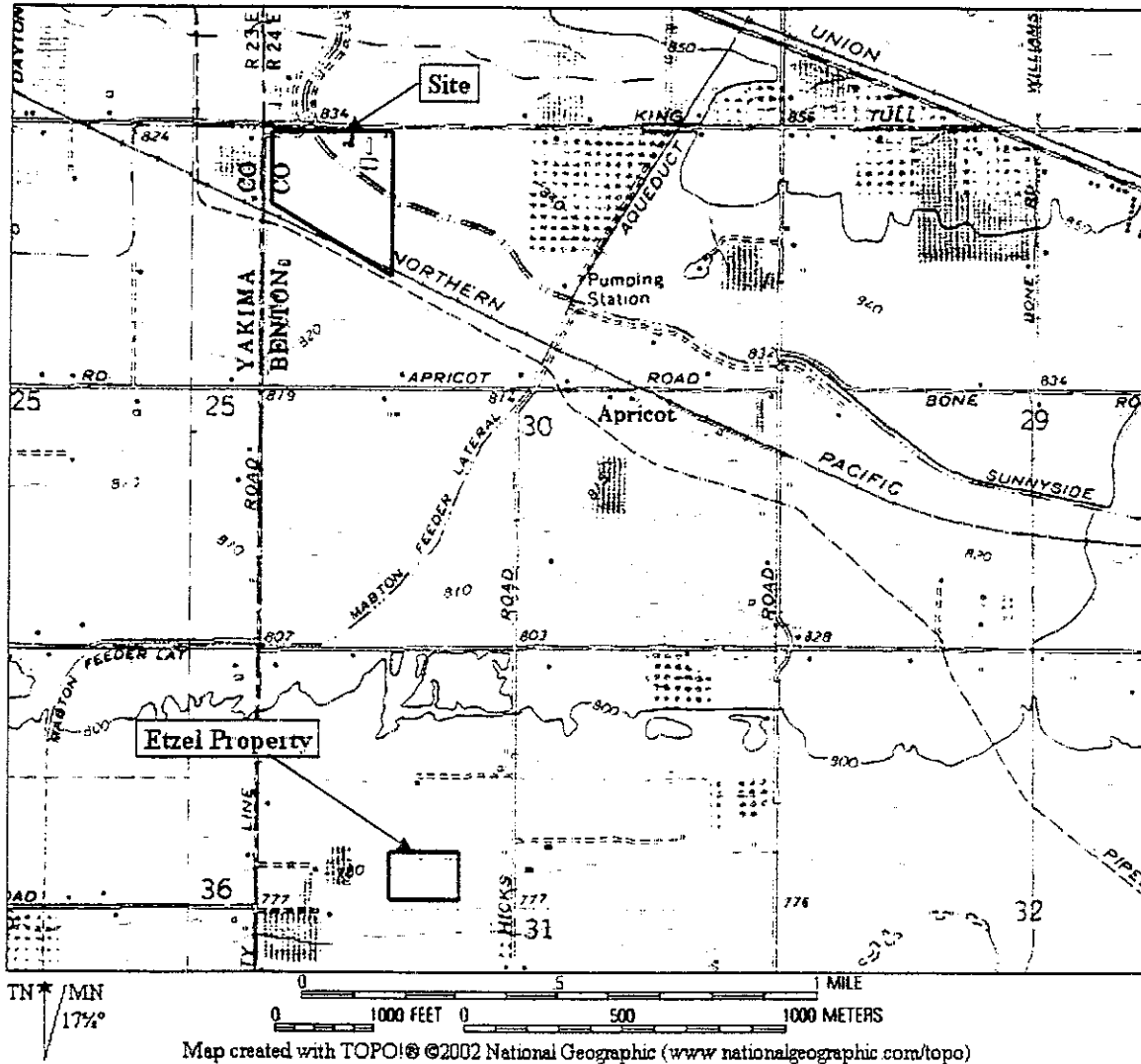
12 Entered this 29 day of October, 2004.

14 CHRISTINE A. POMEROY

15 \_\_\_\_\_  
16 JUDGE  
17 Thurston County Superior Court

# Exhibit A

## Site Location Map Alexander Farms Site Benton County, Washington





**Exhibit B**

**CLEANUP ACTION PLAN**

Alexander Farms Facility  
Benton County, Washington

Prepared by

Thomas L. Mackie, P.G.  
Site Manager  
Department of Ecology  
(509) 454-7835

March 1, 2004

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## 1.0 Introduction

### 1.1 Purpose

The purpose of this Cleanup Action Plan (CAP) is to identify the cleanup actions selected by the Department of Ecology (Ecology) for the remediation and monitoring of contaminated groundwater and soils at the Alexander Farms Site, located in Benton County, Washington. This CAP has been developed in accordance with the Model Toxics Control Act, RCW 70.105D (MTCA), and Chapter 173-340 of the Washington Administrative Code (WAC)<sup>1</sup>. In accordance with WAC 173-340-360(2)(a), the selected cleanup actions meet the threshold requirements at the defined points of compliance; are protective of human health and the environment; comply with remedial action levels; comply with applicable state and federal laws; and provide for compliance monitoring.

This CAP outlines the cleanup action alternatives presented in the following documents:

- *Remedial Investigation Report – Alexander Farms Site, White Shield, Inc. (WSI), March 31, 2003.*
- *Addendum Groundwater Modeling Report – Alexander Farms Site, White Shield, Inc., March 31, 2003.*
- *Final Feasibility Report – Alexander Farms Site, White Shield, Inc., March 31, 2003.*

This CAP specifies the cleanup actions to take place at the Site. These cleanup actions include:

- Removal and off-site disposal of all Dinoseb contaminated soil exceeding 1.6 mg/kg (Dinoseb in soil).
- Monitored Natural Attenuation of Dinoseb contaminated groundwater.

In accordance with WAC 173-340-360, Ecology has selected the above cleanup actions based upon site-specific data provided in the following documents, which are on file at the Washington State Department of Ecology, Central Regional Office. These documents have been used either directly or by reference in the writing of the CAP:

- *Remedial Investigation Report – Alexander Farms Site, White Shield, Inc., March 31, 2003.*
- *Addendum Groundwater Modeling Report – Alexander Farms Site, White Shield, Inc., March 31, 2003.*
- *Final Feasibility Report – Alexander Farms Site, White Shield, Inc., March 31, 2003.*
- *Final Feasibility Study Report Alexander Farms Site, White Shield, Inc., January, 2002.*
- *Remedial Investigation Report Alexander Farms Site, White Shield, Inc., August, 2001.*
- *Final Remedial Investigation/Feasibility Study Work Plan Alexander Farms Benton County, WA. White Shield, Inc., January, 2000.*

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<sup>1</sup> This Cleanup Action Plan is based on the revised WAC 173-340 which became effective August 15, 2001.

- *Final Removal Action Report, Alexander Farms Site, Grandview, Washington, Ecology & Environment, Inc., August, 2000.*
- *Alexander Farms Site Inspection Report, Grandview, Washington, Ecology & Environment, Inc., June 2000*
- *Groundwater Sampling and Characterization Report Alexander Farms Site, Benton County, Washington, White Shield, Inc., May, 1999.*
- *Removal Assessment Report, Alexander Farms Site, Grandview, Washington, Ecology & Environment, Inc., April 1999*

To review or obtain copies of the above documents, contact the Public Disclosure Coordinator at Ecology's Central Regional Office in Yakima, Washington at (509) 454-7658.

## **1.2 Cleanup Action Ownership**

The Responsible Parties for overall implementation and maintenance of the cleanup action are Dan and Harriet Alexander of Bainbridge Island, Washington. Dan and Harriet Alexander were determined to be "liable parties" under RCW 70.105D.040(1) by the Honorable Craig J. Matheson, Benton County Superior Court.<sup>1</sup>

## **2.0 Background**

### **2.1 Site Location and Description**

The Alexander Farms Facility (Site) located in Benton County, Washington includes all areas where Dinoseb contaminated soil and groundwater originating at the West King Tull Road site has come to be located, including but not limited to, Benton County Parcel No. 1-3094-201-2011-001 located at 179301 West King Tull Road (the former Alexander/Tobin residence), Benton County Parcel No. 1-3094-201-2011-002 located at 179101 West King Tull Road (the former Yakima Chief Ranches Hop processing facility), and Benton County Parcel No. 1-3194-200-0010-000 located at 4902 North Hicks Road (the Etzel residence).

This Cleanup Action Plan shall apply to those parcels located on King Tull Road (Benton County Parcel No. 1-3094-201-2011-001 located at 179301 West King Tull Road (the former Alexander/Tobin residence), Benton County Parcel No. 1-3094-201-2011-002 located at 179101 West King Tull Road (the former Yakima Chief Ranches Hop processing facility), and the parcel located between the SVID main canal and the Burlington Northern Santa Fe railroad tracks - Benton County Parcel No. 1-3094-200-0001-004 (the hop yard owned by the Alexanders).

This Cleanup Action Plan is not applicable to Benton County Parcel No. 1-3194-200-0010-000 located at 4902 North Hicks Road (the Etzel residence). Ecology has determined, based on available information, that no further action is required at the North Hicks Road parcel.

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<sup>1</sup> Dan Alexander and Harriet Alexander v Washington State Department of Ecology: Findings of Fact and Conclusions of Law, p. 27, Section III., paragraph 2 (Benton County Superior Court)

## **2.2 Hydrogeology/Geology**

Four stratigraphic units have been described underlying the site. The four stratigraphic units have been designated by WSI in the various reports as Unit 1 – the “shallow aquifer”, Unit 2 – the clay rich “volcaniclastic caliche” layer, Unit 3 – the “intermediate aquifer”, and Unit 4 – the “deep aquifer”.

Unit 1 extends from the ground surface to a depth of 10 -17 feet below the ground surface (bgs) and consists of sand, silt, and fine gravel. Unit 1 corresponds stratigraphically to the Pleistocene aged Touchet Beds. The lower portion of Unit 1 is generally saturated during the irrigation season and unsaturated during the non-irrigation season.

Unit 1 has been significantly disturbed at the site by various excavations including an excavation for a 10,000 gallon underground storage tank, an excavation for a 12,000 gallon storage tank, excavations for various pipelines, and an excavation for the pesticide rinse pad dry-well.

Unit 2 is a tan colored clay rich sandy gravel. Unit 2 varies in thickness from 0.3 – 2.0 feet in thickness, is volcanic rich in lithology, and was deposited as a distal portion of a lahar belonging to the Miocene aged Ellensburg Formation. It has been proposed by WSI that Unit 2 acts an aquitard, restricting or at least slowing the vertical flow of water from unit 1 to unit 3.

Unit 3 lies directly beneath unit 2 to a depth of 27 feet bgs. Unit 3 is the flow top of the Elephant Mountain Member of the Saddle Mountains Basalt Formation of the Columbia River Basalt Group. The pore space in the upper part of the flow top was observed to be filled with the fine grained Unit 2 material from above. The lower portions of the flow top exhibit enough fracture porosity exists to make the unit a usable aquifer. Unit 3 is saturated year round and is utilized as a domestic source of drinking water throughout the lower Yakima Valley. Water levels in Unit 3 indicate that Unit 3 is intimately connected to Units 1-4.

Unit 4 consists of fractured basalt representing the flow base of the Elephant Mountain Member. Unit 4 is also saturated year round and is utilized as a domestic source of drinking water.

Groundwater levels in all the stratigraphic units fluctuate between 5 and 15 feet bgs. Water levels in all the stratigraphic units fluctuate in unison with nearly identical water levels implying the intimate connection between them.

## **2.3 Site History**

### **2.3.1 Historical Use of the Grandview South Ranch**

Dan and Harriet Alexander own and operate property located at 179101 West King Tull Road near Grandview, Washington. They formerly owned and operated property located at 179301 West King Tull Road, near Grandview, Washington. From 1974 through 1991, these two properties formed the Alexanders' operational headquarters and personal residence at the Grandview South Ranch. The Grandview South Ranch was one of several hop ranches owned and operated by the Alexanders as part of Yakima Chief Ranches.

During 1977 through 1979, the Alexanders engaged in the storage, mixing, handling, loading, cleaning, and disposal of pesticides and pesticide application equipment on an area of bare soil and gravel at 179101 West King Tull Road. This area of bare soil and gravel was located in the vicinity of the domestic groundwater well.

In 1980, the Alexanders constructed a 24 ft. by 24 ft. concrete pad with an elevated water tank on the same area of bare soil near the domestic well. Thereafter, the mixing, handling, loading and cleaning of pesticides and pesticide application equipment occurred on the concrete pad. The concrete pad was located in the vicinity of the domestic groundwater well. However, after the construction of the concrete pad, the following activities still occurred on the bare soil: (1) the parking of spray rigs; (2) the disposal of rinsates from the cleaning of the interior of the pesticide spray equipment; and (3) the purging of material from the nozzles of the pesticide spray equipment.

The concrete pad contained a center drain connected to a PVC pipe that lead to a dry well. The dry well was approximately six (6) feet deep and was located approximately 75 feet south of the domestic groundwater well.

The center drain in the concrete pad occasionally would plug and allow liquids and materials to overflow the pad and contact contiguous surface soils. These materials and liquids included rinsates with traces of Dinoseb from the cleaning of the spray rigs and any spills of Dinoseb or Dinoseb solution.

Dinoseb is a listed dangerous waste under both State & Federal Hazardous Waste Regulations. WAC 173-303-081(1)(a); 40 C.F.R. 261.33. Dinoseb is highly toxic and poisonous. The active ingredient in Dinoseb is a metabolic stimulant, and can result in severe injury or death after absorption through skin contact, inhalation, or ingestion. Dinoseb was banned for farm use in 1986. Dinoseb was intentionally stored on the farm until 1991.

As a result of historic Dinoseb mixing and loading, and the cleaning and maintenance of Dinoseb application equipment and containers, the Alexanders released Dinoseb into the environment at the operational headquarters area of the Grandview South Ranch.

In 1991, the Alexanders ceased agricultural activities at the operational headquarters property of the Grandview South Ranch.

In 1994, the Alexanders subdivided the Grandview South Ranch and sold the residential portion to Don and Theresa Tobin (Tobins). The Tobins and their children lived in the ranch house at 179301 West King Tull Road until April of 1998. The Tobins obtained their domestic water from the shallow groundwater well located on the former operational headquarters property of the Grandview South Ranch.

### 2.3.2 Discovery of Dinoseb Contamination at the Grandview South Ranch

In April of 1998, Ecology investigated a complaint from the Tobins of yellow-colored water coming from the groundwater domestic well at the Grandview South Ranch. Analysis by

Manchester Laboratory of a water sample from the groundwater domestic well at the Grandview South Ranch revealed Dinoseb contamination at a concentration of 290 micrograms of Dinoseb per liter of water (ug/l).

The maximum concentration limit (MCL) for Dinoseb established by the USEPA under the Safe Drinking Water Act is 7 ug/l.

Inspections of the Grandview South Ranch by Ecology representatives revealed areas of bright yellow-colored soil. Analysis of two samples of the yellow-colored soil revealed Dinoseb contamination at concentrations of 345 mg/kg and 425 mg/kg, respectively.

The concentration of Dinoseb in soils considered protective of potable groundwater as established by Ecology under the MICA is 1.6 mg/kg.

Inspections of the Grandview South Ranch by Ecology and White Shield employees in 1998 revealed a 30-gallon Vertac General Weed Killer Drum (Vertac Drum) located at the north end of the hop picker building. The Vertac Drum contained approximately ten (10) gallons of yellow/brown liquid. White Shield representatives observed the yellow/brown liquid emerge from a hole in the Vertac Drum when they probed the drum with a boot. Ecology representatives observed yellow-colored soil surrounding the Vertac Drum.

Ecology representatives inspected the Grandview South Ranch and discovered five (5) additional 30-gallon Vertac General Weed Killer Drums in various locations throughout the property.

On May 6, 1998, Ecology issued a notice of Potentially Liable Person Status letter to the Alexanders.

On May 7, 1998, Ecology issued Emergency Enforcement Order No. DE 98TC-C138 (Order) to the Alexanders to address the soil and groundwater contamination at and arising from the Grandview South Ranch. Ecology ordered the Alexanders to: (1) provide security to prevent public access to the Grandview South Ranch; (2) provide an alternative water supply to all homes affected by the releases of Dinoseb contamination; (3) characterize the nature and extent of soil contamination at the Grandview South Ranch; (4) perform an Interim Action Soil Removal to excavate and dispose of the Dinoseb-contaminated soil at the Grandview South Ranch to prevent further groundwater contamination; (5) install at least six groundwater monitoring wells at the Grandview South Ranch to determine the extent of groundwater contamination; and (6) investigate the groundwater contamination at Bruce and Diane Etzel's (Etzels) property and install at least six groundwater monitoring wells at their property.

Between May and July of 1998, White Shield investigated the soil contamination at the Grandview South Ranch. A soil sample from the area of the Vertac Drum with a hole revealed Dinoseb contamination at a concentration of 15,000 mg/kg (1.5%). A soil sample taken at the dry well at a depth of eighteen (18) inches below the soil surface revealed Dinoseb contamination at a concentration of 5,300 mg/kg. A soil sample taken near the Hop Kiln Building revealed Dinoseb contamination at a concentration of 8,600 mg/kg. Between May and July 1998, White Shield excavated approximately 800 cubic yards of Dinoseb contaminated soil.



## 2.4 EPA Time Critical Removal Action

In September 1998, Ecology requested the assistance of the United States Environmental Protection Agency (EPA) after Ecology determined that White Shield had removed all excavation equipment from the site in August 1998 and that excavation activities had all but ceased during August, September, and October of 1998. Following Ecology's request for assistance, the EPA conducted a removal assessment and time-critical removal action at the Alexander Farms site. The removal action was conducted from November 1998 to December 1999 for the primary purpose of removing soil believed to be contaminating a drinking water supply. The soil removal substantially reduced the threat of contaminated soil leaching Dinoseb into the groundwater. Removal of contaminated surface and subsurface soils was accomplished by excavating to depths ranging from 2 to 13 feet below ground surface. Soil that contains 1.6 milligrams per kilogram (mg/Kg) of Dinoseb is considered a threat to groundwater.

A total of 9,953 cubic yards (12,740 tons) of soil was removed from the site, significantly reducing the threat of release of Dinoseb from that source to groundwater. Based on Ecology's "contained-in" determination, soil containing Dinoseb at a concentration of less than 80 mg/Kg did not have to be handled as hazardous waste. Of the 12,740 tons of soil, sampling by EPA indicated that 9,206 tons reportedly contained concentrations between 1.6 and 80 mg/Kg and could be hauled directly to Arlington, Oregon for off-site disposal. Sampling also indicated to EPA that the remaining 3,534 tons of waste soil contained Dinoseb at concentrations greater than 80 mg/Kg making it a hazardous waste. The latter soils were treated on-site by EPA using a thermal desorption unit. The thermally treated soils were subsequently disposed of off-site at Waste Management, Inc., Subtitle D landfill at Arlington, Oregon. In addition to the excavation, treatment and disposal of the soil, the EPA also disposed of 130 cubic yards of Dinoseb-contaminated construction debris, 660 gallons of miscellaneous hazardous substances, and 1,375 gallons of petroleum product.

## 3.0 Soil Cleanup Alternatives

The following is a brief description of the cleanup action alternatives for soil presented in the Feasibility Study Report (FS) submitted by White Shield, Inc.<sup>2</sup>:

### 3.1 Alternative 1 – Soil Wash Alternative

This alternative involves excavating the contaminated soils, placing the excavated soil in a reactor, and treating the soil using water to flush Dinoseb out of the soil media. This alternative would result in the production of waste water that would require treatment. Wastewater treatment might involve chemical treatment for the removal of suspended material and granular activated carbon or photo/electric oxidation for the removal of Dinoseb from the waste water prior to discharge. A wastewater treatment permit would be required for water discharged into the environment. Upon completion of the soil wash treatment process, the treated soil would be processed and stockpiled to allow dewatering and shipped off site for disposal.

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<sup>2</sup> White Shield, Inc., March 31, 2003 Final Feasibility Study Report – Alexander Farms Site received at Ecology on April 17, 2003.

### **3.2 Alternative 2 - Simplot Anaerobic Biological Remediation (SABRE)**

This alternative involves the excavation of Dinoseb contaminated soils, placing the excavated soil in bioreactors and treating the soil using bioremediation to reduce Dinoseb concentrations to below 1.6 mg/Kg. The decontaminated soil would undergo dewatering and drying followed by re-spreading onto the excavated areas. Management of any waste water byproducts may involve chemical treatment for the removal of suspended matter. A wastewater treatment permit would be required for water discharged into the environment. WSI states in the FS that the excavation and biological treatment of Dinoseb contaminated soil using the SABRE process would be successful in meeting MTCA cleanup standards, would permanently remove the threat of contaminated soil from the site, and could be completed within a few weeks.

### **3.3 Alternative 3 – Soil Removal and Off-Site Disposal**

This alternative involves excavating the contaminated soil, and disposing of the waste soils off-site. Dinoseb contaminated soil shall be excavated until the MTCA B cleanup value for Dinoseb (1.6 mg/Kg) is achieved in the bottom and side walls of the excavation(s). The excavated soil would be loaded in to trucks and transported to a permitted waste facility approved by the department. The waste soils would be designated and disposed of in accordance with the Washington State Dangerous Waste Regulations (WAC 173-303).

### **3.4 Alternative 4 – Capping**

This alternative involves the placement of a low permeability cap over the portion of the site containing contaminated soil. The cap would prevent direct human contact with contaminated soil and would minimize rainfall infiltration. Several options for the cap material are available including a high density polyethylene (HDPE) liner and low permeability asphalt cap. Site use may be restricted depending on how the cap is engineered. Reconstruction of the cap after 20 years may be required.

### **3.5 Alternative 5 – Monitored Natural Attenuation**

This alternative would leave the site in its current state leaving the Dinoseb contaminated soil in place where it would naturally decompose over time. Because Dinoseb continues to leach to groundwater at the site, this alternative will not be evaluated. It is being included as a baseline for comparison to the other alternatives only.

## **4.0 Groundwater Cleanup Alternatives**

The following is a brief description of the cleanup action alternatives for groundwater presented in the Feasibility Study Report (FS) submitted by White Shield, Inc.<sup>3</sup>:

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<sup>3</sup> White Shield, Inc., March 31, 2003 Final Feasibility Study Report – Alexander Farms Site received at Ecology on April 17, 2003.

#### **4.1 Alternative 1 – Groundwater Extraction followed by Granular Activated Carbon Treatment**

This alternative involves extracting and treating Dinoseb contaminated groundwater. This alternative is commonly referred to as the “pump-and-treat” alternative. Pumping wells would be constructed and spaced in such a way as to capture the groundwater contamination plume. The extracted water would be treated by running it through a granular activated carbon filter. Granular activated carbon filters have been shown to effectively remove Dinoseb from water. Waste water would then be discharged in accordance with a wastewater discharge permit. The contaminated granular activated carbon would then be sent to a hazardous waste treatment-storage – disposal (TSD) facility for disposal or thermal regeneration.

#### **4.2 Alternative 2 – Groundwater Extraction followed by Photoelectric/Oxidation Treatment**

This alternative involves extracting and treating Dinoseb contaminated groundwater. This alternative is also a “pump-and-treat” alternative. Pumping wells would be constructed and spaced in such a way as to capture the groundwater contamination plume. Instead of an activated carbon filter, the extracted water would be treated by first running past an ultraviolet light and then adding hydrogen peroxide. In this process a high-powered, medium pressure lamp emits high-energy ultraviolet radiation through a quartz sleeve into contaminated water. Hydrogen peroxide is added to contaminated water before it enters the system. Hydrogen peroxide when exposed to the ultraviolet radiation breaks into hydroxyl radical. The radicals then react with the dissolved Dinoseb breaking it down to non-toxic by products. Waste water would then be discharged in accordance with a wastewater discharge permit.

#### **4.3 Alternative 3 – Monitored Natural Attenuation (MNA) and Contingency Actions**

This alternative relies on natural ongoing processes occurring in the aquifer located beneath the site to achieve groundwater cleanup. These *in-situ* processes include biodegradation; dispersion; dilution; sorption; volatilization; radioactive decay; and chemical or biological stabilization, transformation, or destruction of contaminants. In accordance with WAC 173-340-370(7), Ecology expects that natural attenuation of hazardous substances may be appropriate at sites where: (a) Source control (including removal and/or treatment of hazardous substances) has been conducted to the maximum extent practicable; (b) Leaving contaminants on-site during the restoration time frame does not pose an unacceptable threat to human health or the environment; (c) There is evidence that natural biodegradation is occurring and will continue to occur at a reasonable rate at the site; and (d) Appropriate monitoring requirements are conducted to ensure that natural attenuation process is taking place and human health and the environment are protected.

### **5.0 Selected Cleanup Actions**

Ecology has selected Alternative 3, excavation and off-site disposal, for the remediation of soil contamination at the Site and Alternative 3, monitored natural attenuation for groundwater remediation. Excavation and off-site disposal of Dinoseb contaminated soil will eliminate the

risk of human exposure by permanently removing it from the site in addition to removing the Dinoseb that would potentially leach to the groundwater. Based upon the analysis of over five years of groundwater data, Ecology believes that the natural attenuation processes that are occurring in the aquifer beneath the site will reduce the groundwater contamination levels below 7 ug/L within a twenty year time frame. Contaminated soil excavation, soil disposal, and Monitored Natural Attenuation of groundwater shall be conducted in accordance with an Ecology approved Engineering Design Report written in accordance with WAC 173-340-400, Compliance Monitoring Plans written in accordance with WAC 173-340-410, and the periodic review requirements listed in WAC 173-340-420

### **5.1 Excavation, Removal, and Off-Site Disposal of Dinoseb Contaminated Soil**

All Dinoseb contaminated soil shall be excavated and removed from the site until the MTCB Method B cleanup value for the protection of groundwater (1.6 mg/Kg) is achieved in the bottom and side walls of the excavation(s). Sampling and analysis shall be conducted in accordance with an approved Engineering Design Report and Compliance Monitoring Plans. Waste soils shall be designated and disposed of in accordance with the Washington State Dangerous Waste Regulations (WAC 173-303). Excavation and off-site disposal will constitute "source control" to the maximum extent practicable. Source control to the maximum extent practicable satisfies the first of four criteria that are evaluated when selecting monitored natural attenuation for groundwater.

### **5.2 Monitored Natural Attenuation of Dinoseb Contaminated Groundwater**

There are four criteria for the selection of monitored natural attenuation for groundwater:

- Source control (including removal and/or treatment of hazardous substances) has been conducted to the maximum extent practicable. *(Source control will be satisfied by the excavation and off-site disposal of the Dinoseb contaminated soil)*
- Leaving contaminants on-site during the restoration time frame does not pose an unacceptable threat to human health or the environment. *(Because institutional controls will be in place that will restrict the use of groundwater at the site and because the contamination plume is expected to remain within the boundaries of the site, the contamination left on site in the groundwater during the 20-year restoration time frame does not pose an unacceptable threat to human health or the environment.)*
- There is evidence that natural biodegradation is occurring and will continue to occur at a reasonable rate at the site. *(This criteria has been shown to be true because the groundwater data indicates that the natural processes occurring in the subsurface are reducing the concentration of Dinoseb in the groundwater.)*
- Appropriate monitoring requirements are conducted to ensure that natural attenuation process is taking place and human health and the environment are protected. *(The Engineering and Design Report shall and Compliance Monitoring plans shall include plans for the long-term monitoring of Dinoseb contamination in the groundwater. Results from periodic sampling and analysis of groundwater will be reviewed by Ecology on a regular basis to insure that the natural attenuation process is progressing. If, after five years, it can be shown that natural attenuation is not cleaning up the groundwater,*

*another more aggressive groundwater treatment system may be required. Furthermore, in the event that the groundwater monitoring network of wells indicates that Dinoseb contamination exceeding 7 ug/L is leaving the site, aggressive groundwater treatment will be required. Ecology does expect the groundwater to clean itself up within ten years and does not expect the contamination to leave the site boundaries )*

## **6.0 Exposure Pathways during Cleanup**

Although there is potential for humans to be exposed to contaminants at the Site through exposure to contaminated soil and groundwater during the cleanup, the risks can be reduced to safe levels by the adherence to the site Health and Safety Plan.

Activities that involve soil excavation may lead to contaminant exposure to humans through inhalation, ingestion, and dermal contact. The most likely population to be affected by this exposure pathway is equipment operators, those persons collecting soil samples for confirmatory laboratory analysis, and others that may be onsite directing or supervising the project. During Site activities, steps shall be taken to minimize the risk to workers and the public. These steps will be outlined in an approved Health and Safety Plan. Steps shall include such things as the selection of personal protective equipment and dust control.

Because a drinking water aquifer has been contaminated with Dinoseb, exposure to humans via drinking groundwater is possible. Steps shall be taken to minimize the risks to site workers and the public from groundwater at the site. These steps shall also be outlined in an approved Health and Safety Plan and by restricting the drilling of new water wells within the site boundaries. The Health and Safety Plan shall also cover such things as personal protective equipment to insure the safety of site workers.

## **7.0 Terrestrial Ecological Evaluation**

As of the date of this draft CAP, a Terrestrial Ecological Evaluation (TEE) has not been completed for the Alexander Farms site. Although it appears that the site does not qualify for an exclusion from a TEE, Ecology believes that a "Simplified Terrestrial Ecological Evaluation" under WAC 173-340-7492(2) is appropriate for this site, and that there will be no need for institutional controls to address Terrestrial Ecological receptors.

## **8.0 Cleanup Standards**

### **8.1 Cleanup Levels**

#### **8.1.1 Soil Cleanup Level**

The soil cleanup standard selected for the site in 1998 is the MTCA Method B cleanup level for Dinoseb protective of groundwater listed in the *Model Toxics Control Act Cleanup Levels and Risk Calculations (CLARC II) Updated* dated February 1996. The soil cleanup level listed in CLARC II is 1.6 mg of Dinoseb per 1/Kg of soil (mg/Kg). 1.6 mg/Kg is a level at which Dinoseb is no longer expected to leach to groundwater.

### 8.1.2 Groundwater Cleanup Level

The groundwater cleanup level selected for the site is the USEPA Maximum Contaminant Level (MCL) for Dinoseb which is 7 ug of Dinoseb per liter of water (ug/L). 7ug/L is the level set by the EPA for which no known or anticipated adverse effects on human health will occur, including a margin of safety.

### 8.2 Clean Site Determination

The Site shall be considered clean when the cleanup levels listed in Section 5.2 are met throughout the Site. For groundwater, the cleanup levels must be achieved in all monitoring wells for two years (8 consecutive quarters) of concentrations below 7 ug/L.

### 8.3 Points of Compliance

#### 8.3.1 Point of Compliance for Soil

The point of compliance for soils at the Site shall be in compliance with WAC 173-340-740(6)(b) that states, "*For soil cleanups based on **protection of groundwater**, the point of compliance shall be established in the soils throughout the site.*"

#### 8.3.2 Point of Compliance for Groundwater

The point of compliance for groundwater at the site shall be the standard point of compliance per WAC 173-340-720(8)(a) that states, *The standard point of compliance shall be established throughout the site from the uppermost level of the saturated zone extending vertically to the lowest most depth which would be potentially affected by the site.* For groundwater, the point of compliance is the point or points where the groundwater cleanup level must be obtained for the site to be in compliance with the cleanup standards.

## 9.0 Institutional Controls

Institutional Controls are measures undertaken to limit or prohibit activities that may interfere with the integrity of a cleanup action or result in exposure to hazardous substances at the Site (WAC 173-340-440(1)). The institutional controls that will be required for this site are physical measures, property use restrictions, maintenance requirements, and financial assurances.

### 9.1. Physical Measures

The following physical measures shall be implemented at the site:

- Locks that prevent the tampering of on-site groundwater monitoring wells.

## **9.2 Property Use Restrictions**

- Because residual concentrations of Dinoseb in the groundwater at the Site will exceed the cleanup level of 7 ug/L following completion of the soil removal, the Alexanders agree that a Restrictive Covenant shall be recorded with the office of the Benton County Auditor within ten (10) days of the effective date of the Consent Decree. The Restrictive Covenant shall restrict domestic water well drilling on property owned by the Alexanders within the site boundaries until; 1. the site is declared clean by the department or, 2. except where drilling is authorized by written approval received from the department and issued in accordance with applicable law. Defendants will provide Ecology with a copy of the recorded Restrictive Covenant within thirty (30) days of the recording date.

## **9.3 Maintenance Requirements**

- Regular inspections of monitoring well locks will be conducted by the Alexanders and repairs made when necessary.

## **9.4 Financial Assurances**

- Pursuant to WAC 173-340-440(11) financial assurance shall be based on the Alexanders' establishment of a cash trust fund and frozen securities account according to the terms of the Consent Decree. The purpose of the trust fund and frozen account is to ensure that the Alexanders maintain sufficient money to cover all costs associated with the operation and maintenance of the remedial action and Cleanup Action Plan at the Site, including institutional controls, compliance monitoring, and corrective measures, as well as oversight costs.

# **10.0 Cleanup Actions**

## **10.1 Selected Cleanup Actions**

The cleanup actions selected for the Site shall fulfill the threshold requirements put forth in WAC 173-340-360(2)(a), which include protecting human health and the environment, complying with cleanup standards, complying with applicable state and federal laws, and providing for compliance monitoring. Other requirements in WAC 173-340-360(2)(b) state the selected action shall use permanent solutions to the maximum extent practicable, provide for a reasonable restoration time frame, and consider public concerns.

The cleanup actions selected for the Site include the excavation and off-site disposal off all soil exceeding 1.6 mg/Kg (Dinoseb in soil) and Monitored Natural Attenuation of groundwater contaminated with Dinoseb above 7 ug/L.

## 10.2 Justification for the Selected Cleanup Actions

Justification for the selected cleanup actions is provided in the following sections. The following sections detail how the cleanup actions fulfill the requirements for a cleanup action set forth in WAC 173-340-360.

### 10.2.1 Threshold requirements – WAC 173-340-360(2)(a)

- Protection of Human Health and the Environment

The remedial action selected for soil (excavation and off-site disposal) will eliminate the risks to humans and the environment related to contaminated soil by permanently removing the contaminated soil from the site. The risks of exposure to Dinoseb contaminated soil during construction shall be addressed in a Site Safety Plan.

The remedial action selected for groundwater (monitored natural attenuation) in combination with the selected institutional controls for groundwater will decrease the risk of exposure to humans and the environment. Monitoring the Dinoseb plume will insure that Dinoseb contaminated groundwater does not leave the boundaries of the site. Restricting the drilling of domestic water wells within the boundaries of the site will insure that the contaminated groundwater is not used for human consumption. A Health and Safety Plan shall be implemented to protect site workers during construction.

- Compliance with Cleanup Standards

The purpose of the selected cleanup actions is to reduce contaminant concentrations in the soil and groundwater at the site to below the established cleanup levels. The Department may be on site during sampling events to ensure that cleanup levels are met throughout the site. Furthermore, an approved Sampling and Analysis Plan shall be implemented to insure that a statistically valid number of samples from statistically valid locations are collected and analyzed to insure compliance with the cleanup standards.

- Compliance with Applicable State and Federal Laws

The selected cleanup actions shall comply with all applicable state and federal laws.

- Compliance Monitoring

Compliance monitoring shall be done in accordance with an approved compliance monitoring plan written in conformance with WAC 173-340-410 which requires three types of compliance monitoring: Protection, performance, and conformational monitoring (see Section 11.1.2.1). The contents of the Monitoring Plan shall be in compliance with WAC 173-340-410(3).

- Protection monitoring will be conducted in accordance with an approved Site Health and Safety Plan. The Site Health and Safety Plan will ensure that human health and the environment are adequately protected during the cleanup action.



- Performance monitoring will be conducted in accordance with an approved Sampling and Analysis Plan. The sampling and Analysis Plan will ensure that the cleanup action has attained cleanup standards at the defined points of compliance.
- Confirmational monitoring, also be addressed in the Sampling and Analysis Plan will ensure the long-term effectiveness of the cleanup action once the cleanup standards have been attained.

#### 10.2.2 Other requirements – WAC 173-340-360(2)(b)

- Permanent Solutions

WAC 173-340-200 states that a “permanent solution” or “permanent cleanup action” means a cleanup in which cleanup standards of WAC 173-340-700 through 173-340-760 can be met without further action being required at the site being cleaned up or any other site involved with the cleanup action, other than the approved disposal of any residue from the treatment of hazardous substances. The excavation and off-site disposal of contaminated soil will permanently remove all soil exceeding the cleanup standard from the site. Monitored natural attenuation for groundwater is also expected to be a permanent solution.

The cleanup actions selected for the Site meet the determination requirements listed in WAC 173-340-360(3)(i) as follows:

- Reasonable Restoration Time Frame

The cleanup actions described in this CAP provide for a reasonable restoration time frame, as is outlined in WAC 173-340-360 (4). The department determined that the cleanup actions for this site would be completed during a reasonable restoration time frame after considering the following factors:

1. Potential risks posed by the site to human health and the environment. *(The potential risks to human health and the environment posed by soil contamination will be eliminated immediately following the soil excavation and off-site disposal. The potential risks to human health and the environment from contaminated groundwater are greatly reduced by restricting water well drilling on the site and by monitoring the plume to see that it does not leave the site).*
2. Practicability of achieving a shorter restoration time frame. *(Excavation and off-site disposal of contaminated soil is the least time consuming of the soil remediation alternatives. The pump and treat alternatives for contaminated groundwater may achieve a shorter restoration time frame than monitored natural attenuation).*
3. Current use of the site, surrounding areas, and associated resources that are, or may be affected by releases from the site. *(The three parcels that make up the site have three different uses. One parcel is being used as a residence, the parcel where the old hop-processing occurred is vacant and not being used, and the third parcel is used for growing hops. The excavation and off-site disposal of contaminated soil from the former hop processing area will eliminate the risk of soil contact throughout the site. The current use of the site is ideal for the monitored natural*

*attenuation groundwater alternative because the plume is entirely located within the controlled boundaries of the site and will not affect the current use of the site.)*

4. Potential future use of the site, surrounding areas, and associated resources that are, or may be, affected from releases from the site. *(Future uses of the site will not be affected by the soil contamination because it will be gone from the site. Future use of groundwater at the site will be restricted until the groundwater is declared clean by the department.)*
5. Availability of alternative water supplies. *(Alternative water supplies from drilled domestic wells, are possible if written permission is received from the department prior to drilling. The department will review requests for permission to drill domestic wells located within the site boundaries on a case-by-case basis.)*
6. Likely effectiveness of and reliability of institutional controls. *(The locks being required for the groundwater monitoring wells have proven to be effective at most toxic cleanup sites. The restrictions on domestic well drilling will be effective in ensuring the safe construction of any future water wells at the site.)*
7. The ability to control and monitor migration of hazardous substances from the site. *(There will be no contaminated soil left to monitor. The ability to monitor contaminated groundwater is already in place using the existing monitoring well network.)*
8. Toxicity of the hazardous substances at the site. *(The toxicity of the soil was the primary characteristic used in deciding to dispose of the soil off-site. The toxicity of the groundwater was also a major factor in restricting groundwater use at the site and requiring the monitoring of the contamination plume until it is gone.)*
9. Natural processes that reduce concentrations of hazardous substances and have been documented to occur at the site. *(Natural degradation of Dinoseb in the groundwater is the primary aspect of the monitored natural attenuation remedial alternative. The natural degradation will be monitored until the Dinoseb is below 7 ug/L for 2 years.)*

### **10.3 Public Concern**

The public concerns received during the comment period for this CAP are important to the department and will be considered, addressed, and included in the final CAP where appropriate. According to WAC 173-340-360(3)(f)(vii), consideration of public concerns is "Whether the community has concerns regarding the alternative and, if so, the extent to which the alternative addresses those concerns. This process addresses concerns from individuals, community groups, local governments, tribes, federal and state agencies, or any other organization that may have an interest in or knowledge of the site.

### **10.4 Disproportionate Cost Analysis**

According to WAC 173-340-360(3)(d) "A disproportionate cost analysis shall not be required if the department and the potentially liable persons agree to a permanent cleanup action that will be identified by the department as the proposed cleanup action in the draft cleanup action plan."

In this CAP, the department and the Alexanders have reached an agreement regarding the proposed clean up action as specified in this cleanup action plan and there is no need for a disproportionate cost analysis.

### **10.5 Expectations for Cleanup Action Alternatives**

Expectations for cleanup actions are listed in WAC 173-340-370. These expectations include, but are not limited to, the following:

- Emphasis on treatment technologies;
- Destruction, detoxification, and/or removal of hazardous substances;
- Use of engineering controls;
- Minimization of migration of hazardous substances;
- Consolidation, to the maximum extent practicable, of hazardous substances remaining onsite;
- Taking active measures to prevent/minimize the release of contaminants to surface water.

### **10.6 Evaluation Criteria**

WAC 173-340-360(3)(f) puts forth the criteria for determining whether a cleanup action is “permanent to the maximum extent practicable.” Following is a list of these criteria and a discussion of how the selected cleanup actions fulfill each of them.

#### **10.6.1 Protectiveness – WAC 173-340-360(3)(f)(i)**

According to WAC 173-340-360(3)(f)(i), protectiveness is the “overall protectiveness of human health and the environment, including the degree to which existing risks are reduced, time required to reduce risk at the facility and attain cleanup standards, on-site and off-site risks resulting from implementing the alternative, and improvement of the overall environmental quality.”

Existing risks at the site will be minimized by removing the contaminated soil from the site and monitored natural attenuation of the groundwater contamination. The contaminated soil will no longer pose a threat via direct contact or leaching to groundwater. Groundwater shall be monitored to insure that monitored natural attenuation is working and that contaminated groundwater is not leaving the site. If groundwater monitoring indicates exceedences at the site boundaries, contingency measures will be implemented.

#### **10.6.2 Permanence – WAC 173-340-360 (3)(f)(ii)**

According to WAC 173-340-360(3)(f)(ii), permanence is “The degree to which the alternative permanently reduces the toxicity, mobility or volume of hazardous substances, including the adequacy of the alternative in destroying the hazardous substances, the reduction or elimination of hazardous substance releases and sources of releases, the degree of irreversibility of waste treatment process, and the characteristics and quantity of treatment residuals generated.”

The selected cleanup alternative will serve to permanently remove contaminants from the subsurface at the site and place them in an engineered and monitored solid waste landfill. The contaminants will not be destroyed under this alternative but will be placed in a controlled and monitored location.

Groundwater shall be monitored until the cleanup level (7 ug/L Dinoseb in groundwater) is reached in all wells for 8 consecutive quarters (2 years).

#### 10.6.3 Cost – WAC 173-340-360 (3)(f)(iii)

According to WAC 173-340-360 (3)(f)(iii), “The cost to implement the alternative, including the cost of construction, the net present value of any long-term costs, and agency oversight costs that are cost recoverable. Long-term costs include operation and maintenance costs, monitoring costs, equipment replacement costs, and the cost of maintaining institutional controls. Cost estimates for treatment technologies shall describe pretreatment, analytical, labor, and waste management costs. The design life of the cleanup action shall be estimated and the cost of replacement or repair of major elements shall be included in the cost estimate.”

The cleanup action selected for this site is not considered to be substantial and disproportionate to the incremental degree of protection it would achieve over a lower preference cleanup action.

#### 10.6.4 Effectiveness over the long-term – WAC 173-340-360(3)(f)(iv)

According to WAC 173-340-360(3)(f)(iv), “Long-term effectiveness includes the degree of certainty that the alternative will be successful, the reliability of the alternative during the period of time hazardous substances are expected to remain on-site at concentrations that exceed cleanup levels, the magnitude of residual risk with the alternative in place, and the effectiveness of controls required to manage treatment residues or remaining wastes. The following types of cleanup action components may be used as a guide, in descending order, when assessing the relative degree of long-term effectiveness: Reuse or recycling; destruction or detoxification; immobilization or solidification; on-site or off-site disposal in an engineered, lined and monitored facility; on-site isolation or containment with attendant engineering controls; and institutional controls and monitoring.”

The use of off-site disposal for this site will be an effective means of remediation for contaminated soil on this site. Institutional controls and long-term-monitored natural attenuation of groundwater will be an effective means of remediation for groundwater at the site.

#### 10.6.5 Management of short-term risks – WAC 173-340-360(3)(f)(v)

According to WAC 173-340-360(3)(f)(v), the management of short-term risk is, “The risk to human health and the environment associated with the alternative during construction and implementation, and the effectiveness of measures that will be taken to manage such risks.”

Steps will be taken to minimize exposure to contaminated soil during remediation. A Safety and Health Plan shall be prepared, approved, and followed at the Site.

#### 10.6.6 Technical and administrative implementability – WAC 173-340-360(3)(f)(vi)

According to WAC 173-340-360(3)(f)(vi), technical and administrative implimentability is the “Ability to be implemented including consideration of whether the alternative is technically possible, availability of necessary off-site facilities, services and materials, administrative and regulatory requirements, scheduling, size, complexity, monitoring requirements, access for construction operations and monitoring, and integration with existing facility operations and other current or potential remedial actions.”

All of the criteria for implementability, listed above, can be met for the selected cleanup alternatives at this Site.

#### 10.6.7 Consideration of public concerns – WAC 173-340-360(3)(f)(vii)

According to WAC 173-340-360(3)(f)(vii), consideration of public concerns is “Whether the community has concerns regarding the alternative and, if so, the extent to which the alternative addresses those concerns. This process addresses concerns from individuals, community groups, local governments, tribes, federal and state agencies, or any other organization that may have an interest in or knowledge of the site.

Ample opportunity will be given to the community to comment on the DCAP.

## 11.0 Implementation of the Cleanup Action

### 11.1 Work Plans and Specifications

WAC 173-340-400 states that: “Unless otherwise directed by the department, cleanup actions shall comply with this section except for emergencies or interim actions. The purpose of this section is to insure that the cleanup action is designed, constructed, and operated in a manner that is consistent with: (a) the Cleanup Action Plan; (b) accepted engineering practices; and (c) the requirements set forth in WAC 173-340-360.

The work plans required for the cleanup of the Alexanders Farm Site shall include: an **Engineering Design Report** written in accordance with WAC 173-340-400(4)(a) and **Construction Plans and Specifications** written in accordance with WAC 173-340-400(4)(b).

#### 11.1.1 Engineering Design Report

The engineering design report shall include sufficient information for the development and review of construction plans and specifications. It shall document engineering concepts and design criteria used for design of the cleanup action. The information required under WAC 173-340-400(4)(a)(i) through 173-340-400(4)(a)(xx) shall be included in the engineering design report.

## 11.1.2 Construction Plans and Specifications

The construction plans and specifications shall detail the cleanup actions to be performed. The plans and specifications shall be prepared in conformance with currently accepted engineering practices and techniques and shall include the following information as applicable: (1) a general description of the work to be performed and a summary of the engineering design criteria from the engineering design report; (2) a general location map and existing facility conditions map; (3) a copy of any permits and approvals; (4) detailed plans, procedures and material specifications necessary for construction of the cleanup action; (5) specific quality control tests to be performed to document the construction, including specifications for the testing or reference to specific testing methods, frequency of testing, acceptable results, and other documentation methods; (6) startup procedures and criteria to demonstrate the cleanup action is prepared for routine operation; (7) additional information to address applicable state, federal, and local requirements for any exempted permits; (8) a compliance monitoring plan prepared in accordance with WAC 173-340-410 describing monitoring to be performed during construction, and a sampling and analysis plan meeting the requirements of WAC 173-340-820; and (9) provisions to assure safety and health requirements of WAC 173-340-810 are met.

### 11.1.2.1 Compliance Monitoring

Requirements of Compliance Monitoring as stated in WAC 173-340-410 include:

- a) Protection monitoring. Confirm that human health and the environment are adequately protected during construction and the operation and maintenance period of an interim action or cleanup action as described in the safety and health plan;
- b) Performance monitoring. Confirm that the interim action or cleanup action has attained cleanup standards and, if appropriate, remediation levels or other performance standards such as construction quality control measurements or monitoring necessary to demonstrate compliance with a permit or, where a permit exemption applies, the substantive requirements of other laws;
- c) Confirmational monitoring. Confirm the long-term effectiveness of the interim action or cleanup action once cleanup standards and, if appropriate, other performance standards have been attained.

According to WAC 173-340-410 (3), a Compliance Monitoring Plan shall be prepared for all cleanup actions and shall include:

- a) A **sampling and analysis plan** meeting the requirements of WAC 173-340-820 which shall explain in the statement of objectives how the purposes of WAC 173-340-410(1) are met; and
- b) **Data analysis and evaluation procedures** used, to demonstrate and confirm compliance and justification for these procedures, including:
  - i) A description of any statistical method to be employed; or
  - ii) If sufficient data is not available prior to writing the plan to propose a reliable statistical method to demonstrate and confirm compliance, a contingency plan proposing one or

more reliable statistical methods to demonstrate and confirm compliance, and the conditions under which the methods would be used at the facility.

#### 11.1.2.1.1 Sampling and Analysis Plan

The Sampling and Analysis Plan shall specify procedures that ensure that sample collection, handling, and analysis will result in data of sufficient quality to plan and evaluate remedial actions at the Site. The Sampling and Analysis Plan shall be prepared by the implementers of this CAP. As defined in WAC 173-340-820, the Sampling and Analysis Plan shall include the following:

- a) A statement on the purpose and objectives of the data collection, including quality assurance and quality control requirements;
- b) Organization and responsibilities for the sampling and analysis activities;
- c) Requirements for sampling activities including:
  - i) Project schedule;
  - ii) Identification and justification of location and frequency of sampling;
  - iii) Identification and justification of parameters to be sampled and analyzed;
  - iv) Procedures for installation of sampling devices;
  - v) Procedures for sample collection and handling, including procedures for personnel and equipment decontamination;
  - vi) Procedures for the management of waste materials generated by sampling activities; including installation of monitoring devices, in a manner that is protective of human health and the environment;
  - vii) Description and number of quality assurance and quality control samples, including blanks and spikes;
  - viii) Protocols for sample labeling and chain of custody; and
  - ix) Provisions for splitting samples where appropriate.
- d) Procedures for analysis of samples and reporting of results, including:
  - i) Detection or quantification limits;
  - ii) Analytical techniques and procedures;
  - iii) Quality assurance and quality control procedures; and
  - iv) Data reporting procedures, and where appropriate, validation procedures.

#### 11.1.2.2 Reporting Requirements

All analytical results shall be reported in the following manner:

- a) Copies of all data sheets received from the laboratory shall be submitted to Ecology within 30 days of receipt of the data from the laboratory. This includes all chromatographs, and data showing any QA/QC analysis run by the laboratory, and chain-of-custody forms.
- b) All data shall be submitted in tables.
- c) Data tables shall be submitted in printed and electronic format.

### 11.1.2.3 Worker Safety Plan

WAC 173-340(810)(2) outlines the requirements for a Health and Safety Plan. A Health and Safety Plan shall be prepared and submitted to the Ecology Site Manager for review and comment. The plan must include all Applicable, Relevant and Appropriate Requirements (ARARs).

## 11.2 Applicable, Relevant and Appropriate Requirements

WAC 173-340-700(4)(a) states, "In addition to establishing minimum requirements for cleanup standards, applicable state and federal laws may also impose certain technical and procedural requirements for performing cleanup actions." The Alexanders shall be responsible for determining and implementing ARARs for the Site.

## 11.3 Construction Documentation

All aspects of construction shall be performed and documented in accordance with WAC 173-340-400(6). This will include the approval of all the plans listed above prior to work commencing, oversight of construction by a professional engineer licensed in the state of Washington, and the submittal of an "as built" report that documents all aspects of the cleanup and an opinion of the engineer as to whether the cleanup was constructed in compliance with the plans and specifications.

## 12.0 Schedule

### 12.1 Soil Excavation, Soil Disposal, Monitored Natural Attenuation, and Monitoring Well Decommissioning

Within 30 calendar days of the effective date of the Consent Decree issued to implement the CAP, the Alexanders or their representative shall submit to Ecology a schedule for contaminated soil excavation, soil disposal, monitored natural attenuation, and monitoring well decommissioning.

Within 60 calendar days of the effective date of the Consent Decree, the Alexanders shall submit to Ecology, for review and approval, a draft Engineering Design Report written in accordance with WAC 173-340-400(4)(a), draft Construction Plans and Specifications written in accordance with WAC 173-340-400(4)(b), an Operation and Maintenance Plan written in accordance with WAC 173-340-400(c) and a Compliance Monitoring Plan written in compliance with WAC 173-340-410.

Within 30 calendar days of receiving Ecology's comments on the draft Engineering Design Report, the draft Construction Plans and Specifications, the Operation and Maintenance Plan and the draft Compliance Monitoring Plan, the Alexanders shall submit to Ecology, for review and approval, a final Engineering Design Report, final Construction Plans and Specifications, a final Operation and Maintenance Plan, and a final Compliance Monitoring Plan. The final Engineering Design Report, final Construction Plans and Specifications, final Operation and



Maintenance Plan, and final Compliance Monitoring Plan shall address and incorporate Ecology's final comments.

Construction shall commence within 60 calendar days of Ecology's approval of the final Engineering Design Report, final Construction Plans and Specifications, final Operation and Maintenance Plan, and final Compliance Monitoring Plan.

All construction shall be conducted in accordance with WAC 173-340-400(6). Construction documentation, written in accordance with WAC 173-340-400(b) shall be submitted within 120 days of the completion of the soil excavation and disposal. An "as built" report that documents all aspects of the soil cleanup and an opinion of the engineer as to whether the cleanup was constructed in compliance with the plans and specifications shall be submitted to Ecology for approval. Within 120 days of the completion of the monitored natural attenuation phase of cleanup an "as built" report that documents all aspects of the groundwater cleanup and an opinion of the engineer as to whether the cleanup was constructed in compliance with the plans and specifications shall be submitted to Ecology for approval. Within 60 days of approval of the groundwater cleanup as-built report, the Alexanders shall decommission all of the groundwater monitoring wells associated with the Alexander Farms site in accordance with WAC 173-160 and WAC 173-162. The Consent Decree shall be considered satisfied when the as-built reports are received and approved by Ecology

## Exhibit C

### Schedule

Alexander Farms Site  
Benton County, Washington

Deliverable or Action Required	Completion or Date Due to Ecology
Schedule for contaminated soil excavation, soil disposal, and schedule for Monitored Natural Attenuation and monitoring well decommissioning	Due within 30 days of the effective date of the Consent Decree
Submittal of draft Engineering Design Report, draft Construction Plans and Specifications, draft Operation and Maintenance Plan, and draft Compliance Monitoring Plan	Due within 60 days of the effective date of the Consent Decree
Submittal of final Engineering Design Report, final Construction Plans and Specifications, final Operation and Maintenance Plan, and final Compliance Monitoring Plan	Due 30 after receiving Ecology's comments on the drafts
Construction shall commence	Within 60 calendar days of Ecology's approval of the final Engineering Design Report, final Construction Plans and Specifications, final Operation and Maintenance Plan, and final Compliance Monitoring Plan
As Built Report Due	Within 120 days of completion of soil excavation and disposal.
As Built Report Due	Within 120 calendar days of completion of the monitored natural attenuation of groundwater
Groundwater monitoring well decommissioned	Within 60 calendar days of the approval of the Monitored Natural Attenuation As Built Report

**Exhibit D**

**Public Participation Plan**

Prepared for:  
Alexander Farms Site  
Grandview, WA

Prepared by:  
Washington State Department of Ecology  
Central Regional Office  
Toxics Cleanup Program  
Yakima, Washington

March 1, 2004

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## 1.0 INTRODUCTION

This Public Participation Plan has been prepared by the Washington State Department of Ecology (Ecology) for the cleanup actions at the Alexander Farms Site, Grandview, Washington. This Public Participation Plan has been prepared in accordance with criteria set forth in Washington Administrative Code (WAC) 173-340-600.

The purpose of this Public Participation Plan is to encourage a coordinated effort and effective public involvement tailored to the public's needs concerning cleanup actions at the Alexander Farms Site in Grandview, Washington. Appropriate governmental officials, persons residing in the potentially affected vicinity, interested persons visiting the potentially affected area, and other persons requesting information about the site, shall be kept informed. According to WAC 173-340-600(9)(g), the Public Participation Plan shall include the following:

- Applicable public notice requirements and how these will be met
- Information repositories
- Methods of identifying the public's concerns
- Methods of addressing the public's concerns and conveying information to the public
- Coordination of public participation requirements
- Amendments to the plan
- Citizen technical advisor (Ecology Site Manager)

### 1.1 Site Overview and History

#### Overview

The Alexander Farms Facility (Site) located in Benton County, Washington, includes all areas where Dinoseb contaminated soil and groundwater originating at the West King Tull Road site has come to be located, including but not limited to, Benton County Parcel No. 1-3094-201-2011-001 located at 179301 West King Tull Road (the former Alexander/Tobin residence), Benton County Parcel No. 1-3094-201-2011-002 located at 179101 West King Tull Road (the former Yakima Chief Ranches Hop processing facility), Benton County Parcel No. 1-3094-200-0001-004 (a hop yard owned by the Alexanders), and Benton County Parcel No. 1-3194-200-0010-000 located at 4902 North Hicks Road (the Etzel residence).

The cleanup action plan will not apply to Benton County Parcel No. 1-3194-200-0010-000 located at 4902 North Hicks Road (the Etzel residence). Ecology has determined, based on available information, that no further action is required at the North Hicks Road parcel.

#### History

As a result of historic Dinoseb mixing and loading, and the cleaning and maintenance of Dinoseb application equipment and containers, the Alexanders released Dinoseb into the environment at the operational headquarters area of the Grandview South Ranch.

In 1994, the Alexanders subdivided the Grandview South Ranch and sold the residential portion to Don and Theresa Tobin (Tobins). The Tobins and their children lived in the ranch house at 179301 West King Tull Road until April of 1998. The Tobins obtained their domestic water from the shallow groundwater well located on the former operational headquarters property of the Grandview South Ranch.

In April of 1998, Ecology investigated a complaint from the Tobins of yellow-colored water coming from the groundwater domestic well at the Grandview South Ranch. Analysis by Manchester Laboratory of a water sample from the groundwater domestic well at the Grandview South Ranch revealed Dinoseb contamination at a concentration of 290 micrograms of Dinoseb per liter of water (ug/l).

The maximum concentration limit (MCL) for Dinoseb established by the USEPA under the Safe Drinking Water Act is 7 ug/l.

Inspections of the Grandview South Ranch by Ecology representatives revealed areas of bright yellow-colored soil. Analysis of two samples of the yellow-colored soil revealed Dinoseb contamination at concentrations of 345 mg/kg and 425 mg/kg respectively.

The concentration of Dinoseb in soils considered protective of potable groundwater as established by Ecology under the MTCA is 1.6 mg/kg.

Inspections of the Grandview South Ranch by Ecology and White Shield employees in 1998 revealed a 30-gallon Vertac General Weed Killer Drum (Vertac Drum) located at the north end of the hop picker building. The Vertac Drum contained approximately ten (10) gallons of yellow/brown liquid. White Shield representatives observed the yellow/brown liquid emerge from a hole in the Vertac Drum when they probed the drum with a boot. Ecology representatives observed yellow-colored soil surrounding the Vertac Drum.

Ecology representatives inspected the Grandview South Ranch and discovered five (5) additional 30-gallon Vertac General Weed Killer Drums in various locations throughout the property.

On May 6, 1998, Ecology issued a notice of Potentially Liable Person Status letter to the Alexanders.

Between May and July of 1998, White Shield investigated the soil contamination at the Grandview South Ranch. A soil sample from the area of the Vertac Drum with a hole revealed Dinoseb contamination at a concentration of 15,000 mg/kg (1.5%). A soil sample taken at the dry well at a depth of eighteen (18) inches below the soil surface revealed Dinoseb contamination at a concentration of 5,300 mg/kg. A soil sample taken near the Hop Kiln Building revealed Dinoseb contamination at a concentration of 8,600 mg/kg. Between May and July 1998, White Shield excavated approximately 800 cubic yards of Dinoseb contaminated soil.

In September 1998, Ecology requested the assistance of the United States Environmental Protection Agency (USEPA) after Ecology determined that White Shield had removed all

excavation equipment from the site in August 1998 and that excavation activities had all but ceased during August, September, and October of 1998. Following Ecology's request for assistance, the United States Environmental Protection Agency conducted a removal assessment and time-critical removal action at the Alexander Farms site. The removal action was conducted from November 1998 to December 1999 for the primary purpose of removing soil believed to be contaminating a drinking water supply. The soil removal substantially reduced the threat of contaminated soil leaching Dinoseb into the groundwater. Removal of contaminated surface and subsurface soils was accomplished by excavating to depths ranging from 2 to 13 feet below ground surface. Soil that contains 1.6 milligrams per kilogram (mg/Kg) of dinoseb is considered a threat to groundwater.

A total of 9,953 cubic yards (12,740 tons) of soil was removed from the site, significantly reducing the threat of release of dinoseb from that source to groundwater. Based on Ecology's "contained-in" determination, soil containing dinoseb at a concentration of less than 80 mg/Kg did not have to be handled as hazardous waste. Of the 12,740 tons of soil, sampling by EPA indicated that 9,206 tons reportedly contained concentrations between 1.6 and 80 mg/Kg and could be hauled directly to Arlington, Oregon for off-site disposal. Sampling also indicated to EPA that the remaining 3,534 tons of waste soil contained dinoseb at concentrations greater than 80 mg/Kg making it a hazardous waste. The latter soils were treated on-site by EPA using a thermal desorption unit. The thermally treated soils were subsequently disposed of off-site at Waste Management, Inc., Subtitle D landfill at Arlington, Oregon. In addition to the excavation, treatment and disposal of the soil, the EPA also disposed of 130 cubic yards of dinoseb-contaminated construction debris, 660 gallons of miscellaneous hazardous substances, and 1,375 gallons of petroleum product.

On September 25, 1998, the Alexanders filed a lawsuit titled Dan Alexander and Harriet Alexander v. Washington State Department of Ecology, No. 98-2-01679-2, Benton County Superior Court. This lawsuit sought to recover cleanup costs incurred by the Alexanders (who were plaintiffs in that suit) on the basis that the Alexanders claimed they were not liable persons under MTCA RCW 70.105D.040, and claiming that the costs they had incurred up to that point had been reasonably incurred consistent with Ecology's order. The Alexanders also alleged that the department acted in an arbitrary and capricious manner with regard to certain investigative and remedial decisions and that they were entitled to a remedy for incurring costs as a result of those allegedly arbitrary and capricious decisions. That lawsuit was resolved after trial to the Honorable Craig J. Matheson with Findings and Conclusions determining, among other things, that the Alexanders were liable parties under MTCA. Although that judgment was appealed by the Alexanders, their appeal was dismissed along with all other litigation by the Alexanders making claims against Ecology and the State in connection with the Site and remediation of the Site.

## **1.2 The Cleanup Process**

Ecology plans to enter into a consent decree with Dan and Harriet Alexander to conduct a soil and groundwater cleanup of the contamination remaining at the site. A draft Cleanup Action Plan (CAP) has been prepared detailing the preferred cleanup option. The draft CAP will go out for

public comment. Ecology may amend the draft CAP in response to comments received during the public comment period. Then, a final CAP will be issued and implemented.

## **2.0 Applicable Public Notice Requirements**

WAC 173-340-600(5) lists methods Ecology may use to provide information to the public. For the Alexander Farms Site, Ecology has chosen the following methods to provide information to the public.

### **2.1 Press Releases**

Ecology will distribute press releases to inform the public of comment periods on documents related to the site, public meetings, and any other important information related to activities taking place at the site.

### **2.2 Fact Sheets**

Fact sheets are site-specific newsletter-like publications which are mailed to affected communities to inform them of comment periods and other important site activities. Fact sheets may also be used to informally update the community on the progress of the cleanup. They are sent to the persons and agencies listed on the site mailing lists, as well as the repositories and any other area where the public may benefit from having access to them. Fact sheets will be released by the Department of Ecology when it is deemed necessary to do so. Fact sheets will be prepared by Ecology.

### **2.3 Public Meetings**

Public meetings or hearings are held during investigations and cleanups if: 1) During a comment period, ten or more people request one; 2) It is apparent that there is a high level of interest or concern about a site; 3) There is an immediate need for Ecology to communicate with the public directly.

### **2.4 Site Register**

One of the Toxics Cleanup Program's primary communication tools is the Site Register. All public meetings and comment periods as well as many other site activities are published in this bi-monthly report. To receive the Site Register, call Tery Fisher (425) 649-4446 - or Tony Valero at (509)454-7840.



## **2.5 Legal Ads/Display Ads**

Legal and/or display advertisements will be placed in the Yakima Herald, Tri-City Herald, and a local Grandview paper to announce site specific formal comment periods and public meetings/hearings.

## **3.0 Information Repositories**

This is a convenient place where site related information is kept so that the community has access to it. Most often a local library is used as well as the more complete site files which are kept at Ecology's regional office in Yakima. During comment periods, all the documents that are available for review are compiled and kept at the repository. Documents remain at the repositories for the entire duration of public comment period. Ecology's Central Files can make copies of documents, but you may be charged for your copies.

For the Alexander Farms site, the repositories will be:

Bleyhl Community Library  
311 Division Street  
Grandview, WA 98930-1358  
Phone: (509) 882-9217

Department of Ecology  
15 W Yakima Ave, Suite 200  
Yakima, WA 98902-3401  
For an appointment to view files, please contact Roger Johnson (Public Disclosure Coordinator) at (509) 454-7658.

## **4.0 Identifying the Public's Concerns**

Comment periods are the primary way Ecology gets feedback from the public on cleanup decisions. Comment periods are at least 30 days long and are required at key points during the cleanup process before final decisions are made. During comment periods, the public can comment in writing. If ten or more people request a public meeting or hearing, Ecology will conduct a meeting to receive comments.

Notices of the completion and the availability for review and comment of the following documents will be mailed and published:

- Draft Cleanup Action Plan
- Draft Consent Decree
- Final Cleanup Action Plan
- Final Consent Decree

## **5.0 Addressing the Public's Concerns**

After every comment period, Ecology responds to all comments received, both oral and written, in a responsiveness summary. This summary is sent to all people who commented and is also made available at Ecology's regional office in Yakima with the other pertinent site documents.

## **6.0 Coordination of Public Participation Requirements**

The Public Involvement Coordinator and Site Manager will oversee coordination of public involvement requirements outlined in WAC 173-340-600, and with public involvement requirements outlined in other applicable federal, state, and local laws. Additional public involvement requirements are outlined in the State Environmental Policy Act (SEPA) Rules (WAC 178-11) and the SEPA Handbook, Ecology publication 98-114. Public participation requirements of other federal, state, and local laws may be identified during the course of the investigatory and cleanup process.

## **7.0 Amendments to the Plan**

Amendments to the Public Participation Plan shall be approved by Ecology.

## **8.0 Citizen Technical Advisor (Ecology Site Manager)**

Citizens can receive technical assistance on issues related to the site investigation and cleanup from:

Site Manager – Tom Mackie  
Ecology Central Regional Office  
15 W Yakima Avenue Suite 200  
Yakima WA 98902-3452  
(509) 454-7834  
FAX (509)575-2809

Citizens can receive information on public involvement from:

Public Involvement – Tony Valero  
same address as above  
(509) 454-7840  
FAX (509)575-2809

Ecology's TDD number is (509) 454-7673. The bilingual contact is Tony Valero (509) 454-7840.

## **9.0 Mailing List**

A mailing list has been developed for the project. This list includes residents within

approximately 1 mile of the site, and news organizations, local media, governmental agencies, and public interest groups. This list was developed by identifying the owners of the land parcels adjacent to and in the area of the Alexander Farms Site. This list also includes anyone interested in the project. Persons on this list will be sent fact sheets as appropriate during the project. Anyone interested in being added to the mailing list can contact Tony Valero at the address or phone number listed above.

## Exhibit E

### RESTRICTIVE COVENANT

A remedial action occurred at the property that is the subject of this Restrictive Covenant. The remedial action conducted at the property is described in the following document: *State of Washington, Department of Ecology v. Alexander, Consent Decree*, Thurston County Superior Court 2004, and Cleanup Action Plan. These documents are on file at the Department of Ecology's Central Regional Office.

Upon completion of the remedial action, residual concentrations of Dinoseb in groundwater are below the Model Toxics Control Act Method B cleanup level for potable groundwater established under WAC 173-340-720(4). This restrictive covenant is required to ensure that potential purchasers of the property are aware of information that may be needed to comply with the minimum standards for construction and maintenance of wells, chapter 173-160 WAC.

The undersigned, Dan Alexander and Harriet Alexander, are the fee owners of real property in the county of Benton, state of Washington, which is subject to this Restrictive Covenant. The property is legally described as follows:

FOR THE PROCESSING AREA: Lot 2 of Short Plat No. 2011, in Section 30 of Township 9 North, Range 24 East, Benton County, Washington.

FOR THE SOUTH HOP FIELD: That portion of Government Lots 1 and 2, lying Southwest of Sunnyside Canal and North of Northern Pacific Railway Company right-of-way, in Section 30 of Township 9 North, Range 24 East, Benton County, Washington.

Dan Alexander and Harriet Alexander make the following declaration as to limitations, restrictions, and uses to which the property may be put and specify that such declarations shall constitute covenants to run with the land, as provided by law, and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the property.

**Section 1. Requirements for Proposed Well.** Before any person constructs a water well on the property, the person shall consult with the Department of Ecology to ensure that the well is not located within 100 feet of any sampling point where the concentration of Dinoseb in groundwater exceeds 7.0 ug/l and that the proposed well complies with all applicable requirements of chapter 173-160 WAC.

**Section 2. Expiration of Restrictive Covenant.** The owners of the property, and parties or persons claiming under them, reserve the right to record an instrument that provides that this restrictive covenant shall no longer limit the use of the property or be of any further force or effect. However, such an instrument may be recorded only if the Department of Ecology, after public notice and opportunity for comment, concurs. The Department of Ecology shall not withhold its concurrence if representative sampling of the groundwater under the property detects no concentration of Dinoseb in excess of the 7.0 ug/l.

DATED this 31 day of October, 2004.

*Dan Alexander*  
DAN ALEXANDER

*Harriet H. Alexander*  
HARRIET ALEXANDER

Exhibit F  
 'Frozen Account' for Benefit of Dan and Harriet Alexander

Par Value	Ratings Moody's/ S&P/ Insurer	Description/ CUSIP/ State	Maturity Date	Call Date	Market Value 12/12/2003
35,000	AAA AAA FGIC	Kitsap Cnty Wash Sch Dist 498062GB8 WA	12/1/2009	12/1/2007	38,315.20
25,000	AA2 NR	Washington St CTFS Par 93972CT77 WA	7/1/2010	7/1/2009	26,270.50
25,000	AAA NR AMBC	Bainbridge Is Wash Pk & 056895DK8 WA	12/1/2010	6/1/2009	26,732.75
20,000	NR AA-	Washington State HFC Non 939783JG2 WA	7/1/2011	7/1/2008	20,968.80
40,000	AA1 AA-	Washington St Pub Pwr 939827ZD6 WA	7/1/2011	7/1/2007	42,818.40
15,000	AAA AAA MB1A	Washington St Hlth CA 93978ENA6 WA	12/1/2012	6/1/2010	16,780.50
25,000	AAA AAA FSA	University Wash Univ R 91523NAL0 WA	6/1/2013	6/1/2010	28,817.75
25,000	AAA AAA FSA	University Wash Univ R 91523NAM8 WA	6/1/2014	6/1/2010	28,594.75
20,000	AA1 AA+	Washington St RFDG-SE 939745PE9 WA	7/1/2015	7/1/2007	21,357.80
40,000	AAA AAA FGIC	Port Portland Intl Arp 735240VJ9 OR	7/1/2017	7/1/2011	43,276.00
25,000	AAA AAA MBIA	Fife Wash RFDG 316603DL0 WA	12/1/2018	12/1/2011	26,541.75
20,000	A1 NR	Deschutes Cnty Ore HO 250336BU7 OR	1/1/2022	1/1/2012	20,626.40
40,000	AA3 NR	Washington St HFC Non 939783HU3 WA	1/1/2024	1/1/2008	41,302.40
25,000	AA3 AA- AMBC	Pierce Cnty Wash 720356TS3 WA	8/1/2025	8/1/2010	26,365.50
20,000	A1 NR	Deschutes Cnty Ore HO 250336BV5 OR	1/1/2027	1/1/2012	20,766.40

OCT 29 2004

STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

DAN ALEXANDER and HARRIET  
ALEXANDER, husband and wife,  
formerly dba YAKIMA CHIEF  
RANCHES,

Defendants.

NO. 04-2-02240-9

COMPLAINT

I. JURISDICTION

1.1 This Court has jurisdiction over the parties and over the subject matter under the Model Toxics Control Act, RCW 70.105D.

II. PARTIES

2.1 Plaintiff State of Washington, Department of Ecology (Ecology) is a state agency charged with the implementation of the Model Toxics Control Act.

2.2 Defendants have agreed to enter into a Consent Decree with Ecology under the Model Toxics Control Act for investigation and clean-up of the site.

1 **III. FACTUAL ALLEGATIONS**

2 3.1 Site refers to the Alexander Farms Site (Site), which is more particularly  
3 described in Exhibit A, a site diagram, attached to the Decree submitted to settle this action.

4 3.2 Ecology has determined that there has been a release or threatened release of  
5 hazardous substances at the Site. Ecology has further determined that this release or threatened  
6 release requires remedial action to protect human health, welfare, and the environment; and  
7 that the Defendants are potentially liable person with respect to this Site.

8 3.3 Ecology and the Defendants have agreed to enter a Consent Decree to resolve  
9 Ecology's claims against the Defendants for investigation and clean-up related to the Site.

10 3.4 The Consent Decree has been the subject of public notice and comment under  
11 RCW 70.105D.040(4)(a). The Consent Decree is being submitted to the Court along with this  
12 Complaint.

13 Ecology has determined that entry of the Consent Decree will lead to a more  
14 expeditious cleanup of the Site.

15 **IV. CAUSE OF ACTION**

16 4.1 Plaintiff re-alleges all preceding paragraphs.

17 4.2 Plaintiff alleges that the Defendants is responsible for investigation and cleanup  
18 at the Site pursuant to the MTCA, RCW 70.105D.050(3).

19 **V. PRAYER FOR RELIEF**

20 5.1 Ecology and Defendants request that the Court sign and enter the Consent  
21 Decree in this matter.

22 ///



OCT 29 2004

STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

DAN ALEXANDER and HARRIET  
ALEXANDER, husband and wife,  
formerly dba YAKIMA CHIEF  
RANCHES,

Defendants.

NO.

SUMMONS 04-2-02240-9

TO: Dan and Harriet Alexander;  
AND TO: Michael B. Gillett, Attorney for Defendants;  
AND TO: The Clerk of the above-entitled Court.

A lawsuit has been started against you in the above-entitled Court by the State of Washington, Department of Ecology, Plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this Summons.

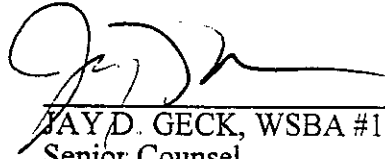
The parties have agreed to resolve this matter by entry of a Consent Decree.

//

1 Accordingly, this Summons shall not require the filing of an answer.

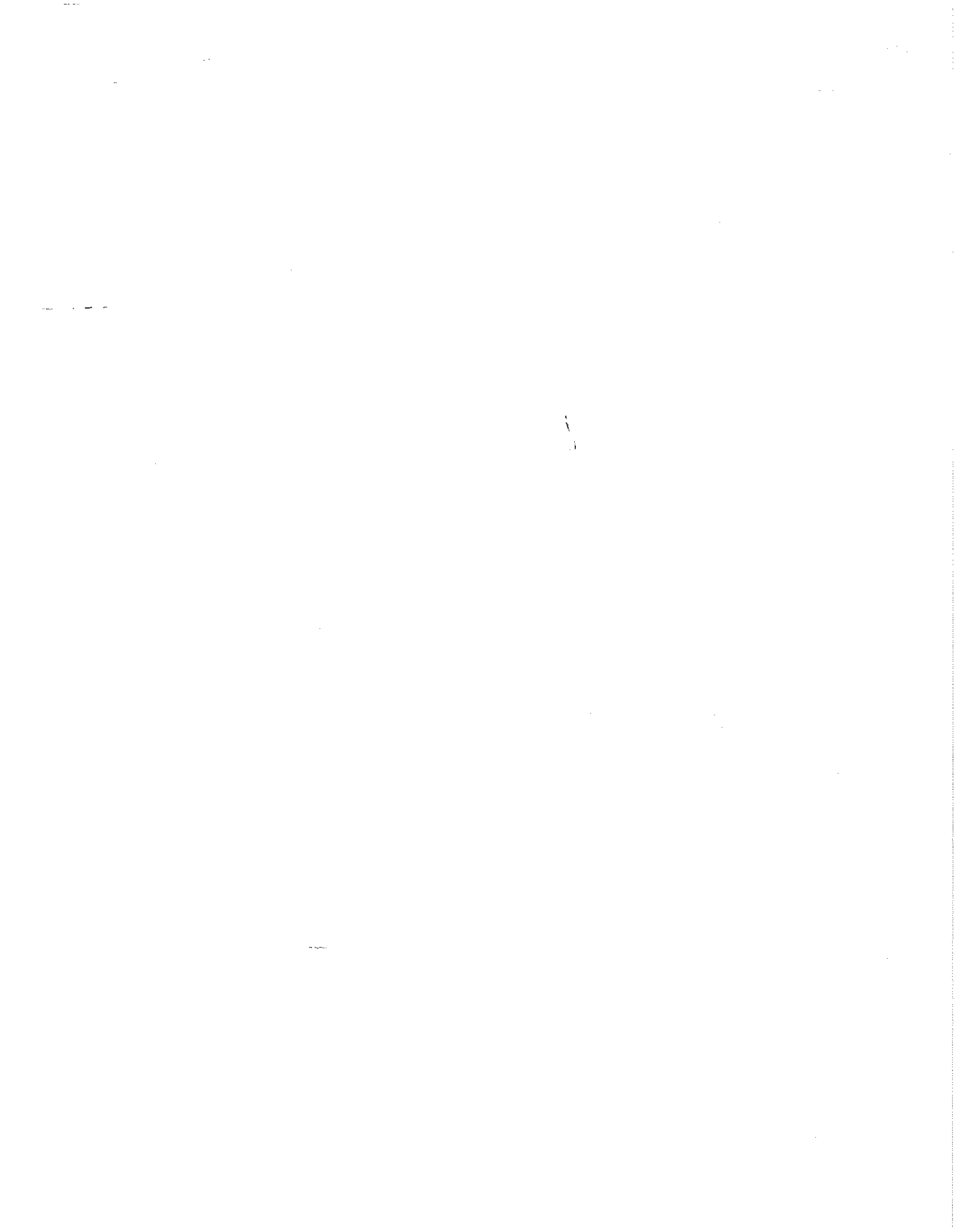
2 Respectfully submitted this 29 day of October, 2004.

3  
4 CHRISTINE O. GREGOIRE  
Attorney General

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6  
7 JAY D. GECK, WSBA #17916  
Senior Counsel  
8 Attorneys for Plaintiff  
State of Washington  
9 Department of Ecology  
(360) 586-6769





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OCT 29 2004

**STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,  
  
Plaintiff,

NO. **04-2-02240-9**  
  
JOINT MOTION FOR ENTRY OF  
CONSENT DECREE

v.

DAN ALEXANDER and HARRIET  
ALEXANDER, husband and wife,  
formerly dba YAKIMA CHIEF  
RANCHES,  
  
Defendants.

**I. INTRODUCTION**

Plaintiff, Washington State Department of Ecology (Ecology), represented by Christine O. Gregoire, Attorney General, and Jay D. Geck, Senior Counsel, and Defendants Dan and Harriet Alexander, represented by Michael B. Gillett of McElroy Law Firm, PLLC, (jointly the Parties) bring this motion seeking entry of the attached Consent Decree. This motion is based upon the pleadings filed in this matter, including the Declaration of Jay D. Geck.

**II. RELIEF REQUESTED**

The Parties request that the court approve and enter the attached Consent Decree that requires remedial investigations and cleanup at the Alexander Farms Site, where there has been

1 a release of hazardous substances. The Parties also request that the court retain jurisdiction  
2 over this action until the action required by the Consent Decree is completed and the parties  
3 request a dismissal of this action.

4 **III. AUTHORITY**

5 RCW 70.105D.030 authorizes Ecology to issue such orders as may be necessary to  
6 effectuate the purposes of the Model Toxics Control Act, RCW 70.105D, and to enter into  
7 consent decrees through judicial proceedings. In addition, RCW 70.105D.040(4) authorizes  
8 the Attorney General to agree to a settlement with a potentially liable person and to request that  
9 the settlement be entered as a consent decree in the superior court of the county where a  
10 violation is alleged to have occurred.

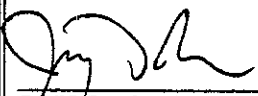
11 **IV. CONCLUSION**

12 The Parties believe it is appropriate for the court to exercise its judicial discretion and  
13 approve the attached Consent Decree, and hereby requests that the court enter the attached  
14 Order.

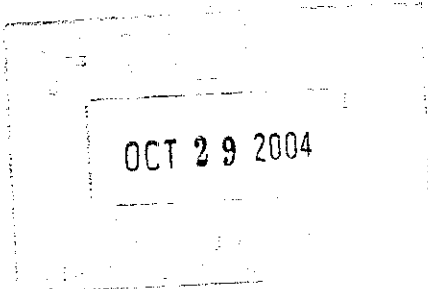
15 DATED this 28<sup>th</sup> day of October, 2004.

16 CHRISTINE O. GREGOIRE  
17 Attorney General

McELROY LAW FIRM, PLLC

18   
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20 JAY D. GECK, WSBA #17916  
21 Senior Counsel  
22 Attorneys for Plaintiff  
State of Washington  
Department of Ecology  
(360) 586-6769

23   
24 \_\_\_\_\_  
25 MICHAEL B. GILLETT, WSBA #11038  
26 Attorneys for the Alexanders  
(206) 654-4160



STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT

NO. 04-2-02240-9

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

NO.

DECLARATION OF JAY D. GECK

v.

DAN ALEXANDER and HARRIET  
ALEXANDER, husband and wife,  
formerly dba YAKIMA CHIEF  
RANCHES,

Defendants.

I, Jay D. Geck, declare under penalty of perjury under the laws of the state of Washington that the following is true and correct.

1. I am over twenty-one years of age and am competent to testify herein. The facts set forth in this Declaration are from my personal knowledge.

2. I am a Senior Counsel assigned to represent the Washington State Department of Ecology on legal matters relating to the site in Thurston County, Washington referred to as the Alexander Farms Site.

3. On behalf of Ecology and the Attorney General's Office, I took part in the negotiations that led to the Consent Decree with the Defendants that is being presented to the Court.





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STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,  
  
Plaintiff,

NO.  
  
ORDER ENTERING CONSENT  
DECREE

v.

DAN ALEXANDER and HARRIET  
ALEXANDER, husband and wife,  
formerly dba YAKIMA CHIEF  
RANCHES,  
  
Defendants.

Having reviewed the Consent Decree signed by the parties to this matter, the Motion for Entry of the Consent Decree, the Declaration of Jay D. Geck, and the file herein, it is hereby

ORDERED AND ADJUDGED that the Consent Decree in this matter is entered and that the Court shall retain jurisdiction over the Consent Decree to enforce its terms.

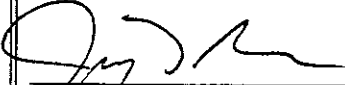
DATED this 29 day of October, 2004.

CHRISTINE A. POMEROY

\_\_\_\_\_  
JUDGE  
Thurston County Superior Court

1 Presented by:


2 CHRISTINE O. GREGOIRE  
3 Attorney General

4   
5 JAY D. GECK, WSBA #17916  
6 Senior Counsel  
7 Attorneys for Plaintiff  
8 State of Washington  
9 Department of Ecology  
10 (360) 586-6769

11 Date: Oct 23, 2004

12 Approved as to form,  
13 notice of presentation waived:

14 McELROY LAW FIRM, PLLC

15   
16 MICHAEL B. GILLETT, WSBA #11038  
17 Attorneys for the Alexanders  
18 (206) 654-4160

19 Date: 10/26/2004

Alexander Farms  
FS 23975611

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

In the Matter of Remedial	)	EMERGENCY ENFORCEMENT ORDER
Action by:	)	
	)	
Dan Alexander	)	No. DE 98TC-C138
	)	
	)	
TO: Dan Alexander	)	
619 Winslow Way West	)	
Bainbridge Island, WA 98110	)	

I

Jurisdiction

This Order is issued pursuant to the authority of Revised Code of Washington (RCW) 70 105D.050(1).

II

Statement of Facts

- 1 On April 15, 1998, Ecology received a complaint concerning contaminated groundwater from a domestic well located at 179301 West King Tull Road near Grandview, Washington. Ecology responded to the complaint. On April 22, 1998, the well water at the site, which had a distinct yellow color to it, was sampled, analyzed, and found to contain the banned herbicide Dinoseb. Dinoseb, which is a phenolic based herbicide commonly used before 1986, was detected in the groundwater at a concentration of approximately 300 micrograms per liter (µg/l). The State of Washington Model Toxics Control Act (MTCA) method B cleanup level for Dinoseb in groundwater is 16 micrograms per liter (µg/l). The U.S. EPA federal drinking water standard is 7 micrograms per liter (µg/l). The sale and use of Dinoseb was banned by the U.S. Environmental Protection Agency by emergency order in 1986.
  
2. Additional investigation of an adjacent property at 179101 West King Tull Road revealed that the ground surface near the contaminated well was stained yellow, a color commonly associated with the herbicide Dinoseb. A soil sample of the ground surface was obtained at the adjacent property with the permission of the tenant and analyzed for Dinoseb. The

analysis of this soil sample showed Dinoseb at a concentration exceeding 400 milligrams per kilogram ( $\mu\text{g}/\text{kg}$ ). The MTCA Method B cleanup levels for soil, protective of groundwater, is 16 milligrams per kilogram ( $\mu\text{g}/\text{kg}$ ). The contaminated soils are located approximately 75 feet from the well described above in 1. The contaminated well was being used as a source of drinking water for the 179301 West King Tull Road residence.

3. Mr. Dan Alexander ("Defendant"), of 6912 Winslow Way West, Bainbridge Island, Washington, is the current owner of the property located at 179101 West King Tull Road where the Dinoseb contaminated soil is located. According to Mr. Alexander, he has owned the property since 1978. Mr. Alexander has leased the property to the owner of a well drilling company, from 1991 to the present. Mr. Alexander was also the former owner of the home located at 179301 West King Tull Road which is adjacent to the 179101 West King Tull Road property. Mr. Alexander sold this home in 1992 to the current residents. Mr. Alexander has a real estate contract with these persons and holds the title to the property.
4. On April 22, 1998, while sampling the Alexander groundwater and soils, Ecology investigators received another complaint about "yellow colored" well water in a domestic well located at a residence at 4902 North Hicks Road, approximately 1.25 miles south of the Alexander West King Tull Road property. This well was sampled on April 23, 1998, and found to also contain Dinoseb. The Dinoseb concentration in this well was measured to be approximately 100 micrograms per liter ( $\mu\text{g}/\text{l}$ ).
5. Upon inspection of a Sunnyside Valley Irrigation District (SVID) irrigation water distribution map, an inlet for a southerly flowing irrigation water lateral was shown to be located adjacent to the Alexander West King Tull Road property (SVID diversion 49.90). It was further determined from the map, and confirmed by Don Schramm of the SVID, that the terminus of lateral 49.90 is located at 4902 North Hicks Road at the southern residence (SVID turnout No. 17 from diversion 49.90). A vicinity map and the potentially affected area are shown in Figure 1. A soil sample collected at 4902 North Hicks Road, SVID 49.90 terminus, on May 1, 1998, (adjacent to the irrigation weir box) was analyzed and found to contain approximately 20 milligrams per kilogram ( $\mu\text{g}/\text{kg}$ ) Dinoseb.

### III.

#### Ecology Determinations

1. Mr. Dan Alexander is an "owner or operator" as defined in RCW 70.105D.020(11) of a "facility" as defined in RCW 70.105D.020(4).
2. The facility is known as the **Alexander Farms** facility. The Alexander Farms facility includes all areas where Dinoseb has contaminated soil and groundwater at the West King

Tull Road site including the residence at 179301 West King Tull Road, the parcel 179101 West King Tull Road, the site located at 4902 North Hicks Road, and any additional properties served by the SVID diversion 49 90, near Grandview, Washington.

3. The substances found at the facility as described above are "hazardous substances" as defined at RCW 70.105D.020(7).
4. Based on the presence of these hazardous substances at the facility and all factors known to the Department, there is a release or threatened release of hazardous substances from the facility, as defined at RCW 70.105D.020(19).
5. By letter dated May 6, 1998, Ecology notified Dan Alexander of his status as a "potentially liable person" under RCW 70.105D.040 in accordance with WAC 173-340-540.
6. Pursuant to RCW 70.105D.030(1) and 70.105D.050, the Department may require potentially liable persons to investigate or conduct other remedial actions with respect to the release or threatened release of hazardous substances, whenever it believes such action to be in the public interest.
7. Based on the foregoing facts, Ecology believes the remedial action required by this Order is in the public interest.
8. This Enforcement Order is being issued on an emergency basis.

#### IV.

#### Work to be Performed

Based on the foregoing Facts and Determinations, it is hereby ordered that Dan Alexander take the following remedial actions and that these actions be conducted in accordance with Chapter 173-340 of the Washington Administrative Code (WAC) unless otherwise specifically provided for herein. These actions shall be completed by the dates specified in Attachment "C" "Schedule for Interim Action and Remedial Investigation/Feasibility Study Deliverables." Attachment "C" is hereby incorporated into this Order by reference and is an integral and enforceable part of the order.

1. The Defendant shall take immediate action to provide site security to control access to the 179101 West King Tull Road site.

2. The defendant shall immediately manage the waste soils that were excavated at the facility on April 26, 1998, designating and disposing of them in accordance with WAC 173-303 (Washington State Dangerous Waste Regulations).
3. The defendant shall inventory and arrange for the disposal of any and all banned or discontinued pesticides that may be stored at the West King Tull Road site.
4. The defendant shall immediately provide for alternative drinking, bathing, washing, and stock water sources for those individuals within the facility boundaries whose well water tests to contain greater than 7 micrograms per liter ( $\mu\text{g/l}$ ) Dinoseb. For all other individuals within the facility boundaries, either provide an alternate potable water supply or conduct well sampling for said individuals, on a weekly basis until further notice.
5. Within seven (7) days of the receipt of this order the Defendant shall hire and provide Ecology the name of an environmental engineering contractor experienced in the remediation, designation, and disposal of pesticide contaminated soil and groundwater.
6. The defendant shall, within fifteen (15) days, provide to Ecology a written work plan for an interim action (IA) emergency soil removal and emergency groundwater monitoring within the boundaries of the facility. The IA work plan shall include: an excavation and removal plan for all soils within the boundaries of the facility that exceed 1.6 milligrams per kilogram (ppm); a sampling and analysis plan designed to define the horizontal and vertical extent of the excavation; a Quality Assurance/Quality Control plan written in accordance with Ecology's "Guidelines and Specifications for Preparing Quality Assurance Projects Plans" per WAC 173-340-820; a plan for the designation and disposal of waste contaminated soils generated during the excavation consistent with WAC 173-303; a site safety plan that addresses all potential exposure pathways for those conducting the facility cleanup and those living near the cleanup site in accordance with WAC 173-340-810; and a groundwater monitoring plan that includes the construction of six (6) or more groundwater monitoring wells at the West King Tull Road site and six (6) or more groundwater monitoring wells at the North Hicks Road site. The number and location of the wells shall be sufficient to determine the horizontal and vertical extent of groundwater contamination at each and any other site within the facility boundary. Groundwater monitoring well construction and water quality monitoring shall begin as specified in Attachment "C". Groundwater samples shall be collected and analyzed in accordance with the approved sampling plan weekly for the first two weeks, bi-weekly for the next four weeks, monthly until October 30, 1998, and quarterly until further notice.
7. In addition to the emergency interim action soil removal and emergency groundwater monitoring, the Defendant shall, by the dates specified in Attachment "C", provide Ecology with a written workplan for a Remedial Investigation/Feasibility Study (RI/FS) as

described in Attachment "A" "Scope of Work for RI/FS Work Plans under Chapter 173-340 WAC". Attachment "A" is hereby incorporated into this Order by reference and is an integral and enforceable part of the Order.

8. In accordance with WAC 173-340-840(5), all IA and RI/FS groundwater sampling data shall be submitted according to Attachment "B": GROUNDWATER SAMPLING DATA SUBMITTAL REQUIREMENTS. These submittals shall be provided to Ecology on paper and in electronic format no more than ten (10) days after each groundwater sampling event. Attachment "B" is hereby incorporated into this Order by reference and is an integral and enforceable part of the Order. The results and analyses from the IA and RI/FS shall be submitted to Ecology for acceptance in accordance with "Schedule for Interim Action and Remedial Investigation/Feasibility Study Deliverables" in Attachment "C".
9. The Defendant shall provide, to the Ecology project coordinator, written status reports of activities pertaining to work or progress toward providing work plans for work at the site weekly. Status reports shall be submitted on the Monday following the week summarized in the report.

V.

Terms and Conditions of Order

1. Definitions Unless otherwise specified, the definitions set forth in ch. 70.105D RCW and ch. 173-340 WAC shall control the meanings of the terms used in this Order.
2. Public Notice RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect.
3. Remedial Action Costs Dan Alexander shall pay to Ecology costs incurred by Ecology pursuant to this Order. These costs shall include work performed by Ecology or its contractors for the initial investigations undertaken prior to the issuance of this order, any remaining investigations, remedial actions, and Order preparation, oversight and administration. Ecology costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Dan Alexander shall pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description of

work performed will be provided upon request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges.

4. Designated Project Coordinators The project coordinator for Ecology is:

Name: Thomas L. Mackie  
Address: 15 West Yakima Ave., Suite 200  
Yakima, Washington 98902  
Phone (509) 454-7834

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and the Defendant, 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 coordinator(s). Should Ecology or the Defendant change project coordinator(s), written notification shall be provided to Ecology or the Defendant at least ten (10) calendar days prior to the change.

5. Performance All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or similar expert, with appropriate training, experience, and expertise in hazardous waste site investigation and cleanup. The Defendant shall notify Ecology as to the identity of such engineer(s) or hydrogeologist(s), and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the Site. The Defendant 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 will be in compliance with this Order.

Except when necessary to abate an emergency situation, the Defendant shall not perform any remedial actions at the Alexander Farms Facility outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

WAC 173-340-400(7)(b)(i) requires that "construction" performed on the Site must be under the supervision of a professional engineer registered in Washington.

6. Access Ecology or any Ecology authorized representative shall have the authority to enter and freely move about all property at the Site at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator



may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the Defendant. When entering the Site under ch. 70.105D RCW, Ecology shall provide reasonable notice prior to entering the Site unless an emergency prevents notice. Ecology shall allow split or replicate samples to be taken by the Defendant during an inspection unless doing so would interfere with Ecology's sampling. The Defendant shall allow split or replicate samples to be taken by Ecology and shall provide Ecology seven (7) days notice before any sampling activity.

7. **Public Participation** The Defendant shall prepare and/or update a public participation plan for the Site. Ecology shall maintain the responsibility for public participation at the Site. The Defendant shall help coordinate and implement public participation for the Site.
8. **Retention of Records** The Defendant shall preserve in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of completion of the work performed pursuant to this Order, all records, reports, documents, and underlying data in its possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of the Defendant, a record retention requirement meeting the terms of this paragraph shall be required of such contractors and/or agents.
9. **Dispute Resolution** The Defendant may request Ecology to resolve factual or technical disputes which may arise during the implementation of this Order. Such request shall be in writing and directed to the signatory, or his/her successor(s), of this Order. Ecology resolution of the dispute shall be binding and final. The Defendant is not relieved of any requirement of this Order during the pendency of the dispute and remains responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.
10. **Reservation of Rights** Ecology reserves all rights to issue additional orders or take any action authorized by law in the event or upon the discovery of a release or threatened release of hazardous substances not addressed by this Order, upon discovery of any factors not known at the time of issuance of this Order, in order to abate an emergency, or under any other circumstances deemed appropriate by Ecology.

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 from the Alexander Farms Site.

In the event Ecology determines that conditions at the Site are creating or have the potential to create a danger to the health or welfare of the people on the Site or in the

surrounding area or to the environment, Ecology may order Dan Alexander to stop further implementation of this Order for such period of time as needed to abate the danger.

11. Transference of Property No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by Dan Alexander 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 transfer of any legal or equitable interest Dan Alexander may have in the Site or any portions thereof, Dan Alexander shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, Dan Alexander shall notify Ecology of the contemplated transfer.

12. Compliance With Other Applicable Laws

- A. All actions carried out by Dan Alexander pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial action under this Order that are applicable shall be included in the workplan and are binding and enforceable requirements of the Order.

Dan Alexander 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 Dan Alexander determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, he shall promptly notify Ecology of this determination. Ecology shall determine whether Ecology or Dan Alexander shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Dan Alexander 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 Dan Alexander and on how Dan Alexander must meet those requirements. Ecology shall inform Dan Alexander in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this

Order. Dan Alexander shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

- B. 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 which is necessary for the State to administer any federal law, the exemption shall not apply and Dan Alexander 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.

## VI.

### Satisfaction of this Order

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

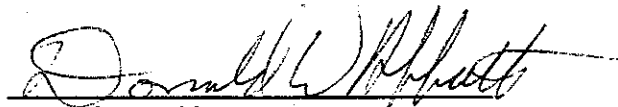
## VII.

### Enforcement

1. 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. In the event Dan Alexander refuses, without sufficient cause, to comply with any term of this Order, Dan Alexander will be liable for:
    - (1) up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and
    - (2) civil penalties of up to \$25,000 per day for each day he 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.

Mr. Dan Alexander  
Emergency Enforcement Order No. DE 98TC-C138  
Page 10

Effective date of this Order: **MAY 7, 1998**

A handwritten signature in black ink, appearing to read "Donald W. Abbott", written over a horizontal line.

**Donald W. Abbott**  
**Section Manager**  
**Toxics Cleanup Program**  
**Central Regional Office**



Alexander Farms  
Amendment 1

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

15 West Yakima, Suite 200 • Yakima, Washington 98902-3401 • (509) 575-2490

June 17, 1998

**CERTIFIED MAIL**

P 148 982 116

Mr. Dan Alexander  
619 Winslow Way West  
Bainbridge Island, Washington 98110

Subject: Amendment of Emergency Enforcement Order DE 98TC-C138; Alexander Farms

Dear Mr. Alexander:

Pursuant to a telephone conversation on May 28, 1998, between Tom Mackie and Jeff Ayers, of White Shield, Inc., I am herein granting your request to amend Ecology Emergency Enforcement Order No. DE 98TC-C138, Section IV paragraph 8. Section IV; paragraph 8, currently reads as follows:

8. In accordance with WAC 173-340-840(5), all IA and RI/FS groundwater sampling data shall be submitted according to Attachment "B": GROUNDWATER SAMPLING DATA SUBMITTAL REQUIREMENTS. These submittals shall be provided to Ecology on paper and in electronic format no more than 10 days after each groundwater sampling event. Attachment "B" is hereby incorporated into this Order by reference and is an integral and enforceable part of the Order. The results and analyses from the IA and RI/FS shall be submitted to Ecology for acceptance in accordance with "Schedule for Interim Action and Remedial Investigation/Feasibility Study Deliverables" in Attachment "C".

As of the date of this letter, Section IV, paragraph 8 shall read as follows:

- 8 In accordance with WAC 173-340-840(5), all IA and RI/FS groundwater and soil sampling data shall be submitted according to Attachment "B": GROUNDWATER SAMPLING DATA SUBMITTAL REQUIREMENTS. These submittals shall be provided to Ecology on paper and in electronic format no more than 20 days after each groundwater and/or soil-sampling event. Attachment "B" is hereby incorporated into this Order by reference and is an integral and enforceable part of the Order. The results and analyses from the IA and RI/FS shall be submitted to Ecology for acceptance in



Mr. Dan Alexander  
Enforcement Order No. DE 98TC-C138  
Amendment 1  
June 17, 1998  
Page 2

accordance with "Schedule for Interim Action and Remedial Investigation/Feasibility Study Deliverables" in Attachment "C".

If you have any questions regarding this matter, please call Tom Mackie, Site Manager, at (509) 454-7834.

Sincerely,



Donald W. Abbott  
Section Manager  
Toxics Cleanup Program  
Central Regional Office

cc: Jeff Ayers, White Shield  
Tom Mackie, Ecology  
Tom Morrill, AAG

Amendment Z  
Alexander Farms



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

15 West Yakima, Suite 200 • Yakima, Washington 98902-3452 • (509) 575-2490

August 16, 1999

**CERTIFIED MAIL**

P 148 982 153

Mr. Dan Alexander  
691 Winslow Way West  
Bainbridge Island, WA 98110

RE: Amendment of Emergency Enforcement Order DE 98IC-C138; Alexander Farms

Dear Mr. Alexander:

Pursuant to White Shield, Inc.'s letter dated June 15, 1999 addressed to Tom Mackie, I am herein granting your request to amend Ecology Emergency Enforcement Order DE 98TC-C138 as follows:

Section IV, paragraph 6. Section IV; paragraph 6, which currently reads as follows:

6. The defendant shall, within fifteen (15) days, provide to Ecology a written work plan for an interim action (IA) emergency soil removal and emergency groundwater monitoring within the boundaries of the facility. The IA work plan shall include: an excavation and removal plan for all soils within the boundaries of the facility that exceed 1.6 milligrams per kilogram (ppm); a sampling and analysis plan designed to define the horizontal and vertical extent of the excavation; a Quality Assurance/Quality Control plan written in accordance with Ecology's "Guidelines and Specifications for Preparing Quality Assurance Projects Plans" per WAC 173-340-820; a plan for the designation and disposal of waste contaminated soils generated during the excavation consistent with WAC 173-303; a site safety plan that addresses all potential exposure pathways for those conducting the facility cleanup and those living near the cleanup site in accordance with WAC 173-340-810; and a groundwater monitoring plan that includes the construction of six (6) or more groundwater monitoring wells at the West King Tull Road site and six (6) or more groundwater monitoring wells at the North Hicks Road site. The number and location of the wells shall be sufficient to determine the horizontal and vertical extent of groundwater contamination at each and any other site within the facility boundary. Groundwater monitoring well construction and water quality monitoring shall begin as specified in Attachment "C". Groundwater samples shall be collected and analyzed in accordance with the approved sampling plan weekly for the first two weeks, bi-weekly for the next four weeks, monthly until October 30, 1998, and quarterly until further notice.



Mr. Dan Alexander  
August 16, 1999  
Page 2

As of the date of this letter, Section IV, paragraph 6 shall read as follows:

6. The defendant shall, within fifteen (15) days, provide to Ecology a written work plan for an interim action (IA) emergency soil removal and emergency groundwater monitoring within the boundaries of the facility. The IA work plan shall include: an excavation and removal plan for all soils within the boundaries of the facility that exceed 1.6 milligrams per kilogram (ppm); a sampling and analysis plan designed to define the horizontal and vertical extent of the excavation; a Quality Assurance/Quality Control plan written in accordance with Ecology's "Guidelines and Specifications for Preparing Quality Assurance Projects Plans" per WAC 173-340-820; a plan for the designation and disposal of waste contaminated soils generated during the excavation consistent with WAC 173-303; a site safety plan that addresses all potential exposure pathways for those conducting the facility cleanup and those living near the cleanup site in accordance with WAC 173-340-810; and a groundwater monitoring plan that includes the construction of six (6) or more groundwater monitoring wells at the West King Tull Road site and six (6) or more groundwater monitoring wells at the North Hicks Road site. The number and location of the wells shall be sufficient to determine the horizontal and vertical extent of groundwater contamination at each and any other site within the facility boundary. Groundwater monitoring well construction and water quality monitoring shall begin as specified in Attachment "C". Groundwater samples shall be collected and analyzed according to the following schedule: monitoring wells YCR-2, YCR-3, YCR-4, YCR-6, YCR-8, YCR-9, YCR-12, YCR-14, YCR-15, YCR-16, YCR-19, YCR-20, the Mendosa residential well, and the Sanchez residential well shall be sampled quarterly with the months of sampling being April, July, October, and January; monitoring wells YCR-1, YCR-5, YCR-10, YCR-13, YCR-17, YCR-18, and the Meyers residential well shall be sampled monthly. The collection and analysis of groundwater samples from monitoring well YCR-11 shall be at your discretion unless directed to do so by Ecology.

Section IV, paragraph 8. Section IV; paragraph 8, which currently reads as follows:

8. In accordance with WAC 173-340-840(5), all IA and RI/FS groundwater and soil sampling data shall be submitted according to Attachment "B": GROUNDWATER SAMPLING DATA SUBMITTAL REQUIREMENTS. These submittals shall be provided to Ecology on paper and in electronic format no more than 20 days after each groundwater and/or soil-sampling event. Attachment "B" is hereby incorporated into this Order by reference and is an integral and enforceable part of the Order. The results and analyses from the IA and RI/FS shall be submitted to Ecology for acceptance in accordance with "Schedule for Interim Action and Remedial Investigation/Feasibility Study Deliverables" in Attachment "C".



Mr. Dan Alexander  
August 16, 1999  
Page 3

As of the date of this letter, Section IV, paragraph 6 shall read as follows:

8. In accordance with WAC 173-340-840(5), all IA and RI/FS groundwater and soil sampling data shall be submitted according to Attachment "B": GROUNDWATER SAMPLING DATA SUBMITTAL REQUIREMENTS. These submittals shall be provided to Ecology on paper no more than 20 days after each groundwater and/or soil-sampling event. These submittals shall be provided to Ecology in electronic format no more than 50 days after each groundwater and/or soil-sampling event. Attachment "B" is hereby incorporated into this Order by reference and is an integral and enforceable part of the Order. The results and analyses from the IA and RI/FS shall be submitted to Ecology for acceptance in accordance with "Schedule for Interim Action and Remedial Investigation/Feasibility Study Deliverables" in Attachment "C".

Section IV, paragraph 9. Section IV; paragraph 9, which currently reads as follows:

9. The Defendant shall provide, to the Ecology project coordinator, written status reports of activities pertaining to work or progress toward providing work plans for work at the site weekly. Status reports shall be submitted on the Monday following the week summarized in the report.

As of the date of this letter, Section IV, paragraph 6 shall read as follows:

9. The Defendant shall provide, to the Ecology project coordinator, written status reports of activities pertaining to work or progress toward providing work plans for work at the site monthly. Status reports shall be submitted the first week following the month summarized in the report.

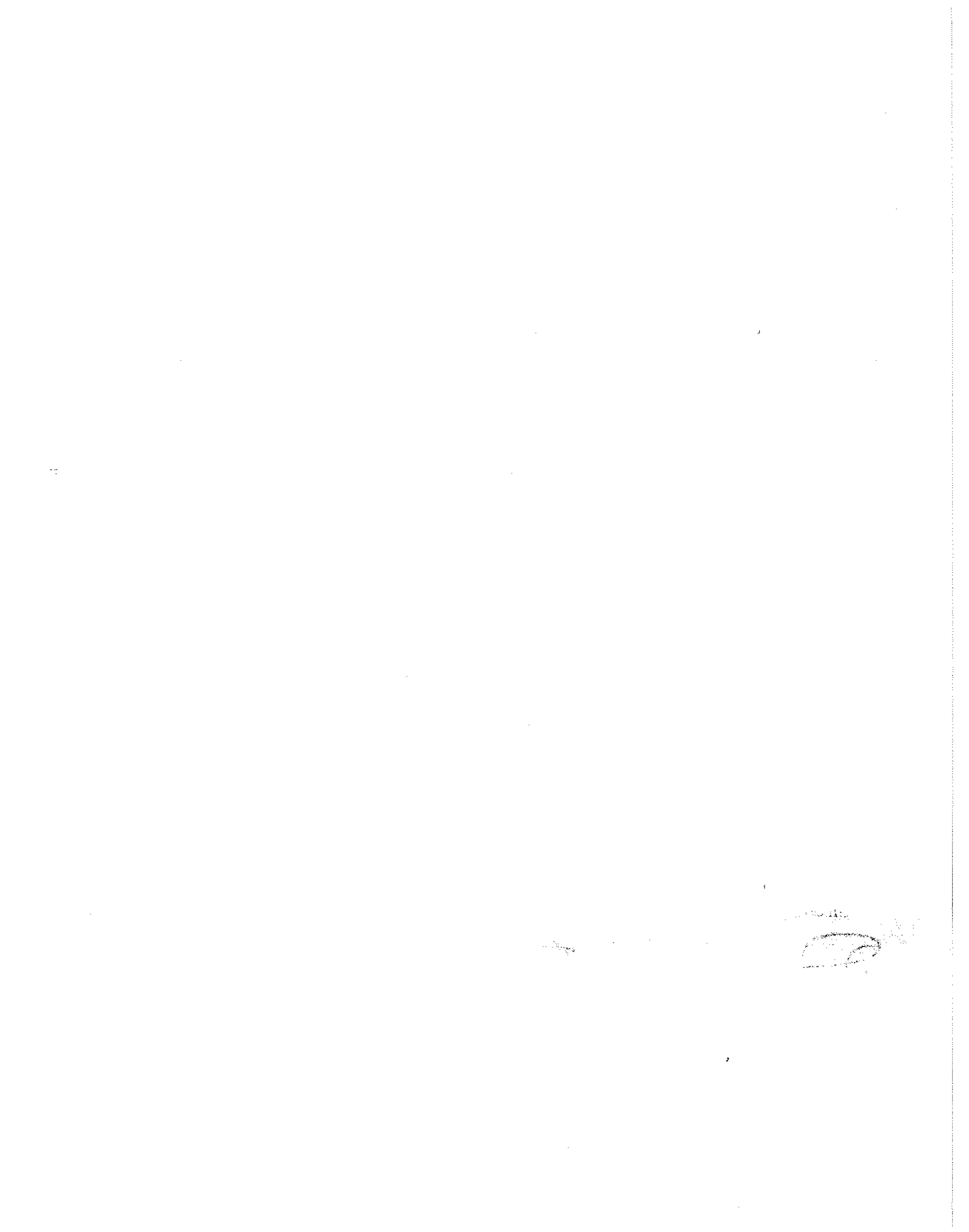
If you have any questions regarding this amendment, please call Tom Morrill, Assistant Attorney General, at (360) 459-6159.

Sincerely,



Donald Abbott  
Section Supervisor  
Toxics Cleanup Program  
Central Regional Office

cc: Bill Gowey, WSI  
Tom Morrill, AAG



Amendment 3  
Alexander Farms



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

15 West Yakima, Suite 200 • Yakima, Washington 98902-3452 • (509) 575-2490

October 12, 1999

**CERTIFIED MAIL**

P 148 982 172

Mr. Dan Alexander  
C/O Mr. Gregory S. McElroy  
1325 Fourth Avenue, Suite 940  
Seattle, Washington 98101-2509

Subject: Amendment of Enforcement Order DE 98TC-C138 – Alexander Farms

Dear Mr. Alexander:

Pursuant to a recent meeting between Tom Mackie and your representatives on October 5, 1999, I am herein granting your request to amend Ecology Emergency Enforcement Order DE 98TC-C138, Attachment C. Attachment C currently reads as follows:

**ATTACHMENT C**

**Schedule for Interim Action and  
Remedial Investigation/Feasibility Study Deliverables**

<b><u>Deliverable</u></b>	<b><u>Date</u></b>
Site Security at West King Tull site	5/13/98
Hire and provide the name of an environmental contractor	5/15/98
Provide alternate source of water	5/15/98
Management of waste soils excavated 4/26/98	5/22/98
Waste pesticides managed	5/22/98
Draft Interim Action (IA) Work Plan due	5/29/98
Final IA Work Plan due	6/5/98



Mr. Dan Alexander  
October 12, 1999  
Page 2

Begin IA Soil Removal	6/8/98
Monitoring wells completed at both sites	6/19/98
Begin groundwater monitoring	6/22/98
IA soil removal complete	7/30/98
Draft RI/FS Work Plan due	8/7/98
Final RI/FS Work Plan due	8/21/98
Draft RI/FS due	10/2/98
Final RI/FS due	10/23/98

As of the date of this letter, Attachment C shall read as follows:

### ATTACHMENT C

#### Schedule for Interim Action and Remedial Investigation/Feasibility Study Deliverables

<b><u>Deliverable</u></b>	<b><u>Date</u></b>
Site Security at West King Tull site	5/13/98
Hire and provide the name of an environmental contractor	5/15/98
Provide alternate source of water	5/15/98
Management of waste soils excavated 4/26/98	5/22/98
Waste pesticides managed	5/22/98
Draft Interim Action (IA) Work Plan due	5/29/98
Final IA Work Plan due	6/5/98

Mr. Dan Alexander  
October 12, 1999  
Page 3

Begin IA Soil Removal	6/8/98
Monitoring wells completed at both sites	6/19/98
Begin groundwater monitoring	6/22/98
IA soil removal complete	7/30/98
<b>Draft RI/FS Work Plan due</b>	<b>11/30/99</b>
<b>Final RI/FS Work Plan due</b>	<b>1/31/00</b>
<b>Draft RI/FS due</b>	<b>7/31/00</b>
<b>Final RI/FS due</b>	<b>10/31/00</b>

If you have any questions regarding this data please call Tom Mackie, Site Manager, at (509) 454-7834.

Sincerely,



Donald W. Abbott  
Section Manager  
Toxics Cleanup Program  
Central Regional Office  
Washington State Department of Ecology

cc: Tom Morrill, AAG





Amendment #4  
Amendment Docket #  
98TC-C138A-04  
COPY

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY  
15 West Yakima, Suite 200 • Yakima, Washington 98902-3452 • (509) 575-2490

August 24, 2000

**CERTIFIED MAIL**

P 148 987 437

Mr. Dan Alexander  
C/O Mr. Gregory S. McElroy  
700 Fifth Avenue, Suite 5850  
Seattle, Washington 98104-5058

Subject: Amendment of Enforcement Order DE 98TC-C138 – Alexander Farms

Dear Mr. Alexander:

Pursuant to a request by your representatives on June 19, 2000 and a recent telephone conversation on August 14, 2000, I am herein granting your request to amend Ecology Emergency Enforcement Order DE 98TC-C138, Attachment C. Attachment C currently reads as follows:

**ATTACHMENT C**

**Schedule for Interim Action and  
Remedial Investigation/Feasibility Study Deliverables**

<b><u>Deliverable</u></b>	<b><u>Date</u></b>
Site Security at West King Tull site	5/13/98
Hire and provide the name of an environmental contractor	5/15/98
Provide alternate source of water	5/15/98
Management of waste soils excavated 4/26/98	5/22/98
Waste pesticides managed	5/22/98
Draft Interim Action (IA) Work Plan due	5/29/98



Mr. Dan Alexander  
August 24, 2000  
Page 2

Final IA Work Plan due	6/5/98
Begin IA Soil Removal	6/8/98
Monitoring wells completed at both sites	6/19/98
Begin groundwater monitoring	6/22/98
IA soil removal complete	7/30/98
Draft RI/FS Work Plan due	11/30/99
Final RI/FS Work Plan due	1/31/00
Draft RI/FS due	7/31/00
Final RI/FS due	10/31/00

As of the date of this letter, Attachment C shall read as follows:

### **ATTACHMENT C**

#### **Schedule for Interim Action and Remedial Investigation/Feasibility Study Deliverables**

<b><u>Deliverable</u></b>	<b><u>Date</u></b>
Site Security at West King Tull site	5/13/98
Hire and provide the name of an environmental contractor	5/15/98
Provide alternate source of water	5/15/98
Management of waste soils excavated 4/26/98	5/22/98
Waste pesticides managed	5/22/98
Draft Interim Action (IA) Work Plan due	5/29/98



Mr. Dan Alexander  
August 24, 2000  
Page 3

Final IA Work Plan due	6/5/98
Begin IA Soil Removal	6/8/98
Monitoring wells completed at both sites	6/19/98
Begin groundwater monitoring	6/22/98
IA soil removal complete	7/30/98
Draft RI/FS Work Plan due	11/30/99
Final RI/FS Work Plan due	1/31/00
<b>1st Draft RI/FS submitted for Ecology and Public Comment</b>	<b>8/31/00</b>
<b>2nd Draft RI/FS submitted for Ecology review</b>	<b>11/31/00</b>

The RI/FS for the Alexander Farms site shall be considered final when your representative receives a Remedial Investigation/Feasibility Study Approval from Ecology.

If you have any questions regarding this amendment, please call Ken Lederman, Assistant Attorney General, at (360) 586-4607.

Sincerely,



Donald W. Abbott  
Section Manager  
Toxics Cleanup Program  
Central Regional Office  
Washington State Department of Ecology

cc: Bill Govey, WSI  
Ken Lederman, AAG





Amendment Docket #  
DE 98TC-C138 A-05  
Amendment #5

STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

15 West Yakima Avenue, Suite 200 • Yakima, Washington 98902-3452 • (509) 575-2490

February 20, 2001

**CERTIFIED MAIL**

7000 0520 0023 2104 0305

Mr Dan Alexander  
691 Winslow Way West  
Bainbridge Island, WA 98110

RE: Amendment of Emergency Enforcement Order DE 98TC-C138; Alexander Farms

Dear Mr. Alexander:

On May 7, 1998 Ecology issued you Emergency Enforcement Order No DE 98TC-C138 for an emergency interim action soil removal, emergency groundwater monitoring, and remedial investigation/feasibility study at the Alexander Farms Facility. Through your efforts and the efforts of the United States Environmental Protection Agency, the emergency interim action soil removal portion of this order has been satisfied. From this date forward, the STATE OF WASHINGTON DEPARTMENT OF ECOLOGY EMERGENCY ENFORCEMENT ORDER NO DE 98TC-C138 shall be called STATE OF WASHINGTON DEPARTMENT OF ECOLOGY ENFORCEMENT ORDER NO. DE 98TC-C138.

Ecology also hereby amends Section III, paragraph 2 of the Enforcement Order, which currently reads as follows:

- 2 The facility is known as the **Alexander Farms** facility. The Alexander Farms facility includes all areas where Dinoseb contaminated soil and groundwater at the West King Tull Road site including the residence at 179301 West King Tull Road, the parcel 179101 West King Tull Road, the site located at 4902 North Hicks Road, and any additional properties served by the SVID diversion 49.90, near Grandview, Washington.

As of the date of this letter, Section III, paragraph 2 of the Enforcement Order shall read as follows:

- 2 The facility is known as the **Alexander Farms** facility. The Alexander Farms facility includes all areas where Dinoseb contaminated soil and groundwater at the West King Tull Road site has come to be located, including but not limited to, Benton County Parcel No. 1-3094-201-2011-001 located at 179301 West King Tull Road, Benton County Parcel No 1-3094-201-2011-

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February 20, 2001  
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002 located at 179101 West King Tail Road, and Benton County Parcel No 1-3194-200-0010-000 located at 4902 North Hicks Road.

If you have any questions regarding this amendment, please call Ken Lederman, Assistant Attorney General, at (360) 586 6770.

Sincerely,

A handwritten signature in cursive script, appearing to read "Donald W. Abbott".

Donald Abbott  
Section Supervisor  
Toxics Cleanup Program  
Central Regional Office

cc: Michael B. Gillett, McElroy Law Firm  
Bill Gowey, WSI  
Ken Lederman, AAG

Amendment #6  
DE 98 TC-C138-05



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY  
15 West Yakima Avenue, Suite 200 • Yakima, Washington 98902-3452 • (509) 575-2490

August 14, 2001

**CERTIFIED MAIL**

7000 0520 0023 2104 0596

Mr. Dan Alexander  
c/o Mr. Gregory S. McElroy  
700 Fifth Avenue, Suite 5850  
Seattle, Washington 98104-5058

Subject: Amendment of Enforcement Order DE 98TC-C138 – Alexander Farms

Dear Mr. Alexander:

Ecology Emergency Enforcement Order DE 98TC-C138 is herein amended as follows:

Attachment C currently reads as follows:

**ATTACHMENT C**

**Schedule for Interim Action and  
Remedial Investigation/Feasibility Study Deliverables**

<b><u>Deliverable</u></b>	<b><u>Date</u></b>
Site Security at West King Tull site	5/13/98
Hire and provide the name of an environmental contractor	5/15/98
Provide alternate source of water	5/15/98
Management of waste soils excavated 4/26/98	5/22/98
Waste pesticides managed	5/22/98
Draft Interim Action (IA) Work Plan due	5/29/98
Final IA Work Plan due	6/5 98



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Begin IA Soil Removal	6/8/98
Monitoring wells completed at both sites	6/19/98
Begin groundwater monitoring	6/22/98
IA soil removal complete	7/30/98
Draft RI/FS Work Plan due	11/30/99
Final RI/FS Work Plan due	1/31/00
<b>1st Draft RI/FS submitted for Ecology and Public Comment</b>	<b>8/31/00</b>
<b>2nd Draft RI/FS submitted for Ecology review</b>	<b>11/31/00</b>

As of the date of this letter, Attachment C shall read as follows:

#### ATTACHMENT C

##### Schedule for Interim Action and Remedial Investigation/Feasibility Study Deliverables

<u>Deliverable</u>	<u>Date</u>
Site Security at West King Tull site	5/13/98
Hire and provide the name of an environmental contractor	5/15/98
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Final RI/FS Work Plan due	1/31/00
<b>1st Draft RI/FS submitted for Ecology and Public Comment</b>	<b>8/31/00</b>
<b>2nd Draft RI/FS submitted for Ecology review</b>	<b>9/3/01</b>

The RI/FS for the Alexander Farms site shall be considered final when your representative receives a Remedial Investigation/Feasibility Study Approval from Ecology.

If you have any questions regarding this amendment, please call Ken Lederman, Assistant Attorney General, at (360) 586-4607.

Sincerely,



Donald W. Abbott  
Section Manager  
Toxics Cleanup Program  
Central Regional Office

cc: Bill Gowey, WSI  
Ken Lederman, AAG  
Jay Geck, AAG

