

RECEIVED

MAY 18 2009

DEPT. OF ECOLOGY
TCP-NWRO

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:

Barbee Mill Co., Inc.

Barbee Mill AGREED ORDER

No. DE 5396

TO: Barbee Mill Co., Inc.
Attention: Mr. Robert Cugini, Vice President
P. O. Box 359
Renton, WA 98057

TABLE OF CONTENTS

I.	INTRODUCTION.....	3
II.	JURISDICTION.....	3
III.	PARTIES BOUND.....	3
IV.	DEFINITIONS.....	3
V.	FINDINGS OF FACT.....	4
VI.	ECOLOGY DETERMINATIONS.....	9
VII.	WORK TO BE PERFORMED	10
VIII.	TERMS AND CONDITIONS OF ORDER.....	13
	A. Public Notice.....	13
	B. Remedial Action Costs	13
	C. Implementation of Remedial Action.....	14
	D. Designated Project Coordinators	14
	E. Performance	15
	F. Access	15
	G. Sampling, Data Submittal, and Availability	16
	H. Public Participation.....	17

I.	Retention of Records.....	18
J.	Resolution of Disputes.....	18
K.	Extension of Schedule.....	19
L.	Amendment of Order	21
M.	Endangerment	21
N.	Reservation of Rights.....	22
O.	Transfer of Interest in Property.....	23
P.	Compliance with Applicable Laws.....	23
Q.	Financial Assurances	25
R.	Periodic Review	26
S.	Indemnification.....	26
IX.	SATISFACTION OF ORDER.....	26
X.	ENFORCEMENT	27
EXHIBIT A.	Site Diagram with Proposed Plat and Monitoring Well Locations	
EXHIBIT B.	Passive Attenuation Zone	
EXHIBIT C.	Schedule of Deliverables for Interim Actions	
EXHIBIT D.	List of Permits or Authorizations for Interim Action	
EXHIBIT E.	Procedurally Exempt Substantive Requirements for Interim Action	
EXHIBIT F.	Environmental Covenant	

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Barbee Mill Co., Inc. under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the Barbee Mill Co., Inc. to implement interim remedial actions at the facility. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. Barbee Mill Co., Inc. agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the responsibility of Barbee Mill Co., Inc. under this Order. Barbee Mill Co., Inc. shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

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

A. Site: The Site is referred to as the Barbee Mill Company Site and is generally located at 4101 Lake Washington Boulevard North in Renton, Washington 98057. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. The Site, as currently known, is more particularly described in the Site Diagram (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(5).

B. Parties: Refers to the State of Washington, Department of Ecology and Barbee Mill Co., Inc.

C. Potentially Liable Person (PLP): Refers to Barbee Mill Co., Inc.

D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits to this Order.

V. FINDINGS OF FACT

Ecology makes the following Findings of Fact, without any express or implied admissions of such facts by Barbee Mill Co., Inc. . All reports referenced below are on file at Ecology's Northwest Regional Office in Bellevue, Washington.

A. The former Barbee Mill Property is located at 4101 Lake Washington Boulevard North, Renton, Washington. From 1943 to 1945, the property was owned by Barbee Marine Yards and a shipyard was created on the northern portion of the property to construct vessels during World War II. From 1945 to 2006, the property was owned by Barbee Mill Co. who operated a lumber mill on the property. Conner Homes at Barbee Mill LLC (Conner Homes) purchased the property in 2006 and is the current owner. The property consists of approximately 22 acres. The City of Renton has approved a Preliminary Plat dividing the property into 114 residential lots in addition to several common space tracts and street right-of-ways. The preliminary plat is shown on Exhibit A.

B. Operations during Barbee Mill historic lumber mill operations included the use of five underground tanks and one above-ground tank used to store petroleum hydrocarbons, a fungicide spray area where a pentachlorophenol-containing compound was used in the 1970s to treat lumber, and an area in the northern portion of the site where pilings were treated in the late 1940s using a solution containing arsenic trioxide and zinc sulfate. Details of historical use and operations are provided in the *Independent Remedial Action Plan, Upland Areas* report (IRAP) prepared by Hart Crowser dated September 6, 2000.

C. Environmental investigations were performed on the Site by Retec and Hart Crowser from 1996 to 1999. Explorations included 59 soil borings, 7 test pits, 4 well points, and 12 monitoring wells. Results of these investigations are summarized in the IRAP. These reports document detections of arsenic exceeding MTCA Method A cleanup levels in site soil and groundwater in the northeast corner of the property, detections of zinc in groundwater exceeding the state water quality criterion for fresh water in the area of highest arsenic occurrences, and a detection of diesel-range petroleum hydrocarbons in groundwater exceeding the MTCA Method A cleanup level for groundwater adjacent to a former UST used for diesel storage before its removal in 1990.

D. Environmental investigations were performed on sediments adjacent to the portion of the Site offshore of the Conner property by Retec, Hart Crowser, and Anchor Environmental from 1996 to 2002. These included performing side-scan sonar and diver surveys and sediment profile imaging, advancing eight sediment cores, and collecting 21 surface sediment grab samples. These investigations identified areas of wood debris from former log rafting activities that resulted in exceedances of Ecology's Freshwater Sediment Quality Value for Total Organic Carbon (TOC).

E. In 1999 and 2002, Barbee Mill dredged woodwaste-impacted sediments from offshore of the Conner property. On February 27, 2003, Ecology issued a No Further Action letter in which Ecology determined that the release of wood waste into the sediments no longer poses a threat to human health or the environment. On April 3, 2003, Ecology issued a letter indicating that approximately 18,000 cubic yards of dredged, stockpiled sediment were suitable for unrestricted beneficial reuse.

F. Between December 2005 and January 2006, Barbee Mill conducted a shoreline habitat restoration along the northern portion of the Conner property shoreline. The restoration involved removing structures and creating a new beach with native plantings.

G. Contaminated groundwater in the northern portion of the Conner property flows to the northwest and discharges to Lake Washington, which abuts the property to the west. A

portion of the plume travels across the adjacent property to the north (Quendall Terminals) before discharging to the lake. As a result, preliminary cleanup levels were developed in the Independent Remedial Action Plan considering both protection of groundwater and surface water. The preliminary cleanup level for arsenic in groundwater was based on natural background concentrations observed in the shallow aquifer.

H. In 2000, Barbee Mill applied to Ecology's Voluntary Cleanup Program and submitted the Independent Remedial Action Plan, which outlined a cleanup action including removal, to a depth of 15 feet, of arsenic-contaminated soil exceeding the MTCA Method A Cleanup Level for Unrestricted Use of 20 mg/kg, followed by further evaluation of the remaining arsenic in groundwater. Ecology issued an opinion letter on the planned cleanup on September 12, 2000.

I. In 2005, Aspect Consulting and S.S. Papadopoulos conducted a geochemical and sediment porewater sampling investigation to model arsenic fate-and-transport at the Site. The conclusion of the study was that even after excavation of soil exceeding 20 mg/kg, groundwater attenuation alone would not achieve cleanup levels within a reasonable restoration timeframe. Consequently, more active groundwater remedial alternatives were considered.

J. Aspect Consulting conducted an analysis of measures to address arsenic in groundwater in the Independent Remedial Action Plan Addendum (IRAP Addendum) dated February 6, 2006. The selected alternative consisted of installing a subsurface Passive Attenuation Zone (PAZ) to intercept the arsenic plume along the Lake Washington shoreline, installing a groundwater pump-and-treat system in the interior of the Conner property, and placing a restrictive covenant on the property preventing groundwater use and disturbance of the constructed elements of the remedial action. The PAZ was designed with sufficient capacity to remove residual arsenic without needing maintenance or repair, while the pump-and-treat system was included to provide additional short-term removal of arsenic and to provide available redundancy to the PAZ in the long-term. Ecology issued an opinion letter on the proposed action dated May 17, 2006, indicating that the proposed approach was likely to be sufficient to meet the

substantive requirements of MTCA for characterizing and addressing arsenic in groundwater at the Site.

K. In 2006, Urban Redevelopment, on behalf of Conner Homes, conducted a supplemental environmental investigation of the Conner property that included excavation of 10 test pits. Urban Redevelopment identified localized contamination in two areas. In one area, diesel-range petroleum hydrocarbons were detected above the MTCA Method A cleanup level in a groundwater grab sample collected from a test pit. In the other area, pentachlorophenol was detected above the MTCA Method B cleanup level for soil in one sample.

L. In 2006, Barbee Mill excavated approximately 30,000 cubic yards of arsenic-contaminated soil, 230 cubic yards of petroleum-contaminated soil, and 160 cubic yards of pentachlorophenol-contaminated soil. Confirmation sampling included 23 samples for petroleum, 16 samples for pentachlorophenol, 90 samples for zinc, and 352 samples for arsenic. All confirmation samples were below MTCA Method A (for arsenic and petroleum) or B (for zinc and pentachlorophenol) cleanup levels for unrestricted use, except for three samples that exceeded the MTCA Method A cleanup level for arsenic but were located below 15 feet in depth (the standard point of compliance for direct contact). The area of arsenic-contaminated soil removed was approximately 700 feet long and 220 feet wide, and up to 15 feet deep. Contaminated soil was disposed of at the Roosevelt Regional Landfill in Roosevelt, Washington. Approximately 860,000 gallons of contaminated groundwater was removed, treated using a packed bed of granulated iron, and discharged to the King County sanitary sewer. These actions were documented in the *Construction Report, Barbee Mill Arsenic Remediation* dated June 21, 2006 and the *Construction Report, Barbee Mill TPH and PCP Remediation* dated June 21, 2006.

M. In 2006, Aspect Consulting conducted an environmental investigation on the Conner and Quendall properties and in the adjacent Lake Washington sediments for design of the PAZ and groundwater pump-and-treat system. The design investigation included 66 groundwater samples collected from 34 soil borings and three sediment porewater samples to further delineate the areal and vertical extent of the arsenic plume and refine the site background concentration of

arsenic in groundwater, to groundwater fate-and-transport modeling, and treatability testing for potential PAZ media. The results of the investigation, background analysis, groundwater modeling, and the recommended design are documented in the *Draft Engineering Design Report, Barbee Mill Groundwater Remediation* dated August 2, 2006. The PAZ design called for installation along the Conner property shoreline and the north Conner property boundary to treat groundwater prior to movement onto adjacent properties. Ecology provided technical assistance and advice. The design was finalized incorporating Ecology comments as the *Construction Specifications, Barbee Mill Passive Attenuation Zone* (undated) and the *Construction and Performance Monitoring Plan, Barbee Mill Groundwater Remediation Project*, dated March 5, 2007.

N. In 2006, Aspect Consulting conducted a pilot test for the proposed PAZ, consisting of a 40-foot long, 15-foot wide, and 15-foot deep portion of the PAZ, and monitoring at three monitoring wells, two well points, and one porewater station for three months. Results, which were reported in a memo titled *Passive Attenuation Zone Pilot Test Results*, dated December 15, 2006, verified the proposed design.

O. In 2007, Barbee Mill installed the PAZ along the shoreline and the downgradient Conner property boundary to intercept and treat groundwater containing arsenic above the Site preliminary cleanup level, based on background, of 0.020 mg/L. The PAZ is 690 feet long, ranges from 10 to 25 feet wide and from 15 to 22 feet deep, and contains between 3 and 29 percent granulated iron, with the balance of the mixture sand to maintain permeability. This work was documented in the *Construction Report – Passive Attenuation Zone, Barbee Mill Arsenic Remediation*, dated October 5, 2007.

P. In 2007, Barbee Mill installed eight performance monitoring wells and two piezometers for the PAZ and eight extraction wells and underground utilities for the groundwater pump-and-treat system.

Q. On December 3, 2007, Ecology issued a *Partial Sufficiency and Further Action Determination* letter for the Barbee Mill Co. Site (VCP No.NW0182).

R. On January 24, 2008 letters of final PLP status determinations were issued by Ecology to Barbee Mill Co., Inc. and Conner Homes at Barbee Mill, LLC.

VI. ECOLOGY DETERMINATIONS

A. Barbee Mill Co., Inc. and Conner Homes at Barbee Mill, LLC are "owners or operators" as defined in RCW 70.105D.020(17) of a "facility" as defined in RCW 70.105D.020(5).

B. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(25) and RCW 70.105D.020(10), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letters to the Barbee Mill Co., Inc. and Conner Homes at Barbee Mill, LLC dated January 22, 2008, pursuant to RCW 70.105D.040, -.020(21) and WAC 173-340-500. By letter dated January 23 and 24, 2008, Conner Homes at Barbee Mill, LLC and the Barbee Mill Co., Inc., respectively, voluntarily waived their rights to notice and comment and accepted Ecology's determination that the Barbee Mill Co., Inc. and Conner Homes at Barbee Mill, LLC are PLPs under RCW 70.105D.040.

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

E. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study or design of a cleanup action.

F. Arsenic contaminated ground water from the Site flows into Lake Washington. Existing Site data indicates that, depending on the ultimate cleanup action selected for the Site, it could be a substantial number of years before cleanup standards are achieved. This circumstance warrants interim actions consistent with WAC 173-340-430.

G. Barbee Mill Co., Inc. is conducting interim remedial actions to address arsenic in groundwater. The following major elements of cleanup actions have been completed:

1. Installation of a subsurface, permeable, passive treatment system (the PAZ) along the downgradient Barbee Mill property line to remove arsenic from groundwater. See Exhibits A and B.
2. Installation of a performance monitoring well network, consisting of eight monitoring wells along the PAZ alignment.
3. Installation of a groundwater extraction system, consisting of eight wells and associated underground utilities.
4. Installation of two piezometers upgradient of the PAZ and groundwater extraction system to monitor groundwater flow patterns at the site.
5. Construction of storm water detention pond with impermeable liner and an overlying sand layer. Note that the final protective gravel layer still needs to be installed over the sand layer to complete construction of the storm water detention pond. See Section VII., Work to be Performed.
6. Excavation to a depth of 15 feet, of arsenic-contaminated soil exceeding the MTCA Method A Cleanup Level for Unrestricted use of 20 milligrams per kilogram.
7. An Environmental Covenant was recorded on June 6, 2008 with the County Auditor's Office on the title of the property owned by Conner Homes at Barbee Mill, LLC, Recording Number 20080606001208. A copy of the Covenant is attached as Exhibit F. The intent of the Covenant is to ensure the successful operation of the interim actions at the Site.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that Barbee Mill Co., Inc. take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein, and in accordance with the schedule attached as Exhibit C.

A. Interim Remedial Action

Barbee Mill Co., Inc.'s additional activities for the interim remedial action shall include:

1. Installing two well points in the Lake Washington lakebed sediments on the adjacent property to the north to monitor groundwater downgradient of the PAZ.
2. Installing the treatment equipment and controls for the groundwater extraction system.
3. Complete construction and begin operating the ground-water extraction and treatment system within 120 days of the effective date of the agreed order. The goal of the extraction system is to accelerate removal of arsenic from the subsurface and reduce the restoration time frame, to the maximum extent practicable, and to at least less than 50 years.
4. The restoration time frame shall be re-evaluated annually.
5. An operations and maintenance plan to keep the extraction system functioning as needed, and to make changes to the extraction system to optimize its effectiveness.
6. A schedule and performance criteria for installation, operation, and monitoring of the ground-water extraction system.
7. A ground-water extraction system construction report.
8. Installation of a gravel layer on top of sand layer of the storm water detention pond. Gravel layer is planned for installation upon completion of all the houses at Conner Homes at Barbee Mill. Final construction shall be completed no later than 30 days after release of the City of Renton's Maintenance Bond number 334518S.
9. Complete draft interim action design and implementation report, and then, after receiving Ecology's comments, incorporate Ecology's comments in the final report.
10. Complete draft Performance Monitoring Plan for ground water and then, after receiving Ecology's comments, incorporate Ecology's comments in the final report.
11. Develop a "data-gaps" analysis, subject to Ecology review and approval, to evaluate the need to further investigate the potential for arsenic to be present in the sediment offshore from the northern half of the Barbee Mill (Connor Homes at Barbee Mill, LLC property) and the southwestern corner of the Quendall Terminals property.

B. Ground-Water Monitoring

The PLP shall submit for Ecology review and approval, in accordance with the due date established in Exhibit C, a final Performance Monitoring Plan to be updated from the March 5, 2007 Construction and Performance Monitoring Plan, as follows:

1. Zinc shall be included as one of the analytes for the first year of ground water monitoring at PAZ performance monitoring wells. After the first year of monitoring, the results will be assessed to determine if continued monitoring or other actions are necessary.
2. Arsenic shall be included as one of the analytes in the pore water monitoring for the ground-water lens that occurs beneath and discharges into Lake Washington.
3. Diesel-range hydrocarbons (TPH-D) shall be monitored quarterly in wells CMW-1, EW-1, and EW-3 for a minimum of one year to confirm cleanup of ground water in the East TPH Area. Monitoring can be discontinued when four quarters of data show ground water meeting cleanup levels for TPH-D.
4. A confirmation ground-water sample shall be collected downgradient of the West TPH area to confirm diesel-range hydrocarbons are below cleanup levels.
5. Include in the final Performance Monitoring Plan, an updated pore water monitoring plan in Lake Washington.

The PLP shall monitor ground water according to the schedule set forth in the updated Performance Monitoring Plan.

The PLP shall submit annually to Ecology, in accordance with the due date established in Exhibit C, a Performance Monitoring Report that summarizes the results of performance monitoring, an evaluation of PAZ effectiveness, and a discussion of trends in arsenic concentration relative to the cleanup level.

C. Progress Reports

Quarterly Progress Reports shall be submitted to the Ecology Project Coordinator per the schedule in Exhibit C.

Reports shall regularly contain the following information:

1. A description of all work completed pursuant to the Agreed Order since the last progress report;
2. A summary of data collected since the last progress report;
3. Summaries of all problems encountered during the reporting period and actions taken to rectify those problems; and
4. Projected work for the next reporting period.

D. Schedule of the work to be performed is shown in Exhibit C.

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

VII. TERMS AND CONDITIONS OF ORDER

A. Public Notice

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

B. Remedial Action Costs

The Barbee Mill Co., Inc. shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). The Barbee Mill Co., Inc. shall pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

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

C. Implementation of Remedial Action

If Ecology determines that the Barbee Mill Co., Inc. has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to the Barbee Mill Co., Inc., perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because Barbee Mill Co., Inc. fail to comply with its obligations under this Order, the Barbee Mill Co., Inc. shall reimburse Ecology for the costs of doing such work in accordance with Section VIII, provided that the Barbee Mill Co., Inc. is not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

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

D. Designated Project Coordinators

The project coordinator for Ecology is:

Ching-Pi Wang
Washington Department of Ecology
Northwest Regional Office
3190 – 160th Avenue SE
Bellevue, WA 98008-5452
(425) 649-7134
cwan461@ecy.wa.gov

The project coordinator for the Barbee Mill Co., Inc. is:

Jeremy Porter
Aspect Consulting LLC
401 2nd Avenue South
Seattle, WA 98104
(206) 838-5835
jporter@aspectconsulting.com

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the Barbee Mill Co.,

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

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

E. Performance

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

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

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

Any documents submitted containing geologic, hydrologic or engineering work shall be under the seal of an appropriately licensed professional as required by Chapter 18.220 RCW or RCW 18.43.130.

The Barbee Mill Co., Inc. shall notify Ecology in writing of the identity of the engineer(s) and geologist(s) and contractor(s), and others who will supervise the activities necessary to carry out the terms of this Order, in advance of their involvement at the Site.

F. Access

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that the Barbee Mill Co., Inc. either owns, controls,

or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the Barbee Mill Co., Inc. progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the Barbee Mill Co., Inc.. The Barbee Mill Co., Inc. shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the Barbee Mill Co., Inc. where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the Barbee Mill Co., Inc. unless an emergency prevents such notice. All persons who access the Site pursuant to this Section shall comply with any applicable Health and Safety Plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

G. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the Barbee Mill Co., Inc. shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, the Barbee Mill Co., Inc. shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the Barbee Mill Co., Inc. pursuant to implementation of this Order. The Barbee Mill Co., Inc. shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the Barbee Mill Co., Inc. and/or its authorized representative

to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII. (Access), Ecology shall notify the Barbee Mill Co., Inc. prior to any sample collection activity unless an emergency prevents such notice.

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

H. Public Participation

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

Ecology shall maintain the responsibility for public participation at the Site. However, the Barbee Mill Co., Inc. shall cooperate with Ecology, and shall:

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

2. Notify Ecology's project coordinator prior to the following, if and to the extent they concern the remedial action required by this Order: preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify the Barbee Mill Co., Inc. prior to the following, if and to the extent they concern the remedial action required by this Order: issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments. For all press

releases, fact sheets, meetings, and other outreach efforts by the Barbee Mill Co., Inc. that do not receive prior Ecology approval, the Barbee Mill Co., Inc. shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

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

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. Renton Public Library
100 Mill Avenue South
Renton, WA 98057
- b. Ecology's Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452

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

I. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, Barbee Mill Co., Inc. shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, Barbee Mill Co., Inc. shall make all records available to Ecology and allow access for review within a reasonable time.

J. Resolution of Disputes

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under

Section VIII.B (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

a. Upon receipt of Ecology's project coordinator's written decision or the itemized billing statement, the Barbee Mill Co., Inc. has fourteen (14) days within which to notify Ecology's project coordinator in writing of its objection to the decision or itemized statement.

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

c. The Barbee Mill Co., Inc., LLC may then request regional management review of the decision. This request shall be submitted in writing to the Northwest Region Toxics Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's written decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of the Barbee Mill Co., Inc.'s request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

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

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

K. Extension of Schedule

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

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

2. The burden shall be on the Barbee Mill Co., Inc. to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

- a. Circumstances beyond the reasonable control and despite the due diligence of the Barbee Mill Co., Inc. including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the Barbee Mill Co., Inc.;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII.M (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of the Barbee Mill Co., Inc.

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

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

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

L. Amendment of Order

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

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

The Parties contemplate that this Order shall be amended in order to provide for the following:

- Prepare a Remedial Investigation, Feasibility Study, Remedial Design, and draft Cleanup Action Plan for the Site. This will include the results of the data gaps analysis report, all previous and current investigations and cleanup activities for the uplands and sediments of the Site.

M. Endangerment

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

Site, Ecology may direct the Barbee Mill Co., Inc. to cease such activities for such period of time as it deems necessary to abate the danger. The Barbee Mill Co., Inc. shall immediately comply with such direction.

In the event the Barbee Mill Co., Inc. determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, the Barbee Mill Co., Inc. may cease such activities. The Barbee Mill Co., Inc. shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction, the Barbee Mill Co., Inc. shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the Barbee Mill Co., Inc.'s cessation of activities, it may direct the Barbee Mill Co., Inc. to resume such activities.

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

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

N. Reservation of Rights

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

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

O. Transfer of Interest in Property

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

P. Compliance with Applicable Laws

1. All actions carried out by the Barbee Mill Co., Inc. pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. The permits or specific federal, state or local requirements that the agency has determined are applicable and that are known at the time of entry of this Order have been identified in Exhibit D.

2. Pursuant to RCW 70.105D.090(1), the Barbee Mill Co., Inc. is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, the Barbee

Mill Co., Inc. shall comply with the substantive requirements of such permits or approvals. The exempt permits or approvals and the applicable substantive requirements of those permits or approvals, as they are known at the time of entry of this Order, have been identified in Exhibit E.

The Barbee Mill Co., Inc. has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the Barbee Mill Co., Inc. determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or the Barbee Mill Co., Inc. shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the Barbee Mill Co., Inc. 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 the Barbee Mill Co., Inc. and on how the Barbee Mill Co., Inc. must meet those requirements. Ecology shall inform the Barbee Mill Co., Inc. in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The Barbee Mill Co., Inc. shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

3. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for the State to administer any federal law, the exemption shall not apply and the Barbee Mill Co., Inc. 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.

Q. Financial Assurances

Pursuant to WAC 173-340-440(11), the Barbee Mill Co., Inc. shall maintain sufficient and adequate financial assurance mechanisms to cover all costs associated with the operation and maintenance of the remedial action at the Site, including institutional controls, compliance monitoring, and corrective measures. However, Ecology agrees that the Barbee Mill Co. need not provide financial assurance to cover the completion of the storm water pond as described in Section VII.A.f, as long as Conner Homes at Barbee Mill provides a bond to the City of Renton, which the City finds acceptable, to secure the completion of this work.

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

The Barbee Mill Co., Inc. shall adjust the financial assurance coverage and provide Ecology's project coordinator with documentation of the updated financial assurance for:

1. Inflation, annually, within thirty (30) days of the anniversary date of the entry of this Order; or if applicable, the modified anniversary date established in accordance with this Section, or if applicable, ninety (90) days after the close of the Barbee Mill Co., Inc.'s fiscal year if the financial test or corporate guarantee is used, and
2. Changes in cost estimates, within thirty (30) days of issuance of Ecology's approval of a modification or revision to the work to be performed under this Order that results in increases to the cost or expected duration of remedial actions. Any adjustments for inflation since the most recent preceding anniversary date shall be made concurrent with adjustments for changes in cost estimates. The issuance of Ecology's approval of a revised or modified scope of work for this Order will revise the anniversary date established under this Section to become the date of issuance of such revised or modified scope of work.

R. Periodic Review

As remedial action, including groundwater monitoring, continues at the Site, the Parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of monitoring the Site as often as is necessary and appropriate under the circumstances. At least every five (5) years after June 6, 2008 (the date the Environmental Covenant was recorded), the Parties shall meet to discuss the status of the Site and the need, if any, for further remedial action at the Site. At least ninety (90) days prior to each periodic review, the Barbee Mill Co., Inc. shall submit a report to Ecology that documents whether human health and the environment are being protected based on the factors set forth in WAC 173-340-420(4). Ecology reserves the right to require further remedial action at the Site under appropriate circumstances. This provision shall remain in effect for the duration of this Order.

S. Indemnification

The Barbee Mill Co., Inc. agree to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property to the extent arising from or on account of acts or omissions of the Barbee Mill Co., Inc., its officers, employees, agents, or contractors in entering into and implementing this Order. However, the Barbee Mill Co., Inc. shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

IX. SATISFACTION OF ORDER

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

X. ENFORCEMENT

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

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

C. In the event the Barbee Mill Co., Inc. refuse, without sufficient cause, to comply with any term of this Order, the Barbee Mill Co., Inc. will be liable for:

a. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and

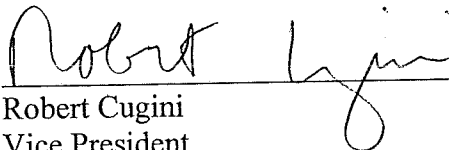
b. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

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

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

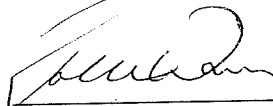
Effective date of this Order: DECEMBER 1, 2009

BARBEE MILL CO., INC.



Robert Cugini
Vice President
Barbee Mill Co., Inc.
(425) 226-3900

**STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY**



Robert Warren
Section Manager
Toxics Cleanup Program
Northwest Regional Office
(425) 649-7054

EXHIBIT A

**SITE DIAGRAM WITH PROPOSED PLAT &
MONITORING WELL LOCATION PLAN**

EXHIBIT B

PASSIVE ATTENUATION ZONE

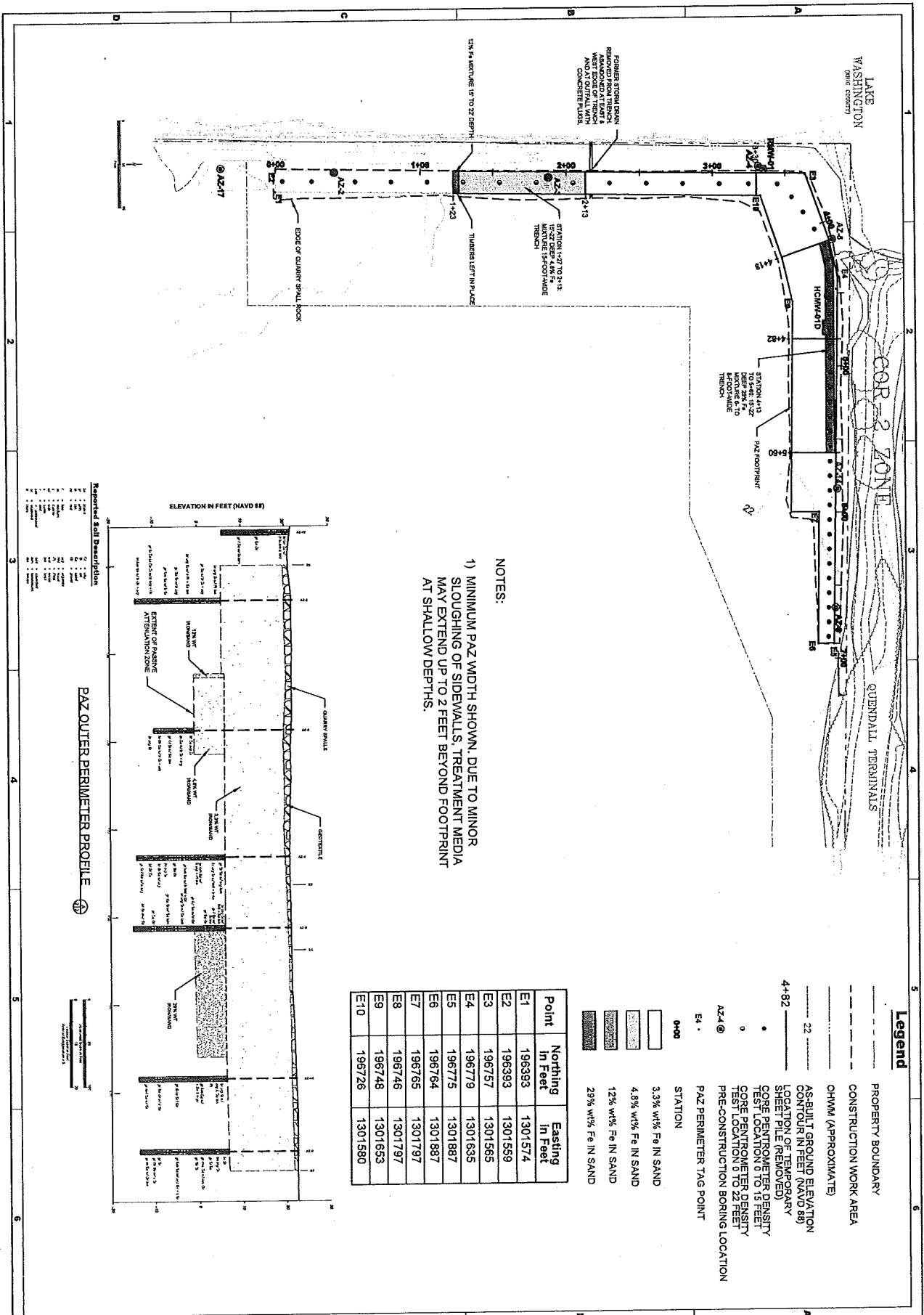


EXHIBIT C
Schedule of Deliverables

Action Items and Deliverables	Due Dates in Calendar Days
Install adjacent property well points in Lake Washington sediments.	30 days from the effective date of the agreed order; subject to approval of schedule extension per Section VIII of agreed order in order to gain access to adjacent properties.
Install ground-water extraction system treatment equipment and controls.	120 days from effective date of agreed order.
Operation of ground-water extraction system.	30 days from installation of ground-water extraction system treatment equipment and controls.
Complete draft Interim Action Design and Implementation report. Include specific tasking specified in scope of work of the agreed order for operation, maintenance, monitoring and construction details of the ground-water extraction system.	180 days from the effective date of the AO
Complete final Interim Action Design and Implementation report.	30 days from receipt of Ecology comments on draft report.
Complete draft Performance Monitoring Plan for ground water. Include specific tasking specified in scope of work of the agreed order for ground-water and pore-water monitoring.	45 days from the effective date of the AO
Complete final Performance Monitoring Plan	30 days from receipt of Ecology comments on draft plan.
Annual Performance Monitoring Reports	Annually, 45 days from receipt of all final analytical data from the laboratory.
Evaluate restoration time frame for contaminated ground water.	Included in Annual Performance Monitoring Reports.

Quarterly Progress Reports	30 days after receipt of final laboratory reports from each quarterly groundwater monitoring event
Draft cost estimate as required by Section VIII.R (Financial Assurances)	60 days after effective date of Order
Provide proof of financial assurances sufficient to cover costs in a form acceptable to Ecology per Section VIII.R (Financial Assurances).	60 days after Ecology's approval of cost estimate
Proof of updated financial assurances per Section VIII.R (Financial Assurances)	Annually, within thirty days of the effective date of the Order or, if applicable, 90 days after the close of the PLP's fiscal year if financial test or corporate guarantee is used.
Complete draft data gaps analysis report for site characterization and remediation.	120 days after effective date of Order.
Complete final data gaps analysis report for site characterization and remediation.	60 days after receipt of Ecology comments.
Begin discussions for amendment of this Order to implement recommendation of data gaps analysis report.	30 days after completion of final data gaps analysis report.
Install gravel protective layer on top of sand layer that overlies the liner of the storm water pond.	Final construction to be completed within 30 days of release of Maintenance Bond number 334519S for the City of Renton.

EXHIBIT D

List of Permits and Authorizations for Interim Action

1. Shoreline Substantial Development Permit (City of Renton File # LUA-02-069, ECF, SP, SM). Issued for soil removal action, revised to include PAZ/P&T installation. Included SEPA review with a DNS-M determination.
2. Special Fill and Grade Permit (City of Renton File #LUA-02-069, ECF, SM, SP).
3. King County Wastewater Discharge Authorizations 4082-01, 4082-02, 4082-03, 4082-04, 4082-05 (treatment/discharge to sewer of water generated during soil removal and PAZ installation)

EXHIBIT E

Procedurally Exempt Substantive Requirements for Interim Action

Barbee Mill, Co., Inc. shall comply with the substantive requirements of the following permits and authorizations, which are attached hereto:

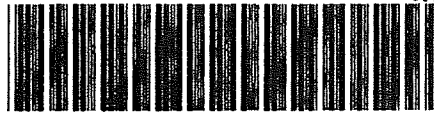
1. Right-of-Way Use Permit (City of Renton #R-0161), Installation of the groundwater extraction system.
2. King County Wastewater Discharge Authorization 4133-01 (treatment/discharge to sewer of water generated from the groundwater extraction system).

Exhibit F:
Environmental Covenant

RECEIVED

JUN 20 2008

DEPT. OF ECOLOGY
TCP-NWRO



20080606001208

MITSUNAGA
PAGE 001 OF 019 COV
06/05/2008 14:47
KING COUNTY, WA

After Recording Return to:
Ching-Pi Wang
Department of Ecology
3190 - 160th Avenue SE
Bellevue, Washington 98008-5452

ORIGINAL

JUN 26 2008

ATTORNEY GENERAL'S OFFICE
Ecology Division

Title of Document: Environmental Covenant

Grantors: Conner Homes at Barbee Mill, LLC, a Washington Limited Liability Company;
and City of Renton

Grantee: State of Washington, Department of Ecology

Legal Description: The Plat of Barbee Mill, recorded under King County recording no.
20080208000182, Volume 246, pages 25 to 39 of Plats, records of King County, Washington

Tax Parcel Nos.: 322405-9034-00

ENVIRONMENTAL COVENANT

Grantors, Conner Homes at Barbee Mill, LLC, and the City of Renton, hereby bind Grantors, its successors and assigns to the land use restrictions identified herein and grants such other rights under this environmental covenant (hereafter "Covenant") made this day of April 17, 2008 in favor of the State of Washington Department of Ecology, and its successors and assigns ("Ecology"). Ecology shall have full right of enforcement of the rights conveyed under this Covenant pursuant to the Model Toxics Control Act, RCW 70.105D.030(1)(g), and the Uniform Environmental Covenants Act, 2007 Wash. Law ch. 104, sec. 12.

This Declaration of Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by Conner Homes at Barbee Mill, LLC, its successors and assigns, the City of Renton, its successors and assigns, and Ecology.

An interim remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Covenant. The Remedial Action conducted at the property was designed and constructed as described in the documents listed in attached Exhibit E-5:

The Remedial Action will also be the subject of a proposed Agreed Order No. 5396, a copy of which will be on file at Ecology's Northwest Regional Office located at 3190 160th Avenue SE, Bellevue, WA 98008. The Agreed Order will describe the Remedial Action in detail and provide for ongoing remedial actions at the Site.

This Covenant is required to protect the integrity of the Remedial Action on the property, because the Remedial Action may have resulted in concentrations of the following remaining at the Barbee Mill Site:

- Confirmed arsenic in ground water exceeding the MTCA preliminary cleanup level protective of surface water.
- Suspected arsenic in soil exceeding the Model Toxics Control Act (MTCA) preliminary cleanup level for protection of ground water.
- Suspected arsenic in sediment located West and Northwest of the Conner at Barbee Mill uplands exceeding the preliminary freshwater sediment criterion.
- Suspected zinc in ground water exceeding the MTCA preliminary cleanup level protective of surface water
- Suspected diesel-range petroleum hydrocarbons in ground water exceeding the MTCA preliminary cleanup level protective of potable use

The undersigned, Conner Homes at Barbee Mill, LLC, is the fee owner of real property (hereafter "Property") in the County of King, State of Washington, that is subject to this Covenant. The additional undersigned, City of Renton, possesses a street easement in the dedicated rights of way. The Property is legally described in E-1 of this Covenant and made a part hereof by reference. Exhibit E-2 also includes a figure showing Property boundaries.

Conner Homes at Barbee Mill, LLC, and the City of Renton, make the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies 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 (hereafter "Owner")

Section 1.

- A. No groundwater may be taken for any use from the Property.
- B. Soil exceeding MTCA Method A cleanup level for unrestricted use for arsenic remains on the Property at a depth approximately eighteen feet below the ground surface as of December, 2007, at elevations of approximately between 8 and 10 feet North American Vertical Datum 1988 (NAVD878), within the area of the original arsenic excavation as shown in Exhibit E-2. This contamination is below the depth at which direct contact exposure would typically be expected. However, Ecology recommends refraining from conducting any activity in these areas that would disturb the contamination at depth, such as: drilling, digging, bulldozing or earthwork or otherwise altering the soil below a depth approximately eighteen feet below ground surface at time of home construction as of December 2007 with grade elevations of approximately between 26 through 30 NAVD88.
- C. Groundwater, and soil exceeding potential cleanup levels for protection of groundwater remains on the Property at or below the maximum groundwater elevation of approximately between 19 and 23 feet NAVD88, within, around, and downgradient of the area

of the original arsenic excavation as shown in E-2. Any activity on the Property that may result in the release or exposure to the environment of this contaminated soil or groundwater, or that creates a new exposure pathway, is prohibited. Some examples of activities that are prohibited in these areas include: drilling, digging, bulldozing or earthwork or otherwise altering the soil below the maximum groundwater elevation of approximately between 19 through 23 feet NAVD88. This restriction shall not apply to maintenance or repair work by the City of Renton or its contractors or agents on the existing sewer main located in the easement recorded under King County Recording no. 7212190390, because the sewer line lies hydraulically upgradient of the area of excavated arsenic contaminated soil.

D. A passive attenuation zone (hereafter PAZ) is present on the Property as shown on Exhibits E-2 and E-3. The top of the PAZ is protected with a geotextile layer covered with quarry spalls. The Owner shall not alter, modify, or remove the PAZ or the protective covering, and any activity on the Property that may damage or reduce the effectiveness of the attenuation zone is prohibited. Some examples of activities that are prohibited in the area of the PAZ include: drilling, digging, bulldozing or earthwork, or placing a heavy object or running heavy equipment on the PAZ causing stress beyond load bearing capacity. This restriction shall not apply to normal construction activities required to build structures on Lots 19, 20, 21, 22, 23, and 24 above the PAZ that are installed in accordance with plans on file with and approved by the City of Renton Department of Community Development, provided that this construction activity does not disturb the PAZ or its protective covering other than through the installation of driven pin piles. Landscaping within the top two feet of existing grade (as of December 2007) shall be allowed above the PAZ.

E. A network of ground water extraction wells linked by piping to a remediation system vault ("hereafter Extraction System") is present on the Property as shown on Exhibits E-2 and E-3. The Extraction System has been designed to pump arsenic-contaminated ground water from beneath the Property and discharge it directly to the sanitary sewer. Any activity that may damage or reduce the effectiveness of the Extraction System is prohibited. Some examples of prohibited activities include digging around the well locations and along the Extraction System pipe runs, blocking the discharge of the Extraction System to the sanitary sewer, or allowing the Extraction System to discharge to Lake Washington, the storm water detention pond, Mill Creek, or any other surface location.

F. A network of ground water monitoring wells is present on the Property as shown on Exhibits E-2 and E-3. Any activity that may damage or reduce the ability of the monitoring wells to be used for their intended purpose is prohibited. Some examples of prohibited activities include covering, sealing, or otherwise obscuring the tops of monitoring wells to reduce access, placing any solid or liquid into a well except as necessary for authorized sampling, digging or otherwise piercing the ground around well locations, storing or placing heavy loads near or on the monitoring wells, or allowing surface water to collect in standing pools of water over monitoring well locations.

G. A storm water detention pond is present within the Property to collect and discharge storm water runoff. The base of the pond is close to the water table, and has a protective liner to prevent mixing of ground water with surface water and loss of surface water. The location and design of the protective liner is presented in Exhibit E-2. Any activity that may damage or reduce the effectiveness or longevity of the protective liner is prohibited.

Some examples of prohibited activities include piercing or otherwise driving objects through the liner, using backhoes or other heavy equipment for excavation purposes near the liner, or placing sharp heavy objects at the base of the pond. Conner Homes at Barbee Mill, LLC and its successors in interest and assigns shall be responsible for future maintenance and any repairs or upgrades for the pond liner.

Section 2. Any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited.

Section 3. Any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 4. The Owner of the Property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. The written notice shall be in substantially the form attached as Exhibit E-4. WAC 173-340-440(9)(c) provides that "no conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for the continued monitoring, operation, and maintenance of the cleanup action". At the time of signature to this Environmental Covenant, it is expected that the necessary ongoing remedial actions required by Ecology for this Site, other than those described in this Environmental Covenant, will be implemented by named potentially liable persons under an Order or Decree with Ecology. It is further expected that financial assurances intended to ensure the ongoing remediation will be posted by the named potentially liable parties. The requirement for "adequate and complete provision" in this Section shall be deemed to have been satisfied by compliance with the terms of the Order or Decree and this Environmental Covenant. Nothing in this Section shall be construed to require Ecology's approval of any conveyance of title, easement, lease, or other interest in the Property.

Section 5. The Owner must restrict leases to uses and activities consistent with the Covenant and notify all lessees of the restrictions on the use of the Property.

Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 7. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, such as from monitoring and extraction wells and from sediments; to inspect remedial actions conducted at the Property; to determine compliance with this Covenant; to inspect records that are related to the Remedial Action; and to take any other action necessary under MTCA. Ecology does not anticipate needing internal access to residential buildings or other residential structures on the Property.

Section 8. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

Section 9. The remediation at this Site is still in progress, and thus certain contaminants are listed above as "suspected" rather than "confirmed." As the remediation progresses, if Ecology concludes that the list of "confirmed" or "suspected" contaminants at the Site has changed, the Owner or the Owner's representative may request in writing that Ecology issue a written notification of such new information. Upon written request, Ecology will issue a written notice to the Owner confirming the updated information. The Owner may seek to file Ecology's written notice with the county auditor's office, and may, in such a filing, cross reference this Environmental Covenant. However, such notice shall have no effect on the Owner's obligations in this Environmental Covenant, and the terms of this Environmental Covenant shall remain in effect unless Ecology consents, after public notice and comment, to amend or terminate the Covenant pursuant to WAC 173-340-440 and in accordance with the procedure described in RCW 64.70.100.

CONNER HOMES AT BARBEE MILL, LLC

Charles F. Conner

Charles F. Conner

Title: President

Dated: 4-17-08

CITY OF RENTON

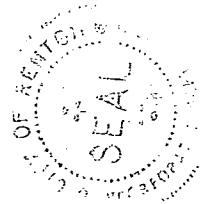
Denis Law
Title: Denis Law, Mayor
Dated: 4/18/08

Attest:

Bonnie I. Walton
Bonnie I. Walton, City Clerk

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Robert Warren
Robert Warren
Section Manager
Toxics Cleanup Program
Northwest Regional Office
Dated: 5-6-08



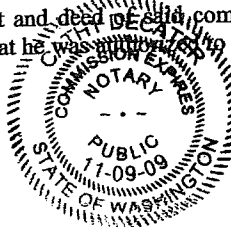
STATE OF WASHINGTON)

) ss.

COUNTY OF KING)

On this 17th day of April, 2008, I certify that Charles Conner personally appeared before me, acknowledged that he is the President of Conner Homes at Barbee Mill, LLC, the limited liability company that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said company, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument for said company.

Cathy Decater
Notary Public in and for the State of
Washington, residing at Sammamish.
My appointment expires 11.9.09.



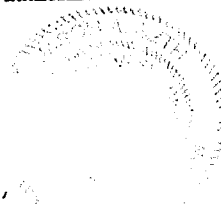
STATE OF WASHINGTON)

) ss.

COUNTY OF KING)

On this 18th day of April, 2008, I certify that Denis Law personally appeared before me, acknowledged that he/she is the Mayor of the City of Renton, the municipal corporation that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument for said corporation.

Janna Sato
Notary Public in and for the State of
Washington, residing at Renton.
My appointment expires 6-29-09.



STATE OF WASHINGTON)

) ss.

COUNTY OF KING)

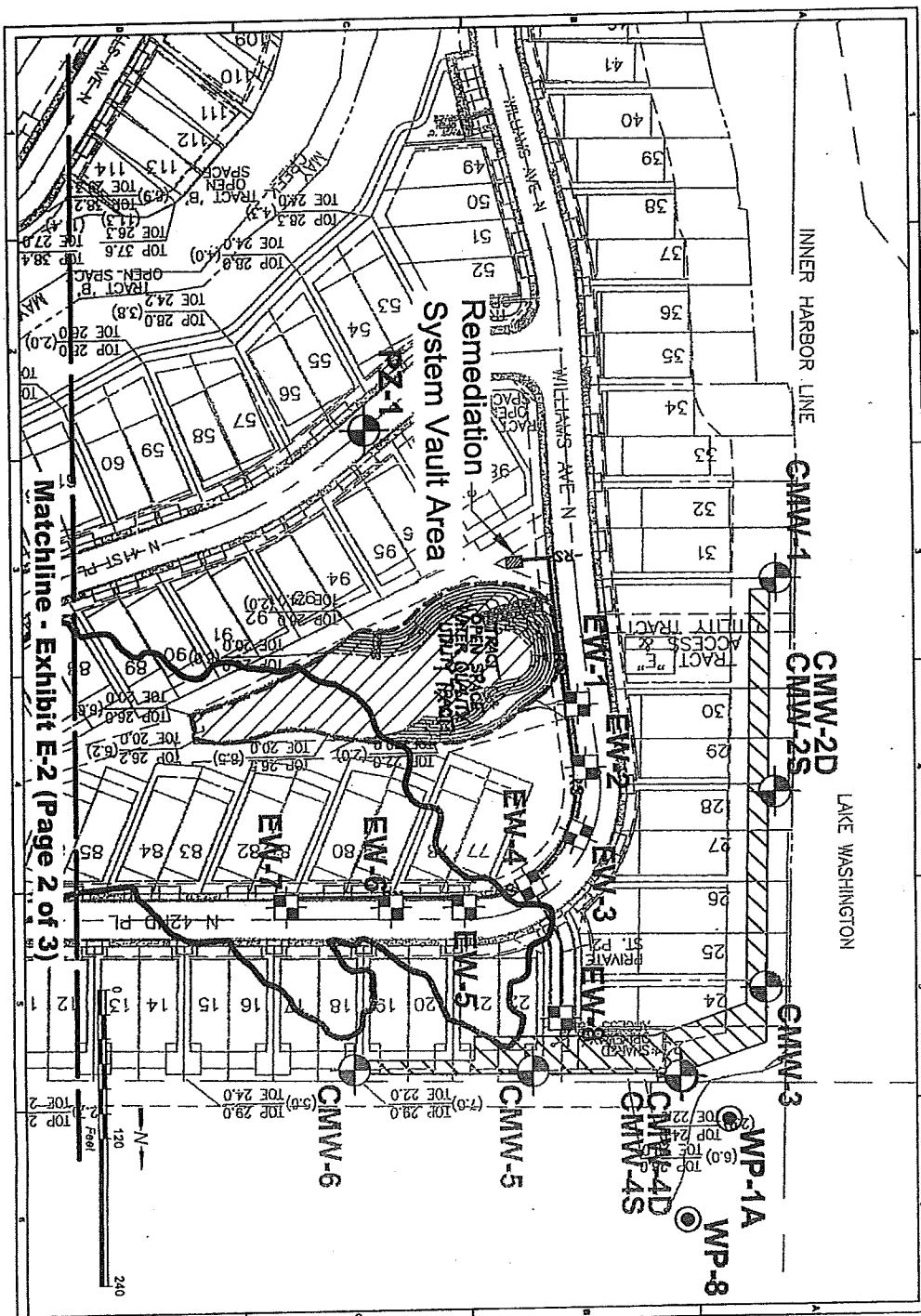
On this 6 day of May, 2008, I certify that Robert Warren personally appeared before me, acknowledged that he/she is the Section Manager of the Washington State Department of Ecology, the public agency that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said agency, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument for said agency.

Susan M. Winter
Notary Public in and for the State of
Washington, residing at King.
My appointment expires 11.10.2008.

EXHIBIT E-1

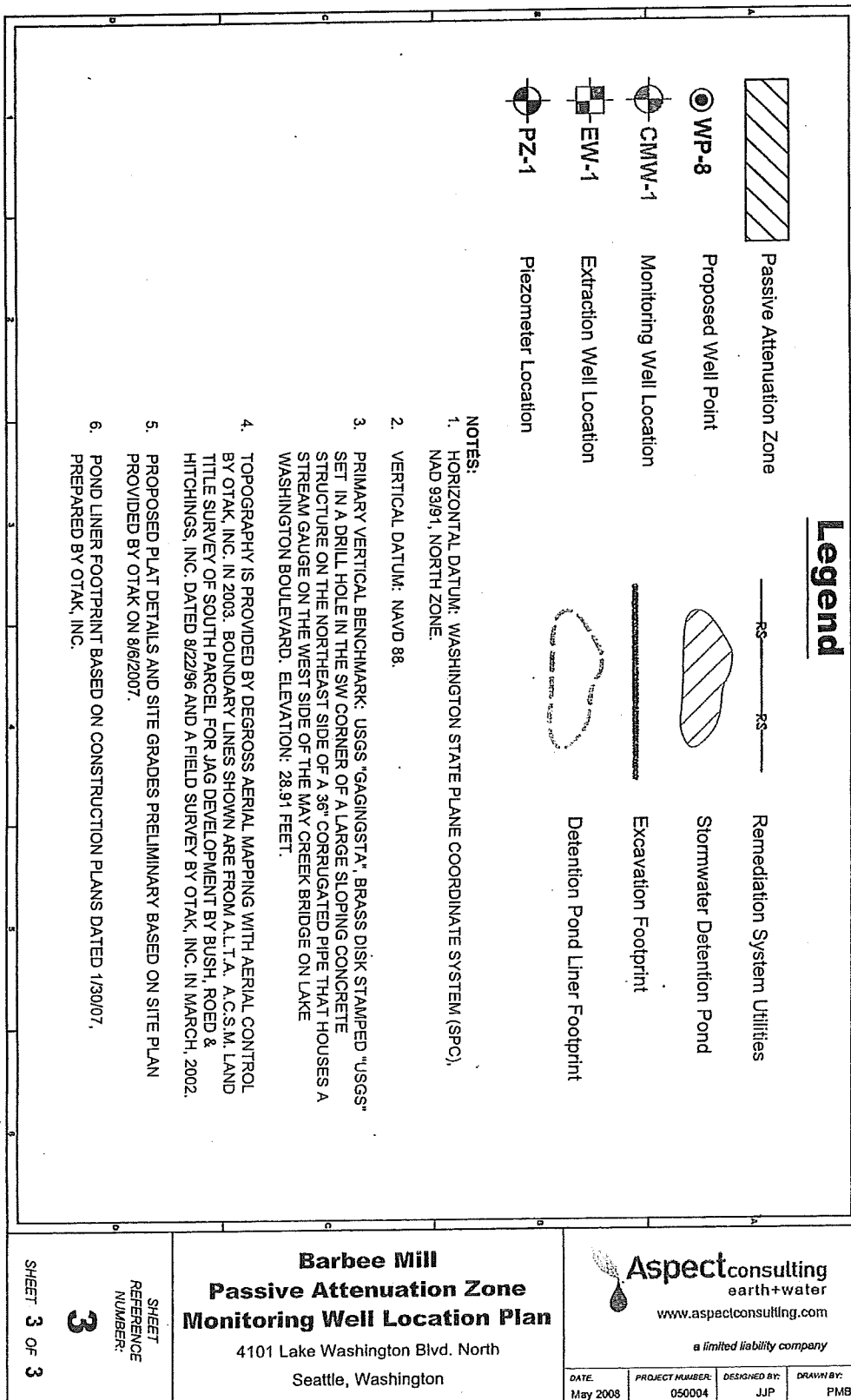
LEGAL DESCRIPTION OF PROPERTY

he Plat of Barbee Mill, recorded under King County recording no.
20080208000182, Volume 246, pages 25 to 39 of Plats, records of King County,
Washington

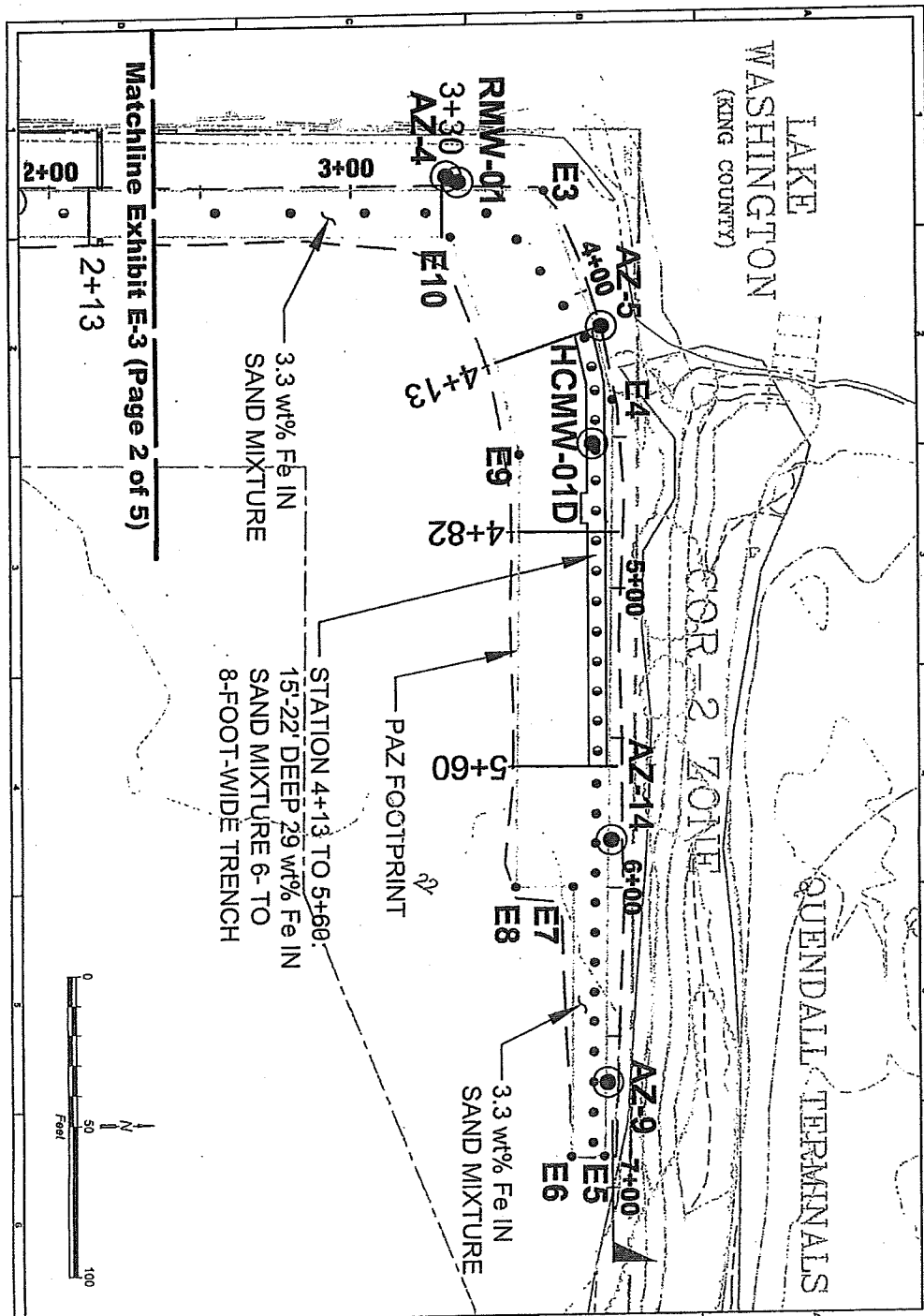


SHEET REFERENCE NUMBER: 3 SHEET 3 OF 3	Barbee Mill Passive Attenuation Zone Monitoring Well Location Plan 4101 Lake Washington Blvd. North Seattle, Washington		 Aspect consulting earth+water www.aspectconsulting.com a limited liability company		
			DATE: May 2008	PROJECT NUMBER: 050004	DESIGNED BY: JJP
			DRAWN BY: PMB		

File Name & Path: Q:\Barbee Mill\Soil Remediation\2007-10 PAZ As Built\050004-03.dwg



File Name & Path: Q:\Barbee Mill\Soil Remediation\2007-10 PAZ As Built\1050004-03.dwg



SHEET
REFERENCE
NUMBER:
2
SHEET 2 OF 3

**Barbee Mill
Passive Attenuation Zone
As-Built Construction Details**

4101 Lake Washington Blvd. North
Seattle, Washington



Aspect consulting
earth+water

www.aspectconsulting.com

a limited liability company

DATE:	PROJECT NUMBER:	DESIGNED BY:	DRAWN BY:
May 2008	050004	JJP	PMB

File Name & Path: Q:\Barbee Mill\Soil Remediation\2007-10 PAZ As Built\050004-02.dwg

Exhibit E-3 (Page 1 of 5)

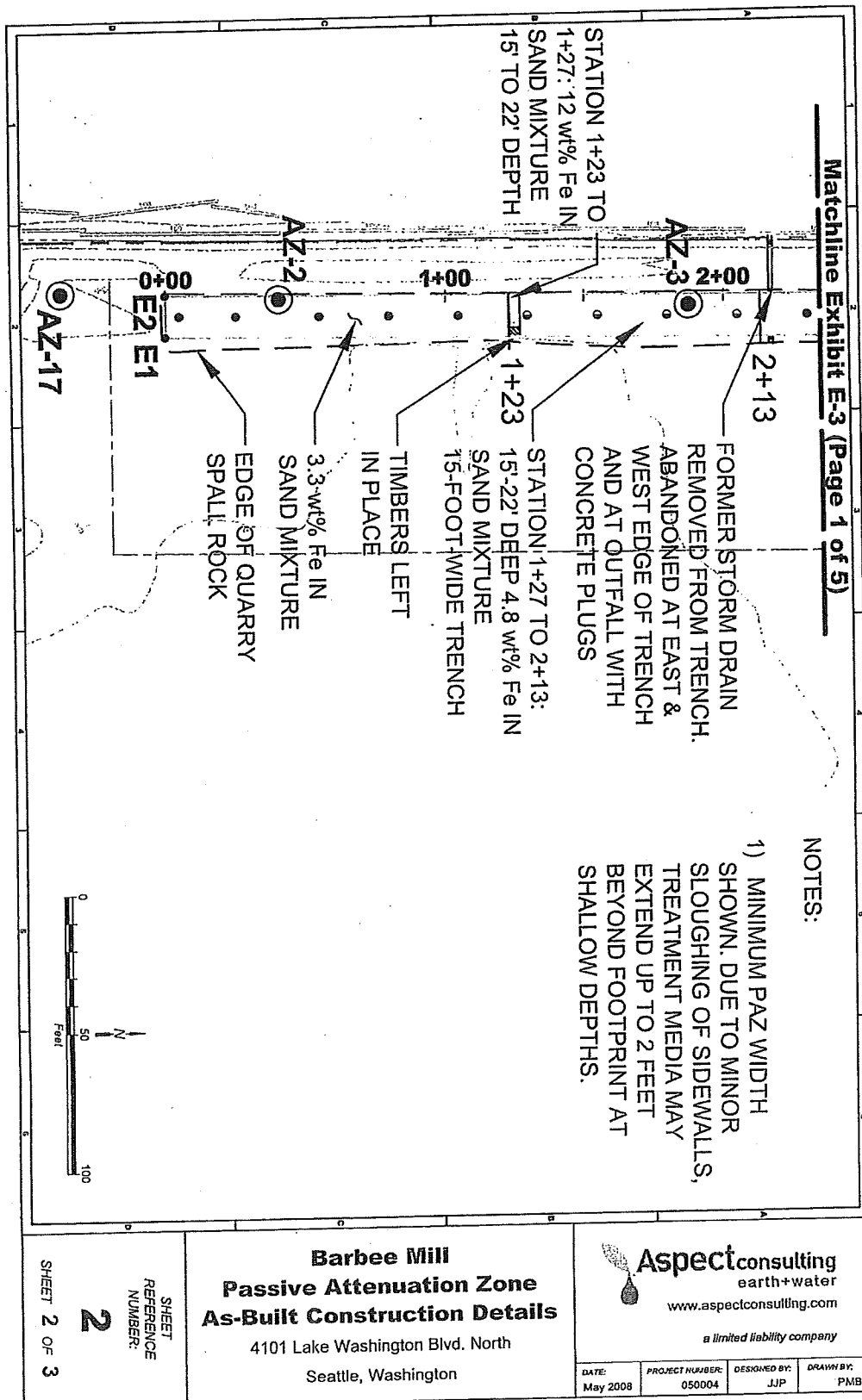
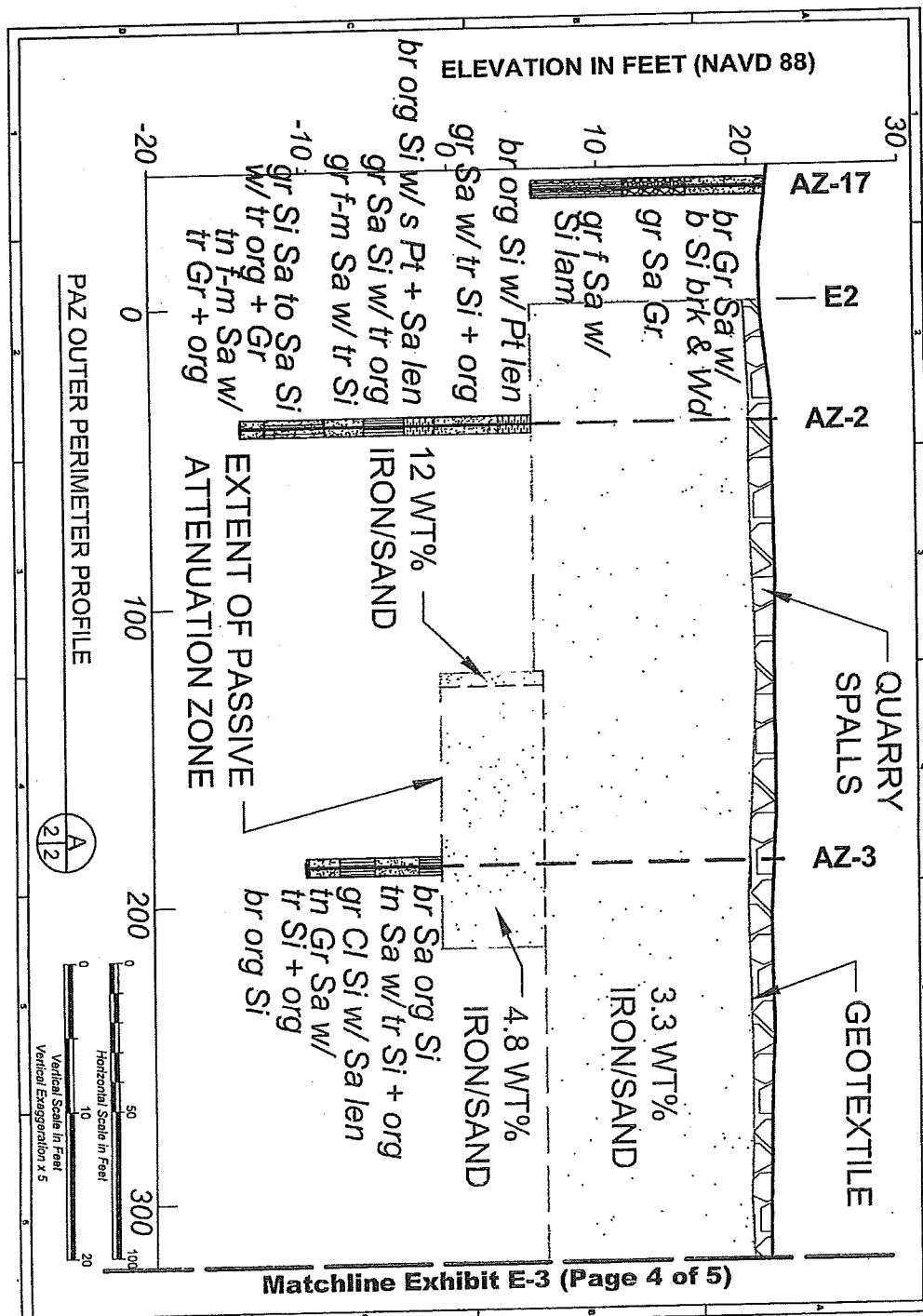



Exhibit E-3 (Page 2 of 5)



SHEET REFERENCE NUMBER: 2 SHEET 2 OF 3	Barbee Mill Passive Attenuation Zone As-Built Construction Details 4101 Lake Washington Blvd. North Seattle, Washington		 Aspect consulting earth+water www.aspectconsulting.com a limited liability company	
	DATE: May 2008	PROJECT NUMBER: 050004	DESIGNED BY: JJP	DRAWN BY: PMB

File Name & Path: C:\Barbee Mill\Soil Remediation\2007-10 PAZ As Built\050004-02.dwg

Exhibit E-3 (Page 3 of 5)

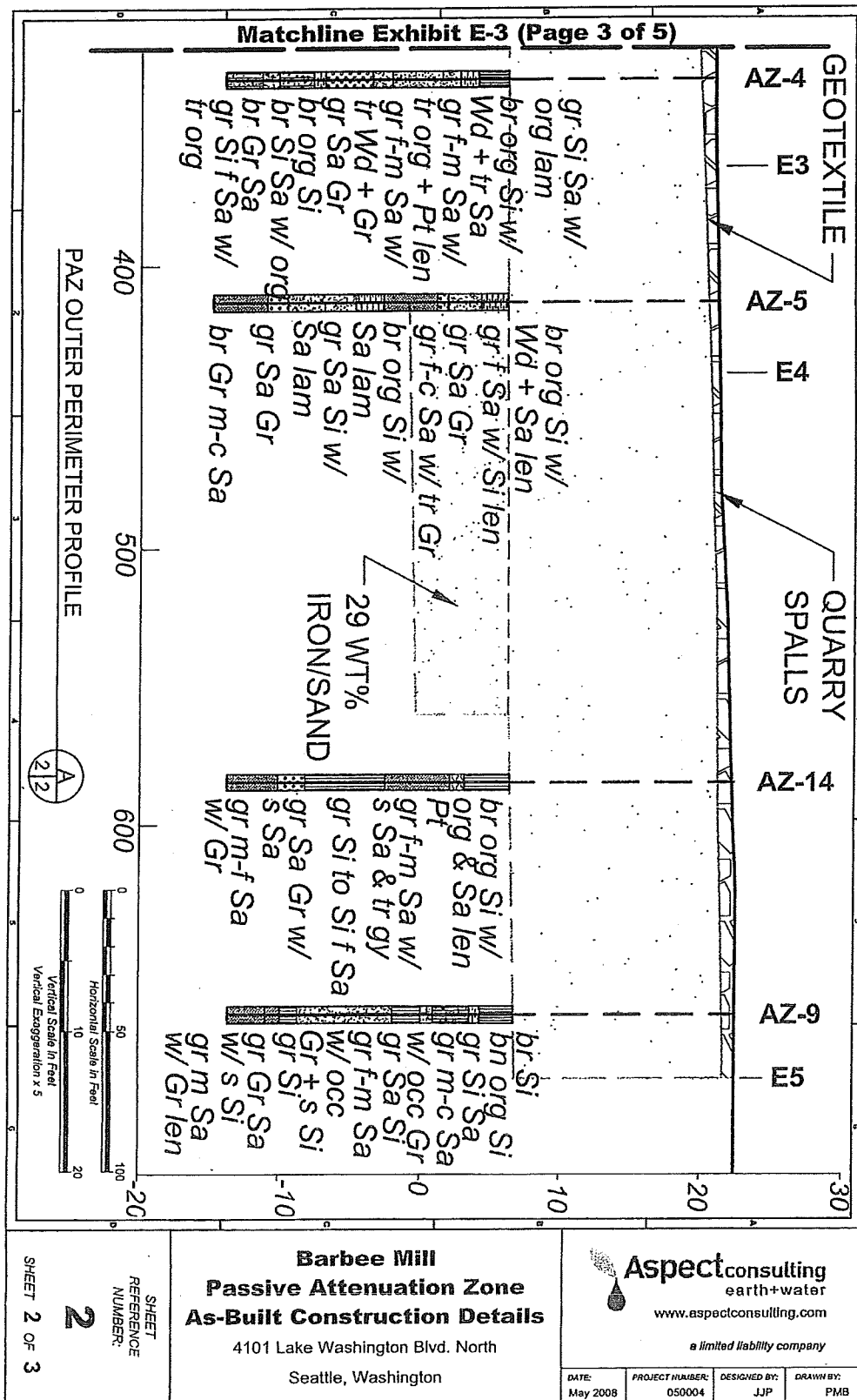
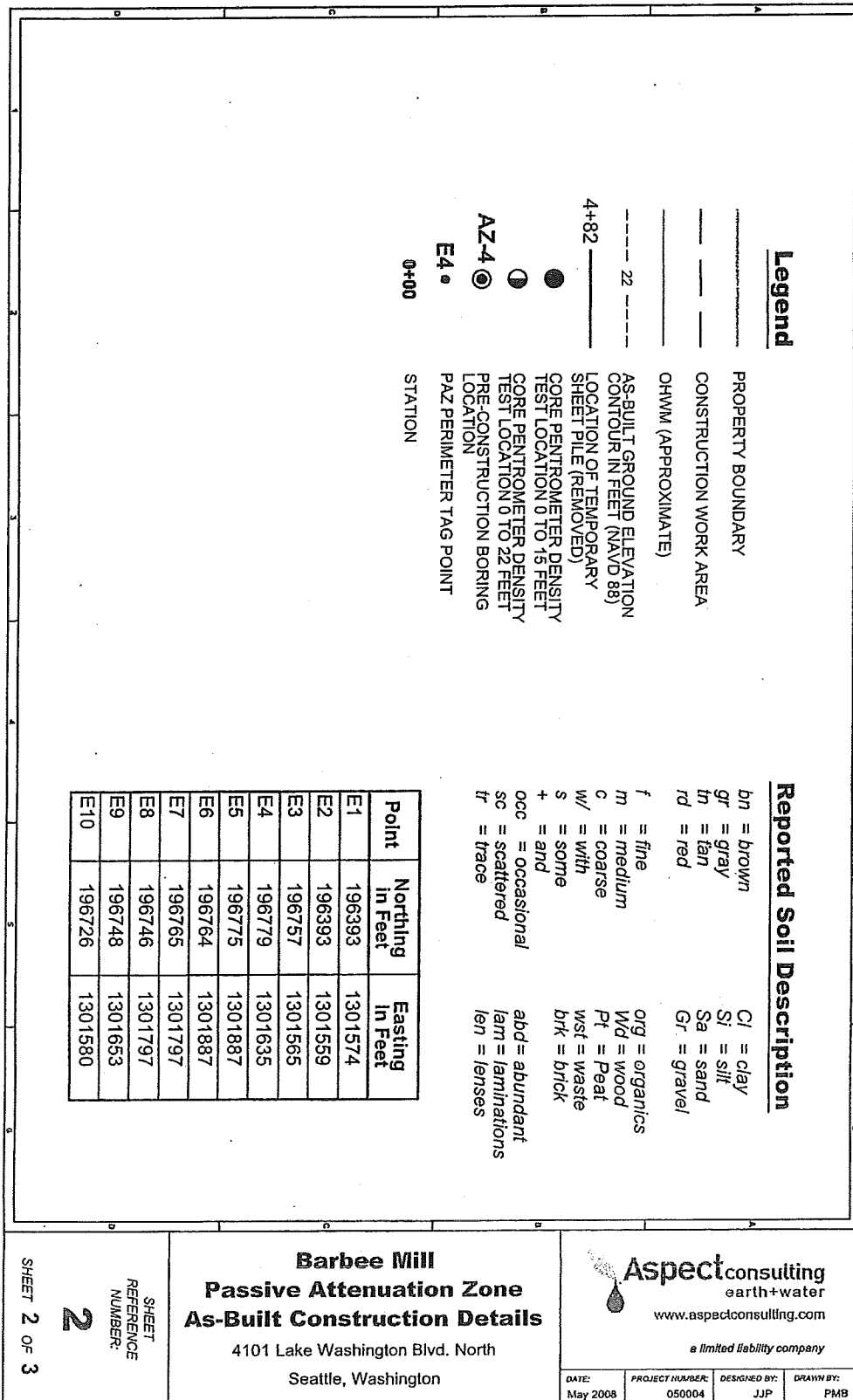


Exhibit E-3 (Page 4 of 5)



File Name & Path: Q:\Barbee Mill\Soil Remediation\2007-10 PAZ As Buils\050004-02.dwg

Barbee Mill
Passive Attenuation Zone
As-Built Construction Details
 4101 Lake Washington Blvd. North
 Seattle, Washington

Aspect consulting
 earth+water
 www.aspectconsulting.com
 a limited liability company

DATE: May 2008	PROJECT NUMBER: 050004	DESIGNED BY: JJP	DRAWN BY: PMB
-------------------	---------------------------	---------------------	------------------

SHEET
REFERENCE
NUMBER:
2
SHEET 2 OF 3

Exhibit E-3 (Page 5 of 5)

EXHIBIT E-4

NOTICE OF INTENT TO CONVEY INTEREST

[Insert Date]

Send To:
Current Site Manager, Barbee Mill Company Site
Toxics Cleanup Program, Northwest Regional Office
Washington State Department of Ecology
3190 – 160th Avenue SE
Bellevue, Washington 98008-5452

Re: *Notice of Intent to Convey Property Interest
Barbee Mill Company Facility
Facility/Site #76716221, Renton, Washington*

Parcel No.: *[Insert Parcel Number for property subject to conveyance]*

Address: *[Insert Address for property subject to conveyance]*

In accordance with the Environmental Covenant recorded on the title of my property, I, **[Insert Name of Current Owner]**, am hereby informing the Washington State Department of Ecology that I intend to convey **[Insert a short description of type of property interest you are conveying – for example: “title of my property” or “a leasehold interest in my property”]** to **[Insert name of intended recipient of property interest]**. The anticipated effective date of the conveyance is **[Insert Date of Conveyance]**.

For more information, I can be reached at **[Insert contact information for current owner]**. **[Insert name of intended recipient of property interest]** can be reached at **[Insert contact information for intended recipient of property interest]**.

Sincerely,

[Insert Signature of Current Owner]

EXHIBIT E-5

EPA and Department of Ecology Letters and Remedial Action Documents

Ecology and EPA Letters

1. January 11, 1999, Ecology letter to Mr. Carl Einberger, Hart Crowser, Inc., Subject: Waste Designation at the Barbee Mill Site, Renton, Washington; Re: Hart Crowser, Inc. letter report J-4946-10 dated November 17, 1998
2. November 5, 1990 (1999?), Ecology letter to Mr. Robert Cugini, Barbee Mill Company, Inc., Re: Sediment Analysis of Dredge Spoils from Mill Creek, Barbee Mills, Renton,
3. September 12, 2000, Ecology letter to Mr. Carl Einberger, Hart Crowser, Inc., Re: Independent Remedial Action Plan, Upland Areas, Barbee Mill Company, Renton, Washington, Revised September 6, 2000
4. March 1, 2001, Ecology letter to Mr. Carl Einberger, Hart Crowser, Inc., Re: Dangerous Waste Designation - F035, Barbee Mill Site, Renton, Washington
5. February 27, 2003, Ecology letter to Mr. Robert Cugini, Barbee Mill Co., Re: Independent Remedial Action, Barbee Mill Co.
6. April 3, 2003, Ecology letter to Mr. Robert Cugini, Barbee Mill Co., Re: Stockpiled Sediment Materials, Independent Remedial Action, Barbee Mill Co.
7. September 6, 2005, Ecology letter to Mr. Robert Cugini, Barbee Mill Company, Re: Joint Aquatic Resources Permit Application (JARPA) for Barbee Mill Shoreline Restoration Project, Lake Washington, King County, Washington
8. May 17, 2006, Ecology letter to Mr. Robert Cugini, Vice President, Barbee Mill Company, Re: Opinion pursuant to WAC 173-340-515(5) on Proposed Remedial Action for the following Hazardous Waste Site: Barbee Mill
9. June 1, 2006, EPA Region 10 memorandum to Lynda Priddy, Project Manager, from Rene Fuentes, Hydrogeologist, Office of Environmental
10. Assessment, Subject: Barbee Mill Company Arsenic Plume Independent Remedial Action Plan Addendum, February 8, 2006

Remedial Action Documents

11. November 17, 1998, letter report from Hart Crowser, Re: Updated Summary of Soil and Groundwater Data, Barbee Mill
12. November 17, 1998, letter from Hart Crowser, Re: Waste Designation at the Barbee Mill Site

13. December 17, 1998, letter report from Hart Crowser, Re: Supplemental Report, Additional Site Data, Barbee Mill
14. January 25, 1999, memorandum from Hart Crowser, Re: Review of Facility areas at Barbee Mill
15. May 10, 1999, letter report from Hart Crowser, Re: Review of Site History and Characterization Data, and Proposed Additional Investigation Work, Barbee Mill Company
16. July 16, 1999, transmittal from Hart Crowser, Barbee Mill Co. Site and Exploration Plan, Tables 1-9: Soil and Groundwater Samples
17. November 9, 1999, Draft Remedial Investigation and Focused Feasibility Study for the Quendall Terminals Property, Exponent
18. January 17, 2000, letter from Hart Crowser, Re: Future Use of Dredged Bark and Wood Debris - Barbee Mill Co.
19. September 6, 2000, revised, Independent Remedial Action Plan, Upland Areas, Barbee Mill Company, Hart Crowser
20. January 25, 2001, letter from Hart Crowser, Re: Dangerous Waste Designation at the Barbee Mill Site
21. May 2004, Draft Risk Assessment/Feasibility Study, Port Quendall Terminals Site, Anchor Environmental, L.L.C.
22. February 8, 2006 Draft Independent Remedial Action Plan Addendum, Upland Areas, Aspect Consulting, LLC
23. May 16, 2006, letter from Aspect Consulting, Re: Supplemental Information for IRAP Addendum, Barbee Mill (VCP Site #NW0182)
24. June 21, 2006, Construction Report, Barbee Mill Arsenic Remediation, Aspect Consulting, LLC
25. June 21, 2006, Construction Report, Barbee Mill TPH and PCP Remediation, Aspect Consulting, LLC
26. December 15, 2006, memorandum from Aspect Consulting, Re: Passive Attenuation Zone Pilot Test Results, Barbee Mill Arsenic Remediation Project
27. August 2, 2006, draft Engineering Design Report, Barbee Mill Groundwater Remediation, Aspect Consulting, LLC
28. March 5, 2007, Construction and Performance Monitoring Plan, Barbee Mill Groundwater Remediation Project, Aspect Consulting, LLC, received March 5, 2007, undated Construction Specifications, Barbee Mill Passive Attenuation Zone, Aspect Consulting, LLC

29. received March 5, 2007, undated Remedial Action Management Plan, Project: Barbee Mill PAZ, Clearcreek Contracting Company
30. July 12, 2007, letter from Clearcreek Contractors, Re: Spill #561806
31. August 4, 2007, email from John Funderburk, Sound Environmental Strategies, Re: Barbee Mill
32. October 5, 2007, Construction Report – Passive Attenuation Zone, Barbee Mill Arsenic Remediation, Aspect Consulting, LLC
33. December 3, 2007, Partial Sufficiency and Further Action Determination letter to Mr. Robert Cugini from Mr. Mark Adams

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:

FIRST AMENDMENT to AGREED ORDER

Barbee Mill Co., Inc.

No. DE 5396

TO: Barbee Mill Co., Inc.
Attention: Mr. Robert Cugini, Vice President
P. O. Box 359
Renton, WA 98057

The Parties hereby agree to the following minor amendment to Agreed Order No. DE 5396:

1. Agreed Order Section VII, Terms and Conditions of Order, was originally improperly numbered, and is hereinafter referred to as **Section VIII**.

2. Without affecting the enforceability of any other section, **Section VIII.Q (Financial Assurances)** is wholly substituted and replaced to read in full as follows.

Q. Financial Assurances

Pursuant to WAC 173-340-440(11), the Barbee Mill Co., Inc. shall maintain sufficient and adequate financial assurance mechanisms to cover all costs associated with the operation and maintenance of the remedial action at the Site, including institutional controls, compliance monitoring, and corrective measures. However, Ecology agrees that the Barbee Mill Co., Inc. need not provide financial assurance to cover the completion of the storm water pond as described in Section VII.A.f, as long as Conner Homes at Barbee Mill provides a bond to the City of Renton, which the City finds acceptable, to secure the completion of this work. Except in the event of (1) Barbee Mill Co., Inc.'s dissolution, (2) Barbee Mill Co., Inc.'s bankruptcy, or (3) in circumstances where compliance with the following terms would be futile or impossible, Ecology agrees not to seek funds from these financial assurance mechanisms without first substantially complying with any and all Ecology obligations under Section VIII.E (regarding

insufficient progress), Section VIII.B (Remedial Action Costs), and Section VIII.C (Implementation of Remedial Action). Additionally, except in the event of (1) Barbee Mill Co., Inc.'s dissolution, (2) Barbee Mill Co., Inc.'s bankruptcy, or (3) in circumstances where seeking payment from Barbee Mill Co., Inc. would be futile or impossible, Ecology agrees to provide Barbee Mill Co., Inc. with at least ninety (90) days to pay Ecology's remedial action costs, as described under Section VIII.B, before seeking funds from the financial assurance mechanisms for these costs.

Before accessing funds from the financial assurance mechanisms for the first time, Ecology shall provide Barbee Mill Co., Inc. with 14 calendar days written notice. After accessing financial assurance funds for the first time, Ecology shall thereafter provide Barbee Mill Co., Inc. with, at a minimum, concurrent notice of written demands for financial assurances funds. However, in no event will Ecology be required to provide Barbee Mill Co., Inc. with notice under this paragraph in the event Barbee Mill Co., Inc. dissolves or is otherwise no longer available to be reached after Ecology's reasonable attempts to contact Barbee Mill Co., Inc. through Barbee Mill Co., Inc.'s designated Project Coordinator.

Within sixty (60) days of the effective date of this Order, the Barbee Mill Co., Inc. shall submit to Ecology for review and approval an estimate of the costs that it will incur in carrying out the terms of this Order, including operation and maintenance, and compliance monitoring. On or before December 20, 2010, the Barbee Mill Co., Inc. shall provide proof of financial assurances sufficient to cover all such costs in a form acceptable to Ecology. After initially providing financial assurances in a form acceptable to Ecology, Barbee Mill Co., Inc. may choose at any time to change financial assurance mechanisms by providing proof of the new financial assurances mechanism sufficient to cover all costs associated with the operation and maintenance of the remedial action at the Site, including institutional controls, compliance monitoring, and corrective measures (except for costs to cover completion of the storm water pond in the circumstances described above), in a form acceptable to Ecology. Once Ecology has

approved the new financial assurances mechanisms, Ecology shall provide Barbee Mill Co., Inc. with a written release of the superseded financial assurance mechanisms.

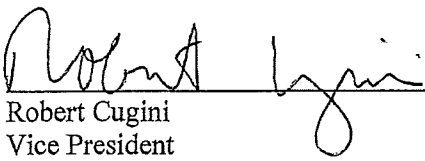
The Barbee Mill Co., Inc. shall adjust the financial assurance coverage and provide Ecology's project coordinator with documentation of the updated financial assurance for:

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

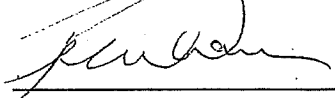
2. Changes in cost estimates, within thirty (30) days of issuance of Ecology's approval of a modification or revision to the work to be performed under this Order that results in increases or decreases to the cost or expected duration of remedial actions. Any adjustments for inflation since the most recent preceding anniversary date shall be made concurrent with adjustments for changes in cost estimates. The issuance of Ecology's approval of a revised or modified scope of work for this Order will revise the anniversary date established under this Section to become the date of issuance of such revised or modified scope of work.

Effective date: Dec 16, 2010.

BARBEE MILL CO., INC.


Robert Cugini
Vice President
Barbee Mill Co., Inc.
(425) 226-3900

**STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY**


Robert Warren
Section Manager
Toxics Cleanup Program
Northwest Regional Office
(425) 649-7054

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

Barbee Mill Co., Inc.

**SECOND AMENDMENT TO
AGREED ORDER**

No. DE 5396

**TO: Barbee Mill Co., Inc.
Attention: Mr. Robert Cugini, Vice President
P.O. Box 359
Renton, WA 98057**

I. INTRODUCTION

Agreed Order No. DE 5396 (Order) entered into by the State of Washington, Department of Ecology (Ecology) and Barbee Mill Co., Inc. (Barbee Mill) on December 1, 2009, and amended on December 16, 2010, (First Amendment) requires that Barbee Mill perform certain interim actions at the Site.

By this Second Amendment to Agreed Order No. DE 5396 (Second Amendment), Ecology requires Barbee Mill to:

1. Conduct additional interim action activities at the Site.
2. Complete a remedial investigation/feasibility study (RI/FS) report.
3. Complete a draft Cleanup Action Plan (DCAP).

Ecology believes the actions required by this Second Amendment are in the public interest.

This Second Amendment does not attempt to recite all of the provisions of the Order or the First Amendment. Provisions of the Order or the First Amendment not specifically changed in this Second Amendment remain in full force and effect.

II. JURISDICTION

This Second Amendment is issued pursuant to the authority of RCW 70.105D.050(1).

III. AMENDMENTS

Work to be Performed, Section VII. of the Order is Amended:

The Order, Section VII. (Work to be Performed), is hereby amended to add the following requirements:

F. Additional Interim Remedial Actions

1. Submit to Ecology a final Interim Action Design and Implementation Report within thirty (30) days after receiving Ecology's comments on the draft Interim Action Design and Implementation Report.
2. Submit to Ecology a final Barbee Mill Sediment Data Gaps Evaluation Report within thirty (30) days after receiving Ecology's comments on the draft Barbee Mill Sediment Data Gaps Evaluation Report.
3. The interim action groundwater extraction and treatment system required under the Order was shut down in August 2011. Groundwater conditions will be monitored as provided in Section VII.F.4. Barbee Mill and Ecology will evaluate the groundwater monitoring results. Based on the groundwater monitoring data evaluation, Ecology will determine the need for future system operation, in consultation with Barbee Mill. Should Ecology determine that it is necessary to restart the groundwater extraction and treatment system, Ecology shall send Barbee Mill written notice of its determination. Within ten (10) calendar days of receiving such written notice, Barbee Mill shall restart the ground water extraction and treatment system and continue to operate and maintain it in accordance with the Operation and Maintenance Manual (Aspect 2009).
4. Monitoring groundwater in accordance with the final Performance Monitoring Plan, March 15, 2010 (Aspect 2010a) and the recommendations of the draft Performance Monitoring Report, July 6, 2010 (Aspect 2010c). A monitoring schedule (revised Table 2 of the Performance Monitoring Plan) based on the recommendations of the draft Performance Evaluation Report and the August 2011 shutdown date for the pump-and-treat system is provided in Exhibit F and is an integral and enforceable part of the Order. Proposed revisions to the

monitoring schedule will be identified in the annual Performance Monitoring Report described below.

5. Completing annually by July 31, a Performance Monitoring Report that summarizes the results of performance monitoring, an evaluation of PAZ effectiveness, a discussion of trends in arsenic concentration relative to the cleanup level, and re-evaluation of restoration time frame. While the groundwater extraction and treatment system is turned off, the Performance Monitoring Report will evaluate any changes to contaminant concentrations in groundwater.

6. Installation of a gravel layer on top of sand layer of the storm water detention pond. Gravel layer is planned for installation upon completion of all the houses at Conner Homes at the Site. Final construction shall be completed no later than 30 days after release of the City of Renton's Maintenance Bond number 334518S. It is Conner Homes responsibility for installation of the gravel layer.

G. Remedial Investigation

Barbee Mill shall conduct a remedial investigation (RI) that meets the requirements of Chapter 173-340 WAC, including WAC 173-340-350. The RI shall include a description of the following site activities and characteristics:

- Site history and sources of contamination
- Previous environmental investigations
- Interim remedial actions
- Nature and extent of contamination in soil, groundwater, and sediments
- Environmental relationship between this Site and Quendall Terminals
- Contaminant fate and transport processes
- Potential human and ecological receptors and exposure pathways

Barbee Mill shall complete the RI Report as follows:

1. Submittal of a Preliminary RI Report for Ecology review and comment within 120 days from the effective date of the Second Amendment. The Preliminary RI Report shall include all information and data collected to date regarding the Site. This information and data

will include updating the groundwater flow and contaminant fate-and-transport models previously developed for the Site using the most current information.

2. Submittal of a draft RI Report for Ecology review and comment within 90 days of receipt of data on the June 2012 groundwater monitoring event or within 90 days from receipt of Ecology's comments on the Preliminary RI Report (whichever is latest). The draft RI Report will incorporate Ecology comments on the Preliminary RI Report and evaluate site monitoring data collected through June 2012. The findings, analyses and conclusions of the Preliminary RI Report will be revised as appropriate based on the additional data.

3. Submittal of a final RI Report within thirty (30) days of receipt of Ecology's comments on the draft RI Report. The final RI Report will incorporate Ecology's comments on the draft RI Report.

4. The Preliminary RI Report, draft RI Report, and final RI Report shall be completed according to the schedule in Exhibit G (Additional Schedule of Deliverables).

H. Feasibility Study

Barbee Mill shall conduct a feasibility study (FS) for proposed Site cleanup that meets the requirements of Chapter 173-340 WAC, including WAC 173-340-350 through 370. The FS shall include the following:

- Remedial action objectives, including chemicals of concern, cleanup levels, and points of compliance for contaminated media;
- Description of interim actions previously implemented at the Site;
- A screening of potentially applicable technologies. In order to simplify the development of remedial alternatives, the screening process will remove from further consideration technologies that are not applicable or technically possible at the Site, that can be represented by other comparable technologies, or whose costs are clearly disproportionate under WAC 173-340-360(3)(e);
- Identification of potential cleanup action alternatives;
- Evaluation of each remedial alternatives according to the requirements of WAC 173-340-350 through WAC 173-340-370. The FS shall include as appropriate a disproportionate cost analysis using the criteria described in WAC 173-340-360.
- Identification of the remedial alternative judged to best satisfy the evaluation criteria.

Barbee Mill shall complete the FS Report as follows:

1. Submittal of an FS Outline for Ecology review and comment within 120 days from the effective date of the Second Amendment. The FS Outline will include a description of the following:

- a. Preliminary remedial action objectives;
- b. Technologies previously considered for implementation at the Site; and
- c. Interim actions implemented at the Site.

2. Submittal of a draft FS Report for Ecology review and comment within ninety (90) days from receipt of Ecology's comments on the draft RI Report or within ninety (90) days from receipt of Ecology's comments on the FS Outline (whichever is latest). The draft FS Report will incorporate Ecology's comments on the FS Outline and provide the additional information to complete the FS in accordance with the requirements of Chapter 173-340 WAC as described above.

3. Submittal of a final FS Report within thirty (30) days of receipt of Ecology's comments on the draft FS Report. The final FS Report will incorporate Ecology's comments on the draft FS Report.

4. The FS Outline, draft FS Report, and final FS Report shall be completed according to the schedule in Exhibit G (Additional Schedule of Deliverables).

I. Preparation of draft Cleanup Action Plan

Within ninety (90) days after Ecology approval of the final RI Report and final FS Report, Barbee Mill shall complete a draft cleanup action plan (DCAP) for Ecology review for the proposed Site cleanup that meets the requirements of 173-340-380 WAC, and addresses the requirements for developing a cleanup action in WAC 173-340-350 through 173-340-390, including Ecology's expectations for cleanup alternatives in WAC 173-340-370. The DCAP shall include a general description of the proposed cleanup action, cleanup standards from the RI/FS Reports and a rationale regarding their selection, a proposed schedule for implementation, description of any institutional controls proposed, and a summary of federal, state and local laws that are applicable to the proposed cleanup action. The DCAP will be available for public

comment in conjunction with the public comment period for the final RI Report and final FS Report. Preparation of a final CAP is not a part of this Second Amendment.

Financial Assurances, Section VIII.Q. of the First Amendment is Amended:

The First Amendment, Section VIII.Q.2. (Financial Assurances) is hereby amended as follows:

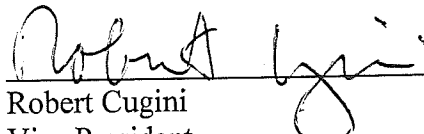
“thirty (30) days” is replaced with “ninety (90) days”

The First Amendment, Section VIII.Q (Financial Assurances) is hereby amended to add the following requirement:

Ecology agrees that Barbee Mill need not provide financial assurances to cover the RI/FS work described in Section VII.G. and H. (Work to be Performed) in this Second Amendment.

Effective date: ~~JANUARY 17, 2012~~^{RWW} MAY 30, 2012^{RWW}

BARBEE MILL CO., INC.


Robert Cugini
Vice President
Barbee Mill Co., Inc.
(425) 226-3900

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY

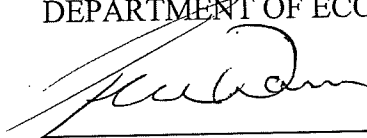

Robert Warren
Section Manager
Toxics Cleanup Program
Northwest Regional Office
(425) 649-7054

Exhibit F - Performance and Compliance Monitoring Schedule

Barbee Mill Site

Well	Monitoring Year ⁽¹⁾									
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
PAZ Compliance Wells										
CMW-1	Q - As, Fe	B - As, Fe	B - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe
CMW-2S	Q - As, Fe	B - As, Fe	B - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe
CMW-2D	Q - As, Fe	B - As, Fe	B - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe
CMW-3	Q - As, Fe	B - As, Fe	B - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe
CMW-4S	Q - As, Fe	B - As, Fe	B - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe
CMW-4D	Q - As, Fe	B - As, Fe	B - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe
CMW-5	Q - As, Fe	B - As, Fe	B - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe
CMW-6	Q - As, Fe	B - As, Fe	B - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe
Wells and Well Points on Quendall Terminals										
BH-29A	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe
WP-1A	Q - As, Fe	B - As, Fe	B - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe
WP-8	Q - As, Fe	B - As, Fe	B - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe	A - As, Fe
Groundwater Extraction Wells and Piezometers										
EW-1	Q - As, Fe	B - As, Fe ⁽²⁾	B - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾
EW-2	Q - As, Fe	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)
EW-3	Q - As, Fe	B - As, Fe ⁽²⁾	B - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾
EW-4	Q - As, Fe	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)
EW-5	Q - As, Fe	B - As, Fe ⁽²⁾	B - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾
EW-6	Q - As, Fe	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)	(4)
EW-7	Q - As, Fe	B - As, Fe ⁽²⁾	B - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾
EW-8	Q - As, Fe	B - As, Fe ⁽²⁾	B - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾	A - As, Fe ⁽²⁾
PZ-1	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)
PZ-2	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)

Notes:

⁽¹⁾ Monitoring begins in September of indicated year.

⁽²⁾ Assumes pump-and-treat operation ends in August 2011 and is not restarted.

⁽³⁾ Piezometers will be monitored for water levels only in conjunction with site monitoring events.

⁽⁴⁾ When the pump-and-treat system is not operating, a subset of extraction wells will be monitored to evaluate concentrations upgradient of the PAZ.

Q Quarterly (every 3 months)

B Biannual (every 6 months)

A Annual

-- No monitoring planned

Quarterly monitoring to be conducted in June, September, December, and March

Biannual and annual monitoring event seasons will be based on quarterly monitoring results

Field parameters (temperature, conductivity, pH, dissolved oxygen, ORP) and water levels collected during each monitoring event

The monitoring program will be reevaluated after 10 years

As Arsenic

Fe Iron

EXHIBIT G
Additional Schedule of Deliverables

Action Items and Deliverables	Due Dates in Calendar Days
Submit to Ecology a final Interim Action Design and Implementation Report	30 days from receipt of Ecology comments on the draft Interim Action Design and Implementation Report
Submit to Ecology a final Barbee Sediment Data Gaps Analysis Report	30 days from receipt of Ecology comments on the draft Barbee Sediment Data Gaps Analysis Report
Submit to Ecology a Preliminary RI Report.	120 days from the effective date of the Second Amendment
Submit to Ecology a draft RI Report.	90 days from receipt of all final analytical data from the laboratory for the June 2012 groundwater monitoring event, or 90 days from receipt of Ecology comments on Preliminary RI Report, whichever is later
Submit to Ecology a final RI Report	30 days from receipt of Ecology comments on the draft RI Report
Submit to Ecology a FS Outline	120 days from the effective date of the Second Amendment
Submit to Ecology a draft FS Report	90 days from receipt of Ecology comments on the draft RI Report, or 90 days from receipt of Ecology's comments on the FS Outline, whichever is later
Submit to Ecology a final FS Report	30 days from receipt of Ecology comments on the draft FS Report
Submit to Ecology a draft CAP	90 days from Ecology's approval of the final RI report and final FS report
Performance Monitoring Reports	Annually, by July 31