

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

AGREED ORDER

**City of Yakima**

No. DE 15861

RE: Interstate 82 Exit 33A Landfill Facility  
Site – FSID 1927  
805 North 7th Street  
Yakima, WA 98901

TO: City of Yakima  
129 North 2nd Street  
Yakima, WA 98901

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## **I. INTRODUCTION**

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the City of Yakima (City) 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 City to complete an interim action, an updated conceptual site model, Feasibility Study (FS), and Draft Cleanup Action Plan (dCAP), for the site identified by Ecology as the “Interstate 82 Exit 33A Landfill Facility Site” located at 805 North 7th Street, Yakima, Washington 98901 (the Site). 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. The City agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the City’s responsibility under this Order. The City shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

## **IV. DEFINITIONS**

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

A. Site: The Site is referred to as “Interstate 82 Exit 33A Yakima City Landfill” and is generally located at or near 805 North 7th Street, Yakima, Washington. Based upon factors currently known to Ecology, the Site is generally depicted in the Site Diagram (Exhibit A). The Site is further defined as the area at the general location above where municipal solid waste has

come to be located, or which is affected by a release or threatened release of hazardous substances from such municipal solid waste; more specifically, the edges of the municipal solid waste and any leachate impacted surrounding soils, the extent of any contaminated groundwater plume, and vapor phase gas in the unsaturated zones above the municipal solid waste. The Site constitutes a Facility under RCW 70.105D.020(8). The Facility Site ID number is 1927 and the Cleanup Site ID number is 3853 as listed in Ecology's Integrated Site Information System.

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

C. City: Refers to the City of Yakima.

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 the City:

A. According to the results of a 2016 title search and a search of the Yakima County Assessor website, there are two primary parcels comprising the Site. Yakima County Parcel Number 19131841001 comprises 37.66 acres and is owned by OfficeMax Incorporated (Yakima County Assessor records still list the property as owned by the Boise Cascade Corporation, which in 2004 changed its corporate name to OfficeMax Incorporated). The Parcel is currently leased to Yakima Resources, LLC. Yakima County Parcel Number 19131842001 comprises 11.88 acres and is owned by LeeLynn, Inc., and Wiley Mt., Inc. BNSF Railway Company owns a right-of-way touching these parcels.

B. The primary properties comprising the Site were historically part of a ranch until they were developed in 1903 by the Cascade Lumber Company for use as a lumber mill. The Cascade Lumber Company merged with Boise Payette Lumber Company in the late 1950s to form Boise Cascade. Approximately 60 percent of the area of the lumber mill was occupied by large log



ponds, including one on the southern portion of the property that the City of Yakima later used as a landfill.

C. At some point, the lumber mill gradually transitioned from using ponds for wood storage to using log decks with sprinklers. The southernmost log pond was drained, and a portion of this pond was used by the City of Yakima as a municipal landfill. The landfill was used by the City of Yakima between 1963 and 1970. The Yakima County Health Department reportedly closed the landfill in 1972.

D. The landfill was never lined, and covered approximately 28 acres in area. The average depth of the landfill has been estimated at about 12 feet, with the deepest portion of the landfill located in the southeast corner measuring as much as 30 feet deep. Estimates of volumes of municipal solid waste range from 388,000 to 452,000 cubic yards.

E. Environmental investigations of the landfill parcels were conducted in:

1997: Yakima Health District Site Hazard Assessment Sampling

1998: Landau Associates Hydrologic Study

2008: Parametrix Landfill Environmental Site Assessment Phase II

2009: SLR Remedial Investigation

2010: SLR Additional Remedial Investigation

2012: SLR Soil Vapor and Groundwater Sampling Report

2014: Landau Associates Soil and Groundwater Investigation Summary and Results

2015: Landau Associates Remedial Investigation Report and Landau Associates Interim Data Report for September 2014 – June 2015

F. These subsurface site investigations were used by the City of Yakima to identify releases or potential releases of hazardous substances at the Site. These include diesel range organics; heavy oils; vinyl chloride; n-nitrosodiphenylamine; 4,4'-DDT; 4,4'-DDD; endosulfan II; bis(2-ethylhexyl)phthalate; 3,3'-dichlorobenzidine; arsenic; iron; manganese; nitrate; PCB aroclors; and sodium and methane gas. This list may not be exhaustive, as previous investigations have also detected lead and chromium in site soils and groundwater.



G. As of the date of this Order, the City is not a current owner of the parcels associated with the Landfill Site, although the City seeks to obtain certain interests in the Landfill Site in order to build roads across the Site. The City is currently seeking to obtain lands for rights-of-way for the East-West Corridor, which will connect Terrace Heights Drive with the west side of the Yakima River, crossing in part over and through the Landfill Site. Construction of roads is also anticipated to include a North-South street that will connect to Fair Avenue near 10th Street and intersect the East-West Corridor at “H” Street.

## **VI. ECOLOGY DETERMINATIONS**

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

A. The City of Yakima is an “owner or operator,” or a person who “owned or operated” at the time of disposal or release, as defined in RCW 70.105D.020(22), of a “facility” as defined in RCW 70.105D.020(8).

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

C. Based upon evidence Ecology deems credible, Ecology issued a potentially liable person (PLP) status letter to the City dated March 30, 2017, pursuant to RCW 70.105D.040 and WAC 173-340-500. After providing notice and opportunity for comment, reviewing comments submitted by the City on May 2, 2017, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that the City is a PLP at the Site under RCW 70.105D.040 and notified it of this determination by letter dated May 5, 2017.

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

## VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the City take the following remedial actions while pursuing other interim actions at or related to the Site, and that all these actions be conducted in accordance with WAC 173-340 unless otherwise specifically provided for herein:

A. Submission of Historical Data: Within 30 days of the effective date of this Order, the City shall submit the historical data identified in Exhibit B to this Order, in accordance with the requirements of Section VIII.E of this Order.

B. Updated Conceptual Site Model: For the purpose of updating information for the Feasibility Study, the City shall provide to Ecology an Updated Conceptual Site Model (Updated CSM) within 60 days of the latest of the following events: (1) Ecology's approval of a technical memorandum addressing groundwater-surface water interaction (GW/SW Interaction Memorandum), as further described below; (2) submission of the Yakima Mill Site Draft Remedial Investigation Report under Section VII.C of Agreed Order No. DE13959; and (3) Ecology's approval of the Interim Action Report required under Section VII.E.6 of this Order, if the City has begun proceeding with any interim actions pursuant to Section VII.E of this Order prior to completion of the preceding two events. The Updated CSM shall incorporate results and data generated from the GW/SW Interaction Memorandum, the Yakima Mill Site Remedial Investigation, and interim actions (if any) with the previous Remedial Investigation work to provide information to determine the nature and extent of contamination that has resulted from the release(s) of hazardous substances at the Site in all affected or potentially affected media (soil, interstitial air in soil, air, groundwater, drinking water, and/or surface water if applicable). The Updated CSM shall fully delineate the nature and extent of contamination in all affected and potentially affected media at the Site as required by WAC 173-340-350. Ecology reserves the discretion to require the collection of further data after the CSM is updated; however, no requirement to collect such further data is within the current scope of this Order.

1. Process for Approving GW/SW Interaction Memorandum:

a. Ecology has identified the need in conjunction with development of the Feasibility Study to further define contaminated groundwater interaction with the surface water of the Yakima River downgradient of the known area of municipal solid waste at the Site. The requirements for this GW/SW Interaction Memorandum are outlined in Exhibit C attached.

1. Within 90 days of the effective date, the City will provide the GW/SW Interaction Memorandum.

2. Ecology shall endeavor to review and provide comments on the GW/SW Interaction Memorandum within 60 days of the submission.

3. Within 30 days of comments, the City shall provide an updated GW/SW Interaction Memorandum to Ecology.

2. Process for Approving the Updated CSM:

a. Ecology will endeavor to provide comments on the Updated CSM within 30 days of receipt.

b. Within 60 days of receipt of comments by Ecology on the Updated CSM, the City shall, as necessary, deliver to Ecology a Final Updated CSM responsive to Ecology's comments and consistent with MTCA.

c. Ecology will endeavor to respond on approval status within 30 days.

C. Feasibility Study: The City shall provide Ecology with a Draft Feasibility Study (Draft FS) within 90 days of approval of the Updated CSM. The Draft FS must comply with the requirements of WAC 173-340-350 and include the Updated CSM as an appendix.

1. Ecology will endeavor to provide comments on the Draft FS within 30 days of receipt.



2. Within 60 days of receipt of comments from Ecology on the Draft FS, the City shall, as necessary, submit to Ecology a Final FS responsive to Ecology's comments and consistent with MTCA.

3. Ecology will endeavor to respond on approval status within 30 days.

D. Draft Cleanup Action Plan: The City shall submit to Ecology a draft Cleanup Action Plan (dCAP) within 60 days of approval of the Final FS.

1. Ecology will endeavor to provide comments on the dCAP within 30 days of receipt.

2. Within 60 days of receipt of comments from Ecology on the dCAP, the City shall, as necessary, submit to Ecology a Final dCAP responsive to Ecology's comments and consistent with MTCA.

E. Interim Actions: The City may complete certain road construction and related improvements at the Site prior to the completion of a final cleanup action. Under WAC 173-340-430, an interim action is a remedial action that only partially addresses the cleanup of a site, e.g., 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, RI/FS, or design of a CAP. To ensure that the City's road construction and related improvements are consistent with any final cleanup action at the Site, the City shall undertake any such construction and improvements that are within the Site, or within the Yakima Mill Site as described in Agreed Order No. DE13959, in compliance with the following conditions:

1. Within 90 days of the effective date of this Order, submit to Ecology a draft Interim Action Work Plan satisfying the requirements of WAC 173-340-430(7), including, but not limited to, inclusion of a compliance monitoring plan, a health and safety plan (HASp), and a sampling and analysis plan, that integrates the elements of an interim action (e.g., destruction or removal of source material) with the planned construction and

improvements, including the requirement that the construction and improvements do not foreclose reasonable alternatives for a final cleanup action at the Site. The draft Interim Action Work Plan may summarize or incorporate information contained in other existing documents.

2. Upon receipt of the draft Interim Action Work Plan, Ecology will endeavor to provide comments for revision by the City within 30 days of receipt.

3. Within 30 days of receipt of review comments from Ecology on the draft Interim Action Work Plan, the City shall, as necessary, submit to Ecology a final Interim Action Work Plan responsive to Ecology's comments and consistent with MTCA.

4. Upon approval by Ecology, the Interim Action Work Plan shall be considered final and become an integral and enforceable part of this Order.

5. In order to facilitate Ecology's compliance with the public notice requirement of WAC 173-340-600(16), the City shall provide at least 60 days' notice to Ecology before proceeding with any work that is subject to the approved Interim Action Work Plan.

6. Within 60 days of completion of interim action activities, the City shall submit to Ecology a draft Interim Action Report.

a. Ecology will endeavor to provide comments on the draft Interim Action Report within 30 days of receipt.

b. Within 60 days of receipt of comments by Ecology on the draft Interim Action Report, the City shall, as necessary, deliver to Ecology a final Interim Action Report responsive to Ecology's comments and consistent with MTCA.

c. Ecology will endeavor to respond on approval status within 30 days.

7. In addition to the above interim actions, either party may propose an interim action under this Order which could occur at any time. If the Parties are in agreement concerning the interim action, the Parties will follow the process in Section VIII.J

(Amendment of Order) of this Order. If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70.105D, or to undertake the interim action(s) itself.

F. Progress Reports: Monthly progress reports shall be submitted to Ecology's Project Coordinator via mail or email. The first progress report shall be submitted to Ecology on or by the 15th of the month following the effective date of this Agreed Order and subsequent progress reports shall be submitted by the 15th of each month describing work performed the previous month. Monthly progress reports shall continue to be submitted on a monthly basis until the City submits the Updated CSM, or until Ecology notifies the City in writing that monthly report submission can be ended. Emergency situations and any conditions significantly delaying work must be reported to Ecology within 24 hours.

G. Meeting Coordination: To facilitate communication and streamline project effectiveness, Ecology's Project Coordinator, or designated alternate, shall be invited to attend any City meetings regarding work at the Site, including construction meetings, unless the meetings are attorney-client privileged between the City and its attorneys, or the meetings are between the City and its consultant as arranged by the City's attorneys for the purposes of facilitating legal advice or attorney work product. The City shall not be obliged to reschedule meetings that Ecology cannot attend due to scheduling conflicts.

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The following conditions shall apply to the above actions:

H. Any final plans or other final deliverables submitted by the City for Ecology's review and approval shall, upon Ecology's approval, become integral and enforceable parts of this Order.

I. If Ecology determines that the City has failed to make sufficient progress or failed to implement the remedial action required under this Order, in whole or in part, Ecology may, after



notice to the City, perform any or all portions of the remedial action that remain incomplete or, at Ecology's discretion, allow the City an opportunity to correct. The City shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

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

### **VIII. TERMS AND CONDITIONS OF ORDER**

#### **A. Payment of Remedial Action Costs**

The City shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under RCW 70.105D, including remedial actions and Order preparation, negotiation, oversight, and administration. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). For all costs incurred subsequent to the effective date of this Order, the City shall pay the required amount within 30 days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided by Ecology on a monthly basis. Itemized statements shall be submitted by Ecology on a quarterly basis to the City. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within 90 days of receipt of the itemized statement of costs will result in interest charges at the rate of 12 percent per annum, compounded monthly.

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

#### **B. Designated Project Coordinators**

The project coordinator for Ecology is:

Chris Wend  
Toxics Cleanup Program  
Washington State Department of Ecology  
Central Regional Office  
1250 West Alder Street  
Union Gap, WA 98903  
Tel: 509-454-7837  
Fax: 509-575-2809  
cwen461@ecy.wa.gov

The project coordinator for the City is:

Piper Roelen  
Landau Associates  
130 2nd Avenue South  
Edmonds, WA 98020  
Tel: 425-778-0907  
Fax: 425-778-6409

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

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

Ecology will maintain an administrative record for the Site. This record will ensure all correspondence and reports related to this Site are catalogued and up-to-date. Updates to the record will be distributed via email to the City's project coordinator.

### **C. 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 RCW 18.220 and 18.43.

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 RCW 18.220 or 18.43.130.

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

**D. Access**

Ecology or any Ecology authorized representative may enter and freely move about all property at the Site that the City 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 City's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary-type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the City. The City shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the City 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 City unless an emergency prevents such notice. All persons who access the Site pursuant to this Section shall be responsible for their own safety and shall comply with any applicable health and safety plan (HASP), a copy of which shall be provided to Ecology, together with any subsequent updates. Ecology employees



and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

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

With respect to the implementation of this Order, the City 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 generated under this Order, together with the historical data identified in Exhibit B, 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. Data submitted in an electronic format to the Ecology Environmental Information Management (EIM) System in compliance with WAC 173-340-840 shall not be considered properly submitted until the EIM Data Coordinator has cleared the data for transfer into the database and the Ecology Project Coordinator has verified that the data is complete and accurate.

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

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

**F. Public Participation**

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

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

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

2. 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.

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

Yakima Public Library  
102 North 3rd Street  
Yakima, WA 98901

Ecology's Central Regional Office  
1250 West Alder Street  
Union Gap, WA 98903

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Site

shall be maintained in the repository at Ecology's Central Regional Office in Union Gap, Washington.

**G. Retention of Records**

During the pendency of this Order, and for 10 years from the date of completion of work performed pursuant to this Order, the City shall preserve all records, reports, documents, and underlying data in their 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, the City shall make all records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right the City may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If the City withholds any requested records based on an assertion of privilege, the City shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

**H. Resolution of Disputes**

1. In the event 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.A (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 City has 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 14 days, Ecology's project coordinator shall issue a written decision.



c. The City may then request regional management review of the decision. This request shall be submitted in writing to the Central Region Toxics Cleanup Section Manager within 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 issue a written decision regarding the dispute within 30 days of the City'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.

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

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

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least 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.
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on the City 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 City 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 City.

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

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

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

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

4. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding 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.

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

**J. Amendment of Order**

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

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

**K. Endangerment**

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

In the event the City 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 City may cease such activities. The City shall notify Ecology's project coordinator as soon as possible, but no later than 24 hours after making such determination or ceasing such activities. Upon Ecology's direction the City shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the City's cessation of activities, it may direct the City to resume such activities.



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

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

**L. Reservation of Rights**

This Order is not a settlement under RCW 70.105D. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against the City 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 City regarding remedial actions required by this Order, provided the City complies with this Order.

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

By entering into this Order, the City does not admit to any liability for the Site. Although the City is committing to conducting the work required by this Order under the terms of this Order, the City expressly reserve all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

**M. Transfer of Interest in Property**

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

**N. Compliance with Applicable Laws**

1. All actions carried out by the City pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. At this time, no federal, state or local requirements have been identified as being applicable to the actions required by this Order.

2. Pursuant to RCW 70.105D.090(1), the City is exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, the City shall comply with the substantive requirements of such permits or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this Section.

3. The City 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 City determine 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 City shall be responsible to contact the appropriate state and/or

local agencies. If Ecology so requires, the City 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 City and on how the City must meet those requirements. Ecology shall inform the City in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The City shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

4. 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 City shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

**O. Indemnification**

The City agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action 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 City, their officers, employees, agents, or contractors in entering into and implementing this Order. However, the City 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 City's receipt of written notification from Ecology that the City has completed the remedial activity required by this Order,



as amended by any modifications, and that the City has complied with all other provisions of this Agreed Order.

**X. ENFORCEMENT**

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


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


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

Effective date of this Order: JUL 09 2018

CITY OF YAKIMA

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

  
\_\_\_\_\_  
CLIFF MOORE  
City Manager for the City of Yakima

  
\_\_\_\_\_  
VALERIE BOUND  
Section Manager  
Toxics Cleanup Program  
Central Regional Office

CITY CONTRACT NO: 2018-103  
RESOLUTION NO: R-2018-058

## EXHIBIT A SITE DIAGRAM

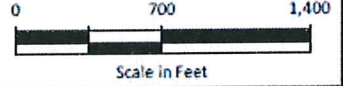


**Legend**

- Interstate 82 Exit 33A Site Boundary
- Yakima Mill Site Boundary (AO No. DE 13959)
- Tax Parcels and Parcel Site Number (191318-XXXX)

**Note**

1. Black and white reproduction of this color original may reduce its effectiveness and lead to incorrect interpretation.



Data Source: Yakima County GIS, Esri World Imagery.



Yakima City Landfill Yakima, Washington	<b>Site Diagram</b> Interstate 82 Exit 33A Site	Exhibit <span style="font-size: 2em; font-weight: bold;">A</span>
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**EXHIBIT B**  
**Historical Data to be Submitted Electronically**

Data from the following environmental studies must be entered into Ecology's electronic Environmental Information Management (EIM) databases:

Parametrix, Former City of Yakima Landfill Phase II Report, October 2008

SLR, City Landfill RI Report, October 2009

SLR, City Landfill Additional RI Report, March 2010

SLR, City Landfill Soil Vapor and Groundwater Sampling, May 2012

Landau, Interim Supplemental RI Report, April 2015

Landau, Draft Supplemental RI Report, September 2015



### **EXHIBIT C** **Groundwater/Surface Water Interaction Work Scope**

Groundwater – surface water interaction is needed to understand the seasonal interface between the groundwater downgradient of the Yakima Landfill and the Yakima River. The main goal of this effort will be to evaluate the annual time periods where the river is gaining water from the groundwater or losing water to the groundwater and use this information to assess the chemical and physical characteristics of the groundwater as it approaches the interface.

Once the groundwater hydrology is understood, final water quality parameters as the groundwater approaches the surface water may be understood. Using all relevant existing groundwater elevation and surface water elevation/stage data, the overall hydrology may be understood for the time periods where the data sets exist. Using standard transport methodologies, the chemical and physical data may be considered for impact on the groundwater/surface water interface. The proposed work scope is a data compilation followed by an analysis of this data. The existing monitoring well and river gauge data from the site are considered adequate for this analysis.

The deliverable will be a technical memorandum including or considering the following elements:

- (1) Obtain stream elevation/stage data for time periods where groundwater sampling data is available from the Supplemental RI.
- (2) Obtain precipitation data for the time periods where groundwater sampling data is available.
- (3) Using the calculated potentiometric gradient and river and groundwater elevations, assess the groundwater – surface water interface.
- (4) Determine any seasonal groundwater/surface water elevation trends (e.g., from irrigation, seasonal precipitation, if possible).
- (5) Assess chemical and physical property transport to the groundwater – surface water interface.

This work should not require any fieldwork and may be prepared by the appropriate professionals as a paper study.