

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

**ENFORCEMENT ORDER**

No. DE 16899

3M Company; Akzo Nobel Canada Inc.; Basin Disposal Inc.; Blount International, Inc.; BNSF Railway Company; The Boeing Company; Carr Aviation, LLC; Crown Beverage Packaging LLC; Daimler Trucks North America LLC; Leonard Dietrich; E.I. du Pont de Nemours & Co., Inc.; Franklin County; Georgia Pacific LLC; Goodrich Corporation on behalf of Kalama Specialty Chemicals, Inc.; Intalco Aluminum; PACCAR Inc.; Pasco Sanitary Landfill, Inc.; PCC Structurals, Inc.; Pharmacia Corporation; PPG Architectural Finishes, Inc.; PPG Industries, Inc.; Puget Sound Naval Shipyards; Sandvik Special Metals LLC; Simpson Timber Company; Union Oil of California, on behalf of Collier Carbon and Chemical; United States Air Force; United States Department of Agriculture, Forest Service; United States Department of the Interior, Bureau of Reclamation; Weyerhaeuser NR Company; and Zep Inc.

**TABLE OF CONTENTS**

I.	INTRODUCTION .....	3
II.	JURISDICTION .....	3
III.	POTENTIALLY LIABLE PERSONS (PLPS) BOUND .....	3
IV.	DEFINITIONS .....	4
V.	FINDINGS OF FACT .....	5
VI.	ECOLOGY DETERMINATIONS .....	15
VII.	WORK TO BE PERFORMED .....	16
VIII.	TERMS AND CONDITIONS .....	22
	A. Remedial Action Costs .....	22
	B. Designated Project Coordinators .....	23
	C. Performance .....	24
	D. Access .....	24
	E. Sampling, Data Submittal, and Availability .....	25
	F. Retention of Records.....	25
	G. Resolution of Disputes .....	26
	H. Extension of Schedule.....	27

I.	Endangerment .....	29
J.	Reservation of Rights.....	29
K.	Transfer of Interest in Property.....	30
L.	Compliance with Applicable Laws.....	30
M.	Periodic Review .....	32
IX.	SATISFACTION OF ORDER.....	32
X.	ENFORCEMENT .....	33

EXHIBIT A	Site Location Diagrams
EXHIBIT B	Cleanup Action Plan
EXHIBIT C	Scope of Work and Schedule
EXHIBIT D	Applicable Law and Relevant and Appropriate Requirements

## **I. INTRODUCTION**

The objective of the State of Washington, Department of Ecology (Ecology) under this Enforcement Order (Order) is to require remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the persons listed in Section III (Potentially Liable Persons Bound) to perform the remedial action(s) at the Pasco Landfill NPL Site (Site) in Pasco, Washington, in accordance with the Cleanup Action Plan (CAP) attached as Exhibit B. Ecology believes the actions required by this Order are in the public interest.

## **II. JURISDICTION**

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

## **III. POTENTIALLY LIABLE PERSONS BOUND**

This Enforcement Order shall apply to and be binding upon the following Potentially Liable Persons (PLPs): 3M Company; Akzo Nobel Canada Inc.; Basin Disposal Inc.; Blount International, Inc.; BNSF Railway Company; The Boeing Company; Carr Aviation, LLC; Crown Beverage Packaging LLC; Daimler Trucks North America LLC; Leonard Dietrich; E.I. du Pont de Nemours & Co., Inc.; Franklin County; Georgia Pacific LLC; Goodrich Corporation on behalf of Kalama Specialty Chemicals, Inc.; Intalco Aluminum; PACCAR Inc.; Pasco Sanitary Landfill, Inc.; PCC Structurals, Inc.; Pharmacia Corporation; PPG Architectural Finishes, Inc.; PPG Industries, Inc.; Puget Sound Naval Shipyards; Sandvik Special Metals LLC; Simpson Timber Company; Union Oil of California, on behalf of Collier Carbon and Chemical; United States Air Force; United States Department of Agriculture, Forest Service; United States Department of the Interior, Bureau of Reclamation; Weyerhaeuser NR Company; and Zep Inc. (collectively the Enforcement Order PLPs). To the extent allowed by law, changes in ownership or corporate status shall not alter the Enforcement Order PLPs' responsibility under this Order. The Enforcement Order PLPs 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 the Pasco Landfill NPL Site (cleanup site ID: 1910). The Site extent, as depicted in Exhibit A-1, includes both on-property (i.e., areas within the Pasco Sanitary Landfill property boundary) and off-property areas (i.e., areas outside the Pasco Sanitary Landfill property boundary). The Site constitutes a facility under RCW 70.105D.020(8). The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located. For purposes of this Order, the Site does not include the Zone B industrial waste area as defined in this Section IV (Definitions).

B. Potentially Liable Persons (PLPs): Refers to 3M Company; Akzo Nobel Canada Inc.; Basin Disposal Inc.; Blount International, Inc.; BNSF Railway Company; The Boeing Company; Carr Aviation, LLC; Crown Beverage Packaging LLC; Daimler Trucks North America LLC; Leonard Dietrich; E.I. du Pont de Nemours & Co., Inc.; Franklin County; Georgia Pacific LLC; Goodrich Corporation on behalf of Kalama Specialty Chemicals, Inc.; Intalco Aluminum; PACCAR Inc.; Pasco Sanitary Landfill, Inc.; PCC Structurals, Inc.; Pharmacia Corporation; PPG Architectural Finishes, Inc.; PPG Industries, Inc.; Puget Sound Naval Shipyards; Sandvik Special Metals LLC; Simpson Timber Company; Union Oil of California, on behalf of Collier Carbon and Chemical; United States Air Force; United States Department of Agriculture, Forest Service; United States Department of the Interior, Bureau of Reclamation; Weyerhaeuser NR Company; and Zep Inc.

C. Enforcement Order or Order: Refers to this Order and each of the exhibits to the Order. All exhibits are an integral and enforceable part of this Order.

D. Industrial Waste Areas or IWAs: Refers to those areas of the Site known as Zones A, C/D, and E, as depicted in the Site Location Diagram (Exhibit A-2).

E. Industrial Waste Area Generators Group or the IWAG: Refers to the members of the Industrial Waste Area Generators Group III (IWAG) consisting of the following Enforcement Order PLPs (as of the effective date of this Order): 3M Company; Akzo Nobel Canada Inc.; Blount International, Inc.; The Boeing Company; Crown Beverage Packaging LLC; Daimler Trucks North America LLC; Georgia Pacific LLC; Goodrich Corporation on behalf of Kalama Specialty Chemicals, Inc.; Intalco Aluminum; PACCAR Inc.; PCC Structural, Inc.; Pharmacia Corporation; PPG Architectural Finishes, Inc.; Simpson Timber Company; Union Oil of California, on behalf of Collier Carbon and Chemical; and Weyerhaeuser NR Company.

F. The Landfill Group or LFG: Refers to the members of the Landfill Group consisting of the following Enforcement Order PLPs (as of the effective date of this Order): Basin Disposal, Inc.; BNSF Railway Company; and Pasco Sanitary Landfill, Inc.

G. Municipal Solid Waste Areas. Refers to those areas of the Site known as the Balefill Area, the Inert Waste Disposal Area, the Burn Trenches, the septic lagoons, the Landspread Area, the Sludge Management Area, and the Municipal Solid Waste Landfill, as depicted in Exhibit A-2.

H. Zone B: Refers to a former portion of the Site known as Zone B, as depicted in the Site Location Diagram (Exhibit A-2). Remedial action for the Zone B industrial waste area is not included in this Order.

## V. FINDINGS OF FACT

Ecology makes the following findings of fact:

A. Based upon factors currently known to Ecology, the Site is generally located at the intersection of Kahlotus Road with United States Routes 12 and 395, at latitude 46 degrees, 15'07" North and longitude 119 degrees, 03'13" West, as shown in the Site Diagram (Exhibit A-1).

B. In 1958, the Franklin County Planning Commission authorized John Dietrich, d/b/a Pasco Garbage Service, to establish and operate a garbage disposal facility at this Site. The facility operated as a burning dump until 1971, at which point it was converted to a sanitary landfill.

C. Resource Recovery Corporation (CR2) was incorporated in Washington in 1972 and took over operation of the landfill. The CR2 Operational Plan, dated August 28, 1972, envisioned the development of additional disposal facilities for both drummed and liquid wastes. Drummed wastes were to be buried, and bulk liquids were to be discharged to lagoons and evaporated.

D. On or about January 3, 1973, CR2 submitted a Waste Discharge Permit Application (the Application) to Ecology, by which it sought permission to collect, transport to, and dispose of various industrial, commercial, and agricultural wastes at the disposal facility. On March 21, 1973, Ecology issued Waste Discharge Permit No. 5301 (the Permit) to CR2 to govern the operation of the disposal facility. The industrial waste lagoons and drum disposal sites were operated at the disposal facility through the end of 1974. Industrial wastes were segregated and disposed of in five zones of the IWA, designated as Zones A, B, C, D and E. *See* Exhibit A-2. Those areas, designated on Exhibit A-2 as Zone U-1 (historical) and Zone TS-2 (historical), were used as holding areas for industrial wastes.

E. On September 24, 1973, Franklin County notified CR2 that it was no longer permitted to dispose of industrial wastes originating from outside of Franklin and Benton Counties at the facility and that CR2 would need to obtain a new special use permit in order to continue operating the sanitary landfill portion of the facility. On November 5, 1973, C R2 submitted a special use permit application to Franklin County seeking permission to continue to operate the facility as a sanitary landfill and industrial waste disposal facility. Franklin County subsequently issued an interim order allowing CR2 to continue operating the sanitary landfill, but barring the disposal of industrial waste at the facility until the County made a decision on CR2's special use permit special use permit application.

F. On February 11, 1974, Franklin County granted CR2 a special use permit that allowed CR2 to continue operating the sanitary landfill and to resume operating the industrial waste disposal facilities until May 2, 1974. CR2 subsequently entered into a Performance Agreement with Franklin County and Ecology, whereby Franklin County allowed CR2 to operate the industrial waste facility through December 31, 1974.

G. Zone A consisted of a drum disposal area and reportedly contains approximately 35,000 drums of mixed organic and inorganic industrial wastes. Zone B consisted of a drum disposal area and contained approximately 5000 drums of chlorinated herbicide manufacturing wastes. Zone C consisted of an unlined pond that was used to evaporate water from various industrial wastes. Zone D consisted of an unlined pond that was used for the disposal of non-containerized industrial wastes. Approximately 3,000,000 gallons of wastes were disposed of in Zones C and D. Zone E consisted of a bulk waste disposal area where approximately 11,000 tons of chlor-alkali sludge and carbon electrode wastes were reportedly deposited.

H. Following expiration of the Permit, CR2 continued to operate the sanitary landfill portion of the facility, accepting local solid and industrial waste under permit from the Benton-Franklin District Health Department. In 1981, Pasco Sanitary Landfill, Inc. (PSL) was formed to operate the landfill. PSL currently owns the Pasco Sanitary Landfill property, which is depicted in Exhibits A-1 and A-2.

I. In February 1990, the Site was listed as a National Priority List (NPL) site by the United States Environmental Protection Agency. This listing was based on the identification of hazardous substances in Site media, including groundwater. Ecology was established as the lead agency for the cleanup investigations and remedial actions taken at the Site.

J. In 1992, a Phase I Remedial Investigation (RI) was begun by a group of PLPs. The purpose of the Phase I RI was to gain additional information on the nature and extent of contamination in the soil, soil-gas, and groundwater near potential contaminant sources at the Site.

Findings of the Phase I RI confirmed the presence of site-related contamination in soil, soil-gas, and groundwater at levels exceeding then applicable MTCA cleanup levels.

K. In November 1994, Ecology issued Enforcement Order No. DE 94TC-E103 to certain PLPs, requiring them to perform a Phase II RI and Feasibility Study (FS). The purpose of the Phase II RI was to further define and characterize the source(s), nature, degree, and extent of contamination at the Site. The purpose of the FS was to develop and evaluate remedial measures to reduce risks to human health and the environment in accordance with WAC 173-340. Results of the Phase II RI Report confirmed that hazardous substances had been released to the environment, within the meaning of RCW 70.105D.020(20). The results of the Phase I and Phase II RI provided sufficient information regarding the nature and extent of contamination at the Site which allowed for the preparation of a Risk Assessment/Cleanup Levels Analysis and a FS.

L. The FS for the Site was completed in accordance with Enforcement Order DE 94TC-E103 and WAC 173-340-350. The FS report was accepted as final by Ecology in October 1999 after public notice and opportunity to comment. The FS proposed a five-year performance monitoring period during which time the preferred remedy would be monitored, evaluated, and modified (if necessary) to optimize the performance of the remedy.

M. In or around May of 1997, certain PLPs undertook Interim Remedial Measures (IRMs) at the Site to reduce potential risks to human health and the environment. The 1997 IRMs included installation and pilot-scale testing of two engineered remediation systems: a soil vapor extraction (SVE) system and a groundwater treatment system (NoVOCs<sup>TM</sup>). The pilot SVE system was installed at Zone A to remove volatile organic compounds in soil vapors from beneath and adjacent to the waste zone. The pilot NoVOCs<sup>TM</sup> groundwater treatment system was installed near Zone A in 1997.

N. In 2000, Ecology and a group of PLPs entered into Agreed Order No. DE 00TCPER-1324, which required the implementation and completion of certain interim actions at the IWA and an area encompassing a groundwater plume that was emanating from the Site. Also



in 2000, Ecology issued Enforcement Order No. DE 00TCPER-1325 to a separate group of PLPs, which required them to implement and complete those interim actions at the IWA and groundwater plume areas. The interim actions required by Agreed Order No. DE 00TCPER-1324 and Enforcement Order No. DE 00TCPER-1325 included: the installation of engineered landfill caps at Zones A, C, D, and E of the IWA; an expansion of the SVE and NoVOCs systems at Zone A; removal of the drums and installation of a temporary cover at Zone B of the IWA; and implementation of institutional controls. Ecology determined that before a final site remedy could be selected under MTCA, a five-year operational period was necessary to evaluate the performance of the interim action systems.

O. In 2000, Ecology and a group of PLPs entered into Agreed Order No. DE 00TCPER-1326, which required the implementation and completion of certain interim actions for the sanitary landfill area at the Site. Also in 2000, Ecology issued Enforcement Order No. DE 00TCPER-1327 to a separate group of PLPs, which required the same interim actions to be implemented and completed at the sanitary landfill area. The interim actions required by Agreed Order No. DE 00TCPER-1326 and Enforcement Order No. DE 00TCPER-1327 included: the installation of an engineered landfill cap at the MSW Landfill; completion of a landfill gas collection system and flare; and implementation of institutional controls. PLPs completed this work pursuant to Agreed Order No. DE 00TCPER-1326.

P. In an April 23, 2007 letter, Ecology provided its evaluation of the Interim Action Performance Monitoring activities. Ecology concluded that additional system improvements, enhancements or additional remedial actions were necessary to address significant data gaps and uncertainties in the understanding of site conditions, and assess the overall effectiveness of the interim remedial systems. Ecology determined that the SVE and NoVOCs<sup>TM</sup> treatment systems were underperforming and provided an insufficient level of treatment to meet all MTCA threshold criteria in the selection of cleanup actions.

Q. In 2002, Ecology approved the Operations and Maintenance Manual, Landfill Gas Collection Control and Flare, Pasco Sanitary Landfill, Pasco, Washington, prepared by Philip Service Corporation dated July 15, 2002. In 2009, Ecology approved a Memorandum regarding Addendum to Pasco Municipal Solid Waste Landfill Operations and Maintenance Manual, prepared by Aspect Consulting dated April 17, 2009. In 2011, Ecology approved the Revised Flare Performance Report, Pasco Municipal Solid Waste Landfill, prepared by Aspect Consulting dated June 29, 2011. The Operations and Maintenance Manual was updated again in 2014. Collectively, these documents have guided the interim remedial activities at the MSW Landfill. This work began in October 2002 and is ongoing as of April 2019.

R. In October and November of 2007, a group of PLPs proposed to undertake investigative tasks at the IWA as part of a continuation of the interim actions required by Agreed Order No. DE 00TCPER-1324. On February 15, 2008, that same group of PLPs submitted to Ecology a draft Work Plan for Additional Interim Actions (AIAs) for these tasks. Also in February of 2008, that group of PLPs formally requested that it be allowed to undertake additional interim actions at the IWA pursuant to Agreed Order No. DE 00TCPER-1324. On May 9, 2008, the Attorney General's Office conveyed Ecology's agreement to that group of PLPs' request to conduct AIAs under Agreed Order No. DE 00TCPER-1324. The approved AIAs included: installation of new monitoring wells at the Site; evaluation of alternative SVE system operations; assessment and verification of the NoVOCs<sup>TM</sup> system operations and facilitated mechanisms of contaminant reduction; and inspection, maintenance and modifications (as needed) to the current SVE and NoVOCs<sup>TM</sup> systems.

S. In fall 2008, an assessment of the NoVOCs<sup>TM</sup> system revealed that the NoVOCs<sup>TM</sup> was not performing according to design expectations. Between November 2010 and June 2011, the four NoVOCs<sup>TM</sup> wells were decommissioned.

T. In 2009, a sub-group of PLPs performing the AIAs made a request to Ecology to modify the scope and schedule for Phase I of the AIAs and be allowed to perform certain tasks

under the Phase II AIAs at the Site. These tasks included: upgrades to the Zone A SVE system; supplemental soil sampling and analytical testing of Zone A subsurface soils; installation of new Zone A groundwater monitoring wells; installation of additional property boundary and downgradient plume area groundwater monitoring wells; investigation of soil conditions beneath Zone A using non-vertical borehole drilling and sampling techniques; and, maintenance of subsidence on the Zone A cap. Ecology stated in a letter dated September 18, 2009, that the SVE system upgrade was intended to address only soil/vadose zone contamination, consistent with the intent of the 2000 Orders, and was not intended to serve as a replacement for the NoVOCs™ system, nor used as a stand-alone groundwater treatment remedial system.

U. In May 2010, Ecology approved the Phase II Volume I AIA Work Plan. The Work Plan described upgrades to the interim action SVE system, and the installation of additional groundwater monitoring wells within Zone A. In May 2010, Ecology approved the Engineering Design Report for SVE System Upgrades submitted by a group of PLPs, which details the engineering design of SVE upgrades. This work began in the summer of 2010 and was completed by the end of 2012.

V. In January 2011, Ecology approved the Phase II AIA Volume II Work Plan to conduct soil investigations beneath Zone A. The Phase II AIA Volume II Work Plan also specifies the installation of four additional intermediate-depth groundwater monitoring wells within the downgradient plume area and the performance of cap maintenance in response to localized subsidence of the Zone A cap. The intermediate-depth monitoring wells were installed in February and March 2011. In August 2012, Ecology accepted as final the May 2012 Revised Phase II AIA Summary Report prepared by Environmental Partners, Inc. Cap maintenance under the O&M plan for the Zone A cap is ongoing as of December 2018.

W. In October 2012, Ecology and a group of PLPs entered into Agreed Order No. DE 9240, which required the PLPs to conduct a Focused Feasibility Study (FFS) per WAC 173-340-350(8) to evaluate a focused set of remedial alternatives per WAC 173-340-350 through 173-340-

380 to address soil and groundwater contamination at the Site. Agreed Order No. DE 9240 also required ongoing operation, maintenance, and monitoring of Ecology-approved interim actions that are necessary to protect human health and the environment from the release or threatened release of hazardous substances at the Site. Also in October 2012, Ecology issued Enforcement Order No. DE 9406 to a separate group of PLPs, which required those PLPs to undertake the same actions required by Agreed Order No. DE 9240.

X. In December 2012 and January 2013, the PLPs submitted drafts of a FFS Work Plan for Ecology review. After revisions to the revised draft FFS Work Plan in response to Ecology comments, PLPs reissued a revised draft final FFS Work Plan in September 2013, which Ecology approved in November 2013. PLPs submitted a draft FFS Report to Ecology in September 2014. Ecology issued comments on the draft FFS Report in June 2016 following an extended period of Ecology/PLP meetings, communications and correspondence. In August 2017, Ecology received two revised draft final FFS Reports prepared by separate PLP subgroups (i.e., IWAG/Bayer CropScience (BCS) and the Landfill Group). These revised, draft final FFS Reports were made available together for public review and comment in September 2018.

Y. In early December 2013, Ecology learned a subsurface fire had started in a small section of the landfill near the interface between the Balefill Area and Zone A. In April 2014, Ecology issued Enforcement Order No. DE 10651. The 2014 Enforcement Order required the PLPs to perform interim actions that would extinguish the fire, and prevent the likelihood of future subsurface combustion events. The subsurface fire was extinguished in 2016, by the IWAG, and as part of the extinguishment activities a soil-cement-bentonite barrier wall also was constructed around the north, northeast, and a portion of the east perimeter of Zone A to minimize the potential for subsurface combustion migration. In April 2017, Ecology sent the PLPs notice that Ecology deemed that Enforcement Order No. DE 10651 was satisfied.

Z. During the summer of 2016, Ecology communicated its concerns to Site PLPs about potential combustion conditions beneath Zone A. Ecology's concerns were based on limited temperature and vapor monitoring data.

AA. During winter of 2017, the IWAG Group III and its technical representatives completed a combustion evaluation of Zone A. The IWAG submitted the draft Zone A Combustion Evaluation Report to Ecology in April 2017. Ecology submitted a letter to the IWAG Group III in September 2017 highlighting several Zone A conditions as evidence of past or ongoing combustion. The IWAG Group III and Ecology subsequently engaged in additional communications and correspondence concerning the need for additional monitoring activities to further document Site conditions and provide a basis for developing appropriate response actions to address the range of unstable conditions at Zone A.

BB. In April 2017, non-aqueous phase liquid (NAPL) was detected in one of the groundwater monitoring wells located within Zone A (MW-52S). Samples of the NAPL collected and analyzed in 2017 and 2018 indicate the NAPL is a light non-aqueous phase liquid. A large number of hazardous substances have been detected in the NAPL. Concentrations of several of these hazardous substances exceed applicable MTCA cleanup levels for groundwater. These hazardous substances have been, and may continue to be, released at the Site into the environment including soil and groundwater. The IWAG has deployed absorbent socks in Zone A well MW-52S since August 2018 to capture NAPL that is present at the water table.

CC. During late January and early February 2018, the IWAG conducted an inspection of the Zone A geomembrane to identify any visually-evident breaches, tears, holes, panel separations and/or punctures. The visual inspection did not identify the presence of obvious or evident breaches, tears, holes, panel separations and/or punctures of the geomembrane. However, the cover system remains non-compliant with design and performance specifications (in particular, proper drainage of rainfall and snowmelt) due to closed depressions that have developed within

portions of the Zone A cover. These closed depressions are the result of past and ongoing differential settlement.

DD. Groundwater quality monitoring throughout the site generally indicates concentrations of indicator hazardous substances are at or below existing draft cleanup levels; exceptions to this are exceedances of the draft cleanup levels in wells beneath Zone A, and selected wells downgradient of the MSW Landfill. Selected semi-volatile parameters (polynuclear aromatic hydrocarbons - PAH) not previously identified as indicator hazardous substances also were recently detected at two Zone A perimeter monitoring wells. The observed PAH concentrations at MW-47S (southwest perimeter) and MW-50S (northwest perimeter) wells along the downgradient perimeter of Zone A exceeded MTCA Method B cleanup levels during 2<sup>nd</sup> quarter 2017 and 4<sup>th</sup> quarter 2018, respectively.

EE. In October 2018, BCS submitted written documentation to Ecology requesting issuance of a separate consent decree for Zone B. The BCS request posited that residual contamination located at, and associated with, Zone B has not and likely would not commingle with contamination sourced from the Municipal Solid Waste Areas or Industrial Waste Areas Zones A, C/D, and E. Ecology reviewed the BCS technical lines of evidence and also considered the scope and performance of Zone B interim action cleanup activities completed to date. From this basis, Ecology concluded there was a low likelihood for future contaminant releases from Zone B, and a low likelihood that any residual Zone B contamination would commingle with contamination from the other areas of the Pasco Landfill NPL Site. In response to this determination, Ecology granted BCS's request to perform its MTCA cleanup obligations under a separate consent decree. If, during the performance of the work to be performed under this Order, Ecology learns of credible evidence that contamination at or associated with Zone B is commingled with contamination from the Industrial Waste Area Zones A, C/D, and/or E, Ecology shall make the determination that BCS is a PLP for the Site.

FF. As documented in the Cleanup Action Plan (CAP) (Exhibit B), Ecology has chosen a final cleanup action to be implemented at the Site

## **VI. ECOLOGY DETERMINATIONS**

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

A. Each PLP is potentially liable pursuant to RCW 70.105D.040 for the release of hazardous substances at the Site, a facility as defined in RCW 70.105D.020(5). The PLPs arranged for the disposal of hazardous substances at the “facility,” and/or transported hazardous substances to the “facility,” as that term is defined by RCW 70.105D.020(5), and/or are or were “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(32) and (13), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to the Enforcement Order PLPs pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued determinations to each of those PLPs that they were 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 plan.

## **VII. WORK TO BE PERFORMED**

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the Enforcement Order PLPs take the following remedial actions at the Site. The area within the Site where remedial action is necessary under RCW 70.105D is depicted in Exhibit A-2 (excluding the Zone B Site). These remedial actions must be conducted in accordance with WAC 173-340.

A. The Enforcement Order PLPs will conduct the following work at the Site:

### Industrial Waste Area Zones:

1. IWA Zone A: excavation and off-site disposal of waste; in-situ treatment of residual soil and waste zone contamination; installation of a new cover system, including a geomembrane over the excavation area; and groundwater monitoring and implementation of institutional controls.

2. IWA Zones C/D and E: monitoring and maintaining the RCRA C-compliant cover systems, and groundwater monitoring and implementation of institutional controls.

### Municipal Solid Waste Areas:

3. Municipal Solid Waste (MSW) Landfill: operating, monitoring, and maintaining the existing engineering controls that were instituted as interim actions in 2001/2002, and modifying the landfill gas collection and control system (GCCS) and landfill gas treatment system in accordance with future changes in landfill gas generation and collection rates. The required cleanup action also includes groundwater monitoring and implementation of institutional controls.

4. Balefill and Inert Waste Disposal Area: verification of limits-of-waste and cover thicknesses; repair and/or restoration of covers to achieve



compliance with applicable landfill design and closure requirements; monitoring, maintenance, and implementation of institutional controls.

5. Burn Trench BT-1: verification of limits-of-waste and cover thicknesses; repair and/or restoration of covers to achieve compliance with applicable landfill design and closure requirements; monitoring, maintenance, and implementation of institutional controls

6. Burn Trench BT-2: excavation and off-site disposal of contaminated waste concurrent with Zone A excavation work (if necessary); or waste isolation and in-place closure including cover restoration, monitoring, maintenance and implementation of institutional controls.

Site-Wide Remedial Actions:

7. On-Property Central Area Groundwater: routine groundwater monitoring; implementation of institutional controls; and contingent investigation and cleanup work if triggered by monitoring data as described in Exhibit C.

8. Off-Property Groundwater: routine groundwater monitoring; implementation of institutional controls, including maintenance of the existing Groundwater Protection Area ordinance until conditions, following remedy completion, warrant its termination.

The above work shall be completed in accordance with the schedule and terms of the Scope of Work and Schedule, Exhibit C, and all other requirements of this Order.

B. The following naming conventions shall be used for documents that the Enforcement Order PLPs are required to submit to Ecology under this Order: Agency Review Draft (designation for the first time Ecology receives a document); Public Review Draft (designates a document ready for public comment); Final (designation for a document after public comment and Ecology approval). All plans or other deliverables submitted by the Enforcement Order PLPs for Ecology's review and approval under the CAP (Exhibit B) or Scope of Work and

Schedule (Exhibit C) shall, upon Ecology's approval, become integral and enforceable parts of this Order.

C. If the Enforcement Order PLPs learn of a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in soil and/or groundwater, the Enforcement Order PLPs, within seven (7) days of learning of the change in condition, shall notify Ecology in writing of said change and provide Ecology with any reports or records (including field monitoring data, laboratory analyses, sampling results) relating to the change in conditions.

D. Unless otherwise directed by Ecology, the Enforcement Order PLPs shall submit to Ecology written monthly Progress Reports that describe the actions taken during the previous month to implement the requirements of this Order. All Progress Reports shall be submitted by the tenth (10th) day of the month in which they are due after the effective date of this Order. Unless otherwise specified by Ecology, Progress Reports and any other documents submitted pursuant to this Order shall be sent by certified mail, return receipt requested, to Ecology's project coordinator. The Progress Reports shall include the following:

1. A list of on-site activities that have taken place during the month.
2. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests.
3. Description of all deviations from the Scope of Work and Schedule (Exhibit C) during the current month and any planned deviations in the upcoming month.
4. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.
5. All raw data (including laboratory analyses) received during the previous quarter (if not previously submitted to Ecology), together with a detailed description of the underlying samples collected.
6. A list of deliverables and planned activities for the upcoming month.

E. Pursuant to WAC 173-340-440(11), the Enforcement Order PLPs 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.

1. Within sixty (60) days of the effective date of this Order, the Enforcement Order PLPs shall submit to Ecology for review and approval an estimate of the costs under this Order for operation and maintenance of the remedial actions at the Site, including institutional controls, compliance monitoring and corrective measures. Within sixty (60) days after Ecology approves the aforementioned cost estimate, the Enforcement Order PLPs shall provide proof of financial assurances sufficient to cover all such costs in a form acceptable to Ecology.
2. The Enforcement Order PLPs shall adjust the financial assurance coverage and provide Ecology's project coordinator with documentation of the updated financial assurance for:
  - a. 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 Enforcement Order PLPs' fiscal year if the financial test or corporate guarantee is used.
  - b. Changes in cost estimates, within thirty (30) days of issuance of Ecology's approval of a modification or revision to the cleanup action plan (CAP) that result 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 CAP will revise the

anniversary date established under this section to become the date of issuance of such revised or modified CAP.

F. As detailed in the CAP, institutional controls are required at the Site. Environmental (Restrictive) Covenants will be used to implement the institutional controls.

1. In consultation with the Enforcement Order PLPs, Ecology will prepare the Environmental (Restrictive) Covenants consistent with WAC 173-340-440, RCW 64.70, and any policies or procedures specified by Ecology. The Environmental (Restrictive) Covenants shall restrict future activities and uses of the Site as agreed to by Ecology and the Enforcement Order PLPs.
2. After approval by Ecology, the Enforcement Order PLPs shall record the Environmental (Restrictive) Covenant for affected properties it owns with the office of the Franklin County Auditor as detailed in the Schedule (Exhibit B). The Enforcement Order PLPs shall provide Ecology with the original recorded Environmental (Restrictive) Covenants within thirty (30) days of the recording date.
3. As detailed in the CAP, as part of the remedial action for the Site, institutional controls are required on properties within the Pasco Sanitary Landfill property boundary not owned by the Enforcement Order PLPs. The Enforcement Order PLPs will ensure that the owner of each affected property within the Pasco Sanitary Landfill property boundary records an Ecology-approved Environmental (Restrictive) Covenant as detailed in the Schedule (Exhibit C). Upon a showing that the Enforcement Order PLPs have made a good faith effort to secure an Environmental (Restrictive) Covenant for an affected property within the Pasco Sanitary Landfill property boundary and failed to do so, Ecology may provide assistance to the Enforcement Order PLPs. Unless Ecology determines otherwise, affected properties within the Pasco Sanitary Landfill property boundary include

Franklin County Assessor parcel numbers 113-580-082, 113-580-091, 113-580-117, 113-580-135, 113-580-126, 113-200-072, 113-580-037, 113-510-059, and 113-580-064. The Enforcement Order PLPs shall provide Ecology with the original recorded Environmental (Restrictive) Covenants within thirty (30) days of the recording date.

4. As detailed in the CAP, as part of the remedial action for the Site, institutional controls are required to address off-property environmental conditions involving residual site contamination. Institutional controls currently are in place (i.e., City of Pasco (City) Municipal Code Section 16.15.060) to restrict consumptive groundwater use within off-property portions of the Site. Any decision to terminate the institutional control obligations associated with the City's Groundwater Protection Area will be addressed in association with the post-remedy Periodic Review process as described in Section 6.11 of the CAP (Exhibit B). This includes public notice and comment as stipulated in Section 16.15.060(6) of the City's Municipal Code.

G. All plans or other deliverables submitted by the Enforcement Order PLPs for Ecology's review and approval under the Scope of Work and Schedule (Exhibit C) shall, upon Ecology's approval, become integral and enforceable parts of this Order.

H. If Ecology determines that the Enforcement Order PLPs have failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to the Enforcement Order PLPs, perform any or all portions of the remedial action or at Ecology's discretion allow the Enforcement Order PLPs opportunity to correct. In an emergency, Ecology is not required to provide notice to the Enforcement Order PLPs, or an opportunity for dispute resolution. The Enforcement Order PLPs shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.B (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

I. Except where necessary to abate an emergency situation or where required by law, the Enforcement Order PLPs shall not perform any remedial actions at the Site outside those remedial actions required by this Order to address the contamination that is the subject of this Order, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section VIII.J. (Amendment of Order). In the event of an emergency, or where actions are taken as required by law, the Enforcement Order PLPs must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

## **VIII. TERMS AND CONDITIONS**

### **A. Remedial Action Costs**

The Enforcement Order PLPs 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, 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). For all Ecology costs incurred, the Enforcement Order PLPs shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

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

**B. Designated Project Coordinators**

The project coordinator for Ecology is:

Charles Gruenenfelder, L.G., L.Hg.  
Eastern Regional Office, Department of Ecology  
4601 N. Monroe Street  
Spokane, WA 99205-1295  
509-329-3439  
E-mail: [chgr461@ecy.wa.gov](mailto:chgr461@ecy.wa.gov)

2. The project coordinator for the Industrial Waste Area Group is:

Jessi Massingale, P.E., Principal  
Floyd | Snider  
601 Union Street, Suite 600  
Seattle, WA 98101  
206-292-2078 | fax: 206.682.7867  
E-mail: [jessi.massingale@floydsnider.com](mailto:jessi.massingale@floydsnider.com)

3. The project coordinator for the Landfill Group is:

Peter Bannister, P.E.  
Aspect Consulting LLC  
350 Madison Avenue N.  
Bainbridge Island, WA 98110-1810  
206-780-7728  
Email: [pbannister@aspectconsulting.com](mailto:pbannister@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 Enforcement Order PLPs, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

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

**C. Performance**

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

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

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

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

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

**D. Access**

RCW 70.105D.030(1)(a) authorizes Ecology or any Ecology authorized representative to enter all property at the Site that the Enforcement Order PLPs either own, control, or have access rights to, after reasonable notice unless an emergency prevents such notice. The Enforcement Order PLPs shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the Enforcement Order PLPs where remedial activities or investigations will be performed pursuant to this Order.



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

With respect to the implementation of this Order, the Enforcement Order PLPs 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 Enforcement Order PLPs shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the Enforcement Order PLPs pursuant to the implementation of this Order. The Enforcement Order PLPs shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the Enforcement Order PLPs 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.E (Access), Ecology shall notify the Enforcement Order PLPs 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. Retention of Records**

During the pendency of this Order, and for ten (10) years from the date of completion of the work performed pursuant to this Order, the Enforcement Order PLPs 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, the Enforcement Order PLPs shall make all such records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right the Enforcement Order PLPs 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 Enforcement Order PLPs withholds any requested records based on an assertion of privilege, the Enforcement Order PLPs 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.

**G. Resolution of Disputes**

1. In the event that the Enforcement Order PLPs elects to invoke dispute resolution, the Enforcement Order PLPs must utilize the procedure set forth below.

a. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), the Enforcement Order PLPs have fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision (Informal Dispute Decision) stating: the nature of the dispute; the Enforcement Order PLPs' position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

c. The Enforcement Order PLPs may then request regional management review of the dispute. This request (Formal Dispute Notice) must be submitted in writing to the Eastern Region Toxics Cleanup Section Manager within seven (7) calendar days of

receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

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

2. The Parties shall only utilize the dispute resolution process in good faith and shall 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.E (Work to be Performed) or initiating enforcement under Section X (Enforcement).

#### **H. Extension of Schedule**

1. The Enforcement Order PLPs request for 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 when 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 Enforcement Order PLPs 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. The existence of good cause shall be determined by Ecology in its sole discretion. Good cause may include, but may not be limited to:

a. Circumstances beyond the reasonable control and despite the due diligence of the Enforcement Order PLPs 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 Enforcement Order PLPs.

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

c. Endangerment as described in Section VIII.J (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 Enforcement Order PLPs.

3. Ecology shall act upon any the Enforcement Order PLPs' written request for extension in a timely fashion. Ecology shall give the Enforcement Order PLPs written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved in writing by Ecology.

4. At the Enforcement Order PLPs' request, 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 one of the following:

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.J (Endangerment).

**I. Endangerment**

In the event Ecology determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct the Enforcement Order PLPs to cease such activities for such period of time as it deems necessary to abate the danger. The Enforcement Order PLPs shall immediately comply with such direction.

In the event the Enforcement Order PLPs determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment, the Enforcement Order PLPs may cease such activities. The Enforcement Order PLPs 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 Enforcement Order PLPs shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the Enforcement Order PLPs' cessation of activities, it may direct the Enforcement Order PLPs to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section the Enforcement Order PLPs' 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.

**J. Reservation of Rights**

Ecology 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 or 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.

**K. Transfer of Interest in Property**

Before any voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the Enforcement Order PLPs, the Enforcement Order PLPs shall provide 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.

Further, prior to the Enforcement Order PLPs' transfer of any interest in all or any portion of the Site, the Enforcement Order PLPs 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 Enforcement Order PLPs shall notify Ecology of said transfer. Upon transfer of any interest, the Enforcement Order PLPs 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.

**L. Compliance with Applicable Laws**

1. *Applicable Law.* All actions carried out by the Enforcement Order PLPs 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 Ecology has determined are applicable and that are known at the time of the execution of this Order have been identified in Exhibit D. The Enforcement Order PLPs have a continuing obligation to identify additional applicable federal, state, and local requirements that apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or the Enforcement Order PLPs, Ecology will document in writing if they

are applicable to actions carried out pursuant to this Order, and the Enforcement Order PLPs must implement those requirements.

2. *Relevant and Appropriate Requirements.* All actions carried out by the Enforcement Order PLPs pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. The relevant and appropriate requirements that Ecology has determined apply have been identified in Exhibit D. If additional relevant and appropriate requirements are identified by Ecology or the Enforcement Order PLPs, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and the Enforcement Order PLPs must implement those requirements.

3. Pursuant to RCW 70.105D.090(1), the Enforcement Order PLPs may be 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 Enforcement Order PLPs shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70.105D.090(1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Order to enforce those local government permits and/or approvals.

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

5. 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 Enforcement Order PLPs 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.

**M. Periodic Review**

So long as remedial action 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. Unless otherwise agreed to by Ecology, at least every five (5) years after the initiation of cleanup action at the Site the Parties shall confer regarding the status of the Site and the need, if any, for further remedial action at the Site. 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.

**IX. SATISFACTION OF ORDER**

The provisions of this Order shall be deemed satisfied upon the Enforcement Order PLPs' receipt of written notification from Ecology that the Enforcement Order PLPs have completed the remedial activity required by this Order, and that the Enforcement Order PLPs have complied with all other provisions of this Enforcement Order.



**X. ENFORCEMENT**

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

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

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

C. A liable party, who refuses without sufficient cause, to comply with any term of this Order will be liable for:

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

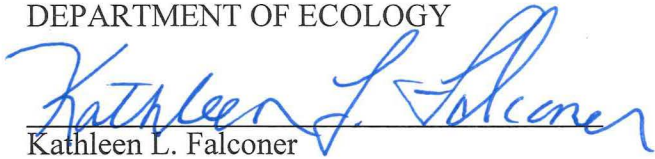
2. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

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

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

Effective date of this Order: Nov. 8, 2019

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY



Kathleen L. Falconer  
Section Manager  
Toxics Cleanup Program  
Eastern Regional Office  
509-329-3568