

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

City of Anacortes
P.O. Box 547
Anacortes, WA 98221

AGREED ORDER

No. DE 16576

TO: Mr. Fred Buckenmeyer
Public Works Director
City of Anacortes
P.O. Box 547
Anacortes, WA 98221

TABLE OF CONTENTS

I.	INTRODUCTION	3
II.	JURISDICTION	3
III.	PARTIES BOUND	3
IV.	DEFINITIONS.....	3
V.	FINDINGS OF FACT.....	4
VI.	ECOLOGY DETERMINATIONS	7
VII.	WORK TO BE PERFORMED.....	8
VIII.	TERMS AND CONDITIONS	9
	A. Payment of Remedial Action Costs	9
	B. Designated Project Coordinators	10
	C. Performance	11
	D. Access	12
	E. Sampling, Data Submittal, and Availability	13
	F. Public Participation.....	14
	G. Retention of Records.....	16
	H. Resolution of Disputes.....	16
	I. Extension of Schedule.....	17
	J. Amendment of Order	19
	K. Endangerment	19

L.	Reservation of Rights.....	20
M.	Transfer of Interest in Property.....	21
N.	Compliance with Applicable Laws.....	21
O.	Periodic Review	23
P.	Indemnification.....	23
IX.	SATISFACTION OF ORDER	24
X.	ENFORCEMENT	24

EXHIBITS

Ex. A Site Location Diagram

Ex. B Area of Interest Diagram

Ex. C Scope of Work & Schedule

Ex. D Ecology Authorized Representatives Approved For Site Access with 24 Hours' Notice

Ex. E Applicable Permits and Requirements

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology and the City of Anacortes under this Agreed 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 a remedial investigation/feasibility study (RI/FS) and to prepare a draft cleanup action plan (DCAP). 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 the Former Anacortes Water Treatment Plant. 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, placed, or otherwise come to be located. Based upon factors currently known to Ecology, the

Site is generally located at 14489 River Bend Road¹ in Mt. Vernon, Washington (Skagit County Parcel No. P21669) as shown in the Site Location Diagram (Exhibit A).

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

C. 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.

D. Property: Refers to the real property located at 14489 River Bend Road in Mt. Vernon, Washington (Skagit County Parcel No. P21669).

E. Former Anacortes Water Treatment Plant: Refers to the water treatment plant that was constructed on the Property between 1969 and 1970 and decommissioned in 2013. The Former Anacortes Water Treatment Plant consists of an Administration Building, Clearwell, Wastewell, Filtration Basin, and Sedimentation Basin, as shown in the Site Location Diagram (Exhibit A).

F. New Anacortes Water Treatment Plant: Refers to the water treatment plant that was constructed on the Property beginning in 2011 and was brought online in 2013 to replace the Former Anacortes Water Treatment Plant, which currently serves the City’s municipal water storage and distribution network. The New Anacortes Water Treatment Plant consists of a new Administration Building, Filtration and Sedimentation Basin, Chemical Storage Building, and above-ground Clearwell, as shown in the Site Location Diagram (Exhibit A). The New Anacortes Water Treatment Plant is located adjacent to the current Site.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by the City:

¹ The physical address for the Site has historically been referred to in Ecology’s files as 14549 River Bend Road.

A. The Site is generally located at 14489 River Bend Road in Mt. Vernon, Washington (*see* Exhibit A). The Property is owned by the City of Anacortes, and the water treatment facility is operated by the City of Anacortes Public Works Department.

B. Between 1969 and 1970, the Former Anacortes Water Treatment Plant was constructed on the Property to treat water from the Skagit River prior to transfer to the City's municipal water storage and distribution network. The Former Anacortes Water Treatment Plant consists of an Administration Building, Clearwell, Wastewell, Filtration Basin, and Sedimentation Basin.

1. The Administration Building is a two-story, above grade building that housed a control room, laboratory, and chemical additive mixing operations.

2. The Clearwell is an approximately 12,000 square-foot, multi-chambered, concrete storage chamber below grade beneath the Administration Building, Filtration Basin, and pump room.

3. The Wastewell is adjacent to the Clearwell and is the concrete structure where sediment was collected periodically before pumping the sediment to the settling lagoons.

4. The Filtration Basin is an approximately 102 foot by 78 foot concrete basin with two identical, three-bay sections. Each section contained filter media in three layers consisting of anthracite, sand, and gravel bed. The filter bays are approximately 15 feet deep and the filter media was specified to be 3.5 feet deep.

5. The Sedimentation Basin is an approximately 240 foot by 82 foot concrete basin with two identical, eight-bay sections that featured gravity flow through the system into clean water overflow troughs/weirs with a sediment collection apparatus. The Sedimentation Basin is partially buried on all four sides and is approximately 17 feet deep.

C. The Former Anacortes Water Treatment Plant was decommissioned in 2013, when the New Anacortes Water Treatment Plant that currently services the City's municipal water storage and distribution network became active. The Former Water Treatment Plant remains on

the Property, but has not been utilized for water treatment, filtration, or distribution since it was decommissioned in 2013. The Administration Building is no longer in active use for any purpose.

D. Access to the New Anacortes Water Treatment Plant and the Former Anacortes Water Treatment Plant is restricted to employees and approved visitors by a locked fence with access controlled vehicle gates to prevent unpermitted access.

E. In January 2015, DLH Environmental Consulting conducted a Hazardous Materials Assessment and detected polychlorinated biphenyls (PCBs) at concentrations exceeding MTCA Method A cleanup levels in a single shallow soil sample taken at the base of the Sedimentation Basin exterior wall.

F. Based on the 2015 Hazardous Materials Assessment, characterization of the nature and extent of PCB contamination at and beneath the Site was undertaken in two phases. The first phase focused on building construction materials in order to define the source and distribution of PCBs identified in the Hazardous Materials Assessment. The second phase involved testing 32 soil samples and 16 groundwater samples for PCBs. The results of both investigation phases were presented in a draft Remedial Investigation (RI) Report dated April 19, 2017, and submitted to Ecology on April 24, 2017 (2017 Draft RI Report).

G. As outlined in the 2017 Draft RI Report, PCBs were detected above MTCA Method A Soil Cleanup Level of 1 mg/kg in 7 soil samples taken along the northern half of the eastern side of the Sedimentation Basin. PCBs were only detected in shallow soils between 0 to 12 inches below ground surface. PCBs were not detected in any other soil samples, or in any of the groundwater samples. The source of the PCBs in shallow soils appears to be the coating material on the exterior of the Sedimentation Basin which does not extend below ground surface.

H. PCBs were also detected in some building materials in the Administration Building. PCBs were commonly used in buildings that were constructed or renovated at the time that the Former Anacortes Water Treatment Plant was constructed.

I. In March 2017, the City conducted an Evaluation of Potential Human Health Risks Associated with Contamination Identified in Building Materials at the Former Anacortes Water Treatment Plant, which determined that no adverse health effects are likely to have occurred to customers, workers, or trespassers as a result of PCBs at the Former Anacortes Water Treatment Plant.

J. On February 27, 2019, Ecology provided comments on the 2017 Draft RI Report. Ecology expects the City to resolve these comments in its submission of a Public Review Draft RI/FS Report pursuant to the schedule set forth in Exhibit C.

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 is an “owner or operator” as defined in RCW 70.105D.020(22) of a “facility” as defined in RCW 70.105D.020(8). The City owns Skagit County Parcel No. P21669, and the City’s Public Works Department operates the Water Treatment Plant that is located on the Property.

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 RCW 70.105D.020(13), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a Potentially Liable Person (PLP) status letter to the City of Anacortes dated January 16, 2018, pursuant to RCW 70.105D.040, RCW 70.105D.020(26), and WAC 173-340-500. By a Notice of Waiver dated January 18, 2018, the City voluntarily waived its right to notice and comment and accepted Ecology’s determination that the City of Anacortes is a PLP under RCW 70.105D.040.

D. Pursuant to RCW 70.105D.030(1) and RCW 70.105D.050(1), Ecology may require a PLP 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. Either party may propose an interim action under this Order. If the Parties are in agreement concerning the interim action, the Parties will follow the process in Section VII.D. 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 itself.

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 at the Site. Based on factors currently known to Ecology, the area within the Site where remedial action is expected to be necessary under RCW 70.105D is generally described in the Area of Interest Diagram (Exhibit B). These remedial actions must be conducted in accordance with WAC 173-340 unless otherwise specifically provided for herein:

A. According to the schedule set forth in Exhibit C, the City will perform a Remedial Investigation and Feasibility Study (RI/FS) that meets the requirements of WAC 173-340-350.

B. According to the schedule set forth in Exhibit C, the City will prepare a Draft Cleanup Action Plan (DCAP) that meets the requirements of WAC 173-340-380.

C. All plans or other deliverables submitted by the City 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.

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

E. If Ecology determines that the City has failed to make sufficient progress or failed to implement the remedial actions 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 or at Ecology's discretion allow the City an opportunity to correct. The City shall reimburse Ecology for the costs of performing any or all portions of the remedial action in accordance with Section VIII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

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

G. Progress reports will be provided every two months during implementation of the Scope of Work and Schedule set forth in Exhibit C.

VIII. TERMS AND CONDITIONS

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. These costs shall include work performed

both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Ecology has accumulated \$20,094.03 in remedial action costs related to this Site as of May 31, 2019. For all costs incurred, 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 upon request. Itemized statements shall be prepared quarterly. 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% 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:

Cris Matthews
Ecology Site Manager
913 Squalicum Way, Suite 101
Bellingham, WA 98225
360-255-4379
cris.matthews@ecy.wa.gov

The project coordinator for the City is:

Fred Buckenmeyer
Director of Public Works
City of Anacortes Public Works
P.O. Box 547
Anacortes, WA 98221
360-293-1919
fredb@cityofanacortes.org

Copies of any communications or documents sent to the project coordinator for the City must also be sent to:

Darcy Swetnam
City Attorney
City of Anacortes
P.O. Box 547
Anacortes, WA 98221
360-299-1950
darcons@cityofanacortes.org

Jacquie Quarré
Foster Pepper PLLC
1111 3rd Avenue, Suite 3000
Seattle, WA 98101
206-447-6206
jacquie.quarre@foster.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 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.

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 RCW 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, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and RCW 18.220.

The City 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

In accordance with the notification procedures set forth below, Ecology or any Ecology authorized representative shall have access to enter and move about within the areas of 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. Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site access. 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 will provide notification to the City prior to access to the Site, unless an emergency prevents such notice. Notification will be provided by Ecology to the Project Coordinator

1. The Ecology authorized representatives identified in Exhibit D shall give at least 24 hours' notice before entering any portion of the Site. Notification pursuant to this paragraph may be delivered in writing via email, or verbally via phone call. The Director of Public Works and the Water Treatment Plant Manager identified in Exhibit D each have the authority to waive the 24 hours' notice requirement for the Ecology authorized representatives identified in Exhibit D. Either party may change their listed representatives in Exhibit D upon 10 days written notice to the other party. Such a change is not considered an amendment to the Agreed Order. Either party may change their listed representative without the concurrence of the other party.

2. Any and all other Ecology authorized representatives not identified in Exhibit D seeking access pursuant to this section shall give at least 72 hours' notice before entering any portion of the Site. Notification pursuant to this paragraph requires Ecology to provide a written list to the City of the names, job titles, office addresses, public email addresses, and public telephone numbers of all Ecology authorized representatives who will enter the Site during such visit.

The City may not deny an Ecology authorized representative access if proper notification has been given. All persons who access portions of the Site pursuant to this section shall comply with any applicable health and safety plan(s) and any appropriate security measures related to Site conditions that the Project Coordinators work out in advance, and shall be escorted at all times by a representative designated by the City.

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 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 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 at least 7 days in advance of any sample collection or remedial activity that is performed at the Site pursuant to this Order or an Ecology directive, but not for any ongoing or future public works projects undertaken as part of the ongoing maintenance and management of the New Anacortes Water Treatment Plant or the Property. Ecology shall, upon request, allow the City and/or its authorized representatives 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

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

1. If agreed to by Ecology, develop appropriate mailing lists and prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.
2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before meetings related to remedial action work to be performed at the Site

with the interested public and/or local governments. Likewise, Ecology shall notify the City prior to the issuance of all press releases and fact sheets related to the Site, and before meetings related to the Site with the interested public and/or 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.

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

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

- a. **City of Anacortes City Hall**
904 6th Street
P.O. Box 547
Anacortes, WA 98221
- b. **Washington State Department of Ecology**
Bellingham Field Office
913 Squalicum Way, Suite 101
Bellingham, WA 98225-2078
- c. **Washington State Department of Ecology**
Northwest Regional Office, Toxics Cleanup Program
3190 160th Avenue SE
Bellevue, WA 98008-5452

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 non-privileged documents related to this Site shall be maintained in the repository at Ecology's Northwest Regional Office in Bellevue, Washington.

G. Retention of Records

During the pendency of this Order, and for 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 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 City shall make all non-privileged 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 that the City elects to invoke dispute resolution the City must utilize the procedure set forth below.

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

2. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The Parties shall informally confer for up to 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 7 calendar days Ecology's project coordinator shall issue a written decision (Informal Dispute Decision) stating: the nature of the dispute; the City's position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

3. The City may then request regional management review of the dispute. This request (Formal Dispute Notice) must be submitted in writing to the Northwest Region Toxics Cleanup Section Manager within 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.

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

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

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

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

I. Extension of Schedule

1. The City's 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 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:

1. The deadline that is sought to be extended;

2. The length of the extension sought;
3. The reason(s) for the extension; and
4. 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:

1. 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;

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

3. 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 from the City 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. At the City's 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 90 days only as a result of:

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

2. Other circumstances deemed exceptional or extraordinary by Ecology; or
3. Endangerment as described in Section VIII.K (Endangerment).

J. Amendment of Order

The project coordinators may agree, either verbally or in writing, to minor changes to the work to be performed without formally amending this Order and without requiring public notice and an opportunity to comment. 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. Ecology will provide its consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

When requesting a change to the Order, the City shall submit a written request 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 change is substantial, then the Order must be formally amended. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.H (Resolution of Disputes).

K. Endangerment

In the event Ecology determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct 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 under this Order 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 reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

M. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by 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. The permits or specific federal, state, or local requirements that the agency has determined are applicable and that are known at the time of the execution of this Order have been identified in Exhibit E. The City has a continuing obligation to identify additional federal, state, and local requirements which 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 City, Ecology will document in

writing if they are applicable to actions carried out pursuant to this Order, and the City must implement those requirements.

2. All actions carried out by the City 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 E. If additional relevant and appropriate requirements are identified by Ecology or the City, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and the City must implement those requirements.

3. Pursuant to RCW 70.105D.090(1), the City is exempt from the procedural requirements of RCW 70.94, RCW 70.95, RCW 70.105, RCW 77.55, RCW 90.48, RCW 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. 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 ability under this Order to enforce those local government permits and/or approvals. The exempt permits or approvals and the applicable substantive requirements of those permits or approvals, as they are known at the time of the execution of this Order, have been identified in Exhibit E.

4. 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 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 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.

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. Periodic Review

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

P. 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 (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions

of the City, its 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 \$25,000 per day for each day it refuses to comply.

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

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

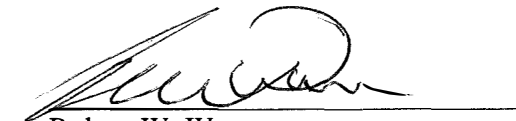
Effective date of this Order: 8-28-19

CITY OF ANACORTES



Laurie Gere
Mayor
City of Anacortes

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

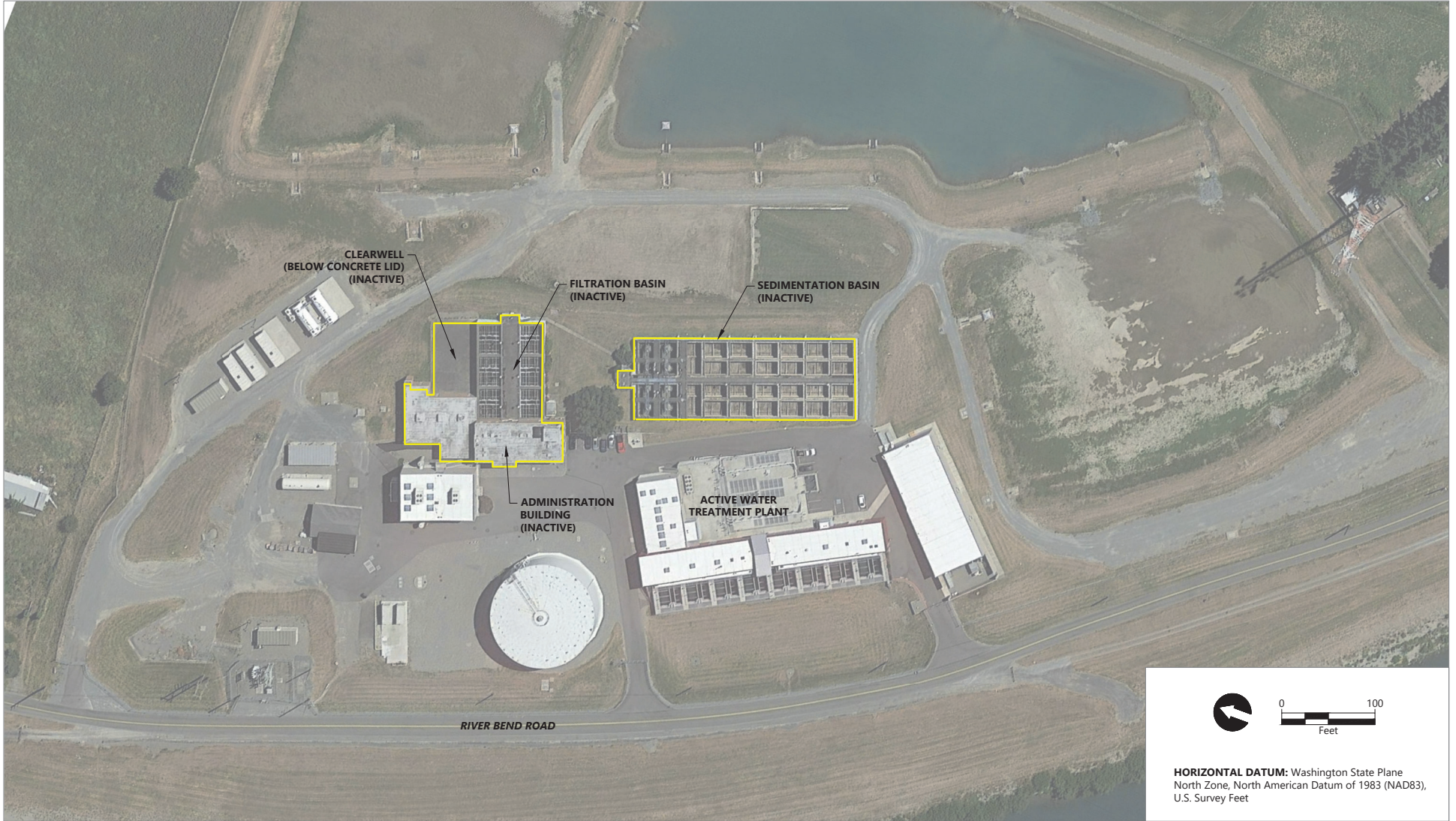


Robert W. Warren
Section Manager
Toxics Cleanup Program
Northwest Regional Office
425-649-7054

Agreed Order No. DE 16576
Exhibit A

EXHIBIT A

Site Location Diagram



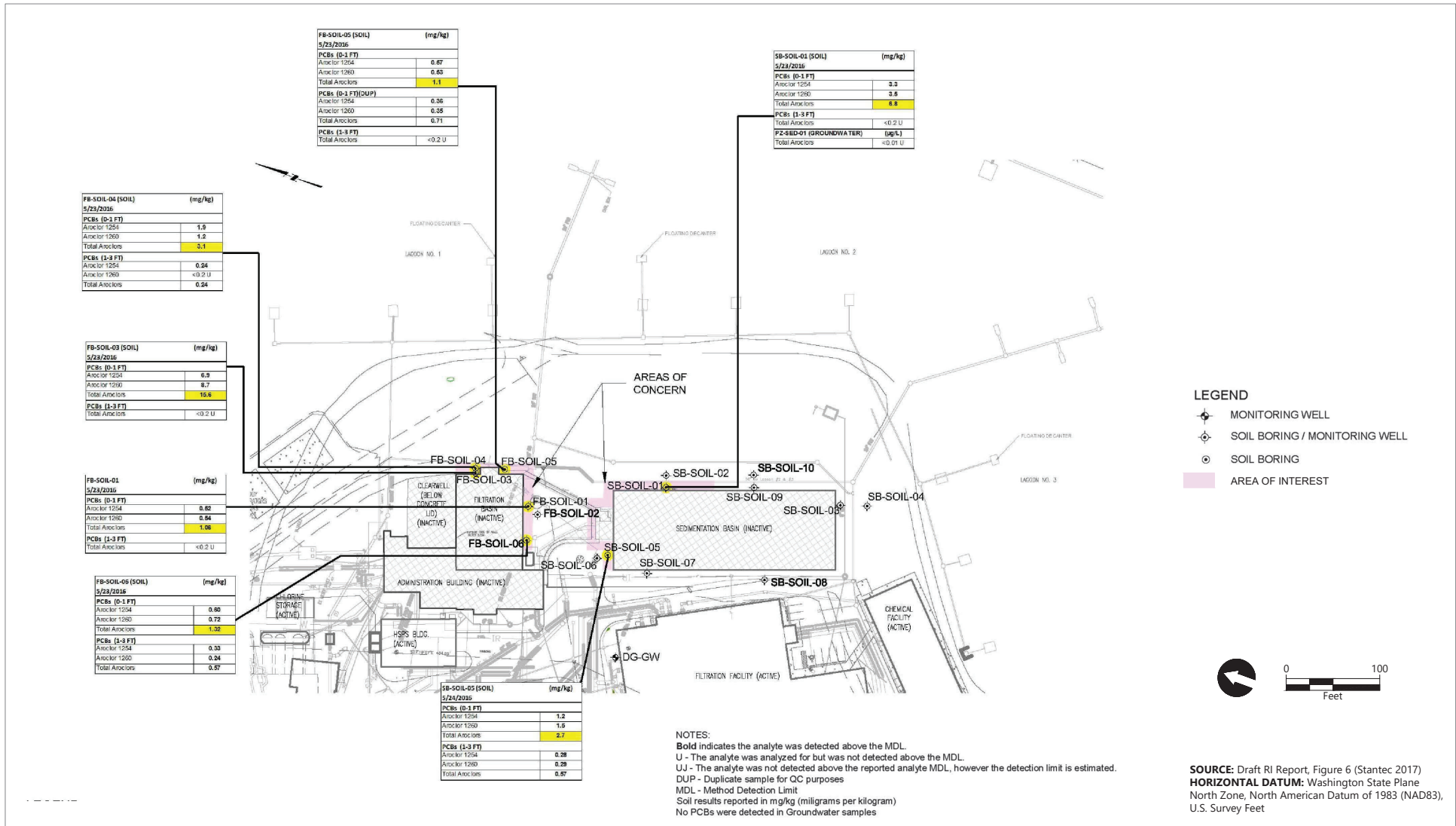
Publish Date: 2019/03/15 4:14 PM | User: hmerrick
 Filepath: K:\Projects\1182-Foster Pepper PLLC\Former Anacortes Water Treatment Plant_Feasibility Study\1182-RP-002 (Site Location Diagram).dwg Exhibit A



Agreed Order No. DE 16576
Exhibit B

EXHIBIT B

Area of Interest Diagram



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EXHIBIT C

Scope of Work and Schedule

Deliverable/Action	Schedule For Completion
Submission of an Agency Review Draft Feasibility Study (FS) Report	90 days from the effective date of this Order
Submission of a Public Review Draft RI/FS Report	30 days from receipt of Ecology's comments on the Agency Review Draft FS Report
Submission of a Final RI/FS Report	60 days from receipt of Ecology's comments on the Public Review Draft RI/FS Report, subsequent to public comment
Submission of a Preliminary Draft Cleanup Action Plan (DCAP)	90 days from Ecology's approval of the Final RI/FS Report
Submission of a Revised Preliminary DCAP, if necessary	60 days from receipt of Ecology's comments on the Preliminary DCAP
Submission of Site Progress Reports	Every two months during implementation of the Scope of Work and Schedule

EXHIBIT D

Ecology Authorized Representatives Approved For Site Access with 24 Hours' Notice

The following Ecology authorized representatives may access the Site with 24 hours' notice as set forth in Section VIII.D of the Agreed Order:

Cris Matthews
Ecology Site Manager
Washington State Department of Ecology
913 Squalicum Way, Suite 101
Bellingham, WA 98225
360-255-4379
cris.matthews@ecy.wa.gov

Tamara Cardona-Marek
Aquatics Unit Supervisor
Washington State Department of Ecology
3190 160th Avenue SE
Bellevue, WA 98008
425-649-7058
taca461@ecy.wa.gov

Ian Fawley
Community Outreach & Environmental Education Specialist
Washington State Department of Ecology
913 Squalicum Way, Suite 101
Bellingham, WA 98225
360-255-4382
ian.fawley@ecy.wa.gov

The following Director of Public Works and Water Treatment Plant Manager each have the authority to waive the 24 hours' notice requirement as set forth in Section VIII.D of the Agreed

Order:

Fred Buckenmeyer
Director of Public Works
City of Anacortes Public Works
P.O. Box 547
Anacortes, WA 98221
360-293-1919
fredb@cityofanacortes.org

Jeff Marrs
Water Treatment Plant Manager
City of Anacortes Public Works
14489 Riverbend Road
Mount Vernon, WA 98273
306-428-1598
jeffm@cityofanacortes.org

Agreed Order No. DE 16576
Exhibit E

EXHIBIT E

Applicable Permits and Requirements

[Reserved]