



Electronic Copy

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY  
PO Box 47775 • Olympia, Washington 98504-7775 • 360-407-6300  
Call 711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

May 28, 2020

Michael Swartz  
Federal Way Public Schools  
33330 8th Ave S  
Federal Way, WA 98003  
[mswartz@fwps.org](mailto:mswartz@fwps.org)

**Re: Acceptance of VCP Application for the following Contaminated Site:**

- **Site Name:** Star Lake Elementary School
- **Site Address:** 4014 S 270th St., Kent, King County, WA 98032
- **Facility/Site ID:** 7890
- **Cleanup Site ID:** 13055
- **VCP Project ID:** NW3271

Dear Michael Swartz:

The Department of Ecology (Ecology) has accepted your Voluntary Cleanup Program (VCP) application for the Star Lake Elementary School facility (Site). We applaud your initiative and welcome your interest in the VCP. This letter confirms your entry into the VCP and provides important information on how we will manage the VCP Cleanup Project (Project) and the Site.

## Agreement

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Ecology has completed our review of your VCP application and signed the VCP Agreement governing the Project on **May 19, 2020**. This is the effective date of the Agreement.

**Enclosure A** includes a copy of the Agreement. Please review it carefully.

## Identification

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Ecology has assigned a unique name and number to the **Site**. We have also assigned a unique number to your **Project** at the Site. You can find this information in the box at the bottom of the first page of the Agreement. When contacting us, please use this information to identify your Project.

## Designated Managers

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Please direct communications between Ecology and Federal Way Public Schools through the designated managers to the maximum extent possible.

- **Ecology**

We have designated the following site manager to respond to your requests:

Eva Barber  
Department of Ecology  
Toxic Cleanup Program  
Southwest Regional Office  
PO Box 47775  
Olympia, WA 98504-7775  
Phone: (360) 407-7094  
E-mail: [eva.barber@ecy.wa.gov](mailto:eva.barber@ecy.wa.gov)

- **Federal Way Public Schools**

The application designated you, Michael Swartz, as the project manager for this Site. We will therefore respond only to your requests. If someone replaces you as the project manager or your contact information changes, please submit a [Change of Contact Form](#).<sup>1</sup>

## Requests for Written Opinions

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In your application, you requested a written opinion on the sufficiency of your Remedial Action Work Plan. Ecology will review the documents you submitted and provide you a written response within about 90 days.

As the cleanup of the Site progresses, you may request written opinions on your planned or completed remedial actions by submitting to Ecology the following:

- [Voluntary Cleanup Program Request for Opinion](#)<sup>2</sup> form, which you can download from our [VCP web site](#).<sup>3</sup>
- Plans and reports documenting the remedial action.

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<sup>1</sup> <https://fortress.wa.gov/ecy/publications/SummaryPages/ECY070218.html>

<sup>2</sup> <https://fortress.wa.gov/ecy/publications/SummaryPages/ecy070219.html>

<sup>3</sup> <https://ecology.wa.gov/vcp>

## Reporting Requirements

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When requesting written opinions on planned or completed remedial actions, please comply with the following reporting requirements:

- **Licensing.** You must submit documents containing geologic and hydrogeologic work conducted under the seal of an appropriately licensed professional, as required by [chapter 18.220 RCW](#),<sup>4</sup> and engineering work conducted under the seal of an appropriately licensed professional, as required by [chapter 18.43 RCW](#).<sup>5</sup>
- **Data Submittal.** You must submit environmental sampling data in both a printed form and an electronic form capable of being transferred into our Environmental Information Management (EIM) system. For an overview of data submittal requirements, please refer to **Enclosure B**, which includes a copy of Toxics Cleanup Program Policy 840. For instructions on how to submit data, please refer to our [EIM Submit Data web page](#).<sup>6</sup>

Failure to comply with these requirements may result in unnecessary delays.

## Payment

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Ecology will send monthly invoices to the billing contact designated in the Application Form. If someone replaces the billing contact or their contact information changes, please submit a [Change of Contact Form](#).<sup>1</sup>

Our invoice will include a summary of the costs incurred, payments received, identity of staff involved, and the amount of time spent on the Project during the previous month. Payment is due within thirty days of the invoice date. For more information on the billing system, please refer to the VCP web site.

## Independent Remedial Action Grants and Cultural Resource Compliance Review

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As a local government, you may qualify for an [Independent Remedial Action Grant](#)<sup>7</sup> from Ecology, after completing your independent cleanup and receiving a no further action determination under the VCP. Grant applications are accepted on an ongoing basis. For more information about the grant program and how to apply, visit Ecology's [Independent Remedial Action Grants](#)<sup>7</sup> web page.

For ground-disturbing remedial actions to be eligible for grant funding, Ecology or another state or federal agency must consult with the [Washington State Department of Archaeology and Historic Preservation](#)<sup>8</sup> and affected Tribes to identify potential cultural resource impacts, **before** any ground-disturbing remedial actions are performed.

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<sup>4</sup> <https://apps.leg.wa.gov/RCW/default.aspx?cite=18.220>

<sup>5</sup> <https://apps.leg.wa.gov/RCW/default.aspx?cite=18.43>

<sup>6</sup> <https://ecology.wa.gov/Research-Data/Data-resources/Environmental-Information-Management-database/EIM-submit-data>

<sup>7</sup> <https://www.ecology.wa.gov/grants-IRAG>

<sup>8</sup> <https://dahp.wa.gov/>

This funding condition is required by Executive Order 05-05. You may request a consultation from Ecology, under the VCP, by completing and submitting the "[Executive Order 05-05, Section 106 NHPA Project Review Form](#)."<sup>9</sup> For more information about Washington's cultural resource laws and regulations, see "[Washington Cultural Resource Regulations: Summary for Independent Cleanup Sites](#)."<sup>10</sup>

## Contact Information

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We are committed to working with you to accomplish the prompt and effective cleanup of the Site. Again, if you have any questions about the VCP or your Project, please contact Eva Barber at (360) 407-7094 or [eva.barber@ecy.wa.gov](mailto:eva.barber@ecy.wa.gov).

Sincerely,



Nicholas M. Acklam  
VCP Unit Manager  
Toxics Cleanup Program  
Southwest Regional Office

NMA/tam

Enclosures (2):   A – Copy of VCP Agreement  
                          B – Toxics Cleanup Program Policy 840: Data Submittal Requirements

cc by email:   Sally McLean, Federal Way Public Schools, [smclean@fwps.org](mailto:smclean@fwps.org)  
                  James Welles, PBS Engineering and Environmental, [james.welles@pbsusa.com](mailto:james.welles@pbsusa.com)  
                  Eva Barber, Ecology, [eva.barber@ecy.wa.gov](mailto:eva.barber@ecy.wa.gov)  
                  Ecology Fiscal – VCP Rev/Rec  
                  Ecology Site File

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<sup>9</sup> <https://fortress.wa.gov/ecy/publications/documents/ecy070537.pdf>

<sup>10</sup> <https://fortress.wa.gov/ecy/publications/SummaryPages/1909059.html>

## **Enclosure A**

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Copy of VCP Agreement

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for double-sided copying.*

# VCP AGREEMENT



**INSTRUCTIONS: Submit this Agreement (original) to Ecology as part of your Application.** Before submitting, enter the Customer's name and the Site's address on the first page and sign the Agreement on the second page. If your Application is accepted, then Ecology will do the following: 1) identify the Site and VCP project in the box below; 2) sign the Agreement; and 3) send you a copy of the completed Agreement.

This document constitutes an Agreement between the State of Washington Department of Ecology (Ecology) and Federal Way Public Schools (Customer) to provide informal site-specific technical consultations under the Voluntary Cleanup Program (VCP) for the Site identified below and associated with the following address:

Star Lake Elementary School - 4014 S 270<sup>th</sup> Street, Kent, WA, 98032

The purpose of this Agreement is to facilitate independent remedial action at the Site. Ecology is entering into this Agreement under the authority of the Model Toxics Control Act (MTCA), Chapter 70.105D RCW, and its implementing regulations, Chapter 173-340 WAC. If a term in this Agreement is defined in MTCA or Chapter 173-340 WAC, then that definition shall govern.

## Services Provided by Ecology

Upon request, Ecology agrees to provide the Customer informal site-specific technical consultations on the independent remedial actions proposed for or performed at the Site consistent with WAC 173-340-515(5). Those consultations may include assistance in identifying applicable regulatory requirements and opinions on whether the remedial actions proposed for or conducted at the Site meet those requirements.

Ecology may use any appropriate resource to provide the Customer with the requested consultative services. Those resources may include, but shall not be limited to, those of Ecology and the Office of the Attorney General. However, Ecology shall not use independent contractors unless the Customer provides Ecology with prior written authorization.

In accordance with RCW 70.105D.030(1)(i), any opinions provided by Ecology under this Agreement are advisory only and not binding on Ecology. Ecology, the state, and officers and employees of the state are immune from all liability. Furthermore, no cause of action of any nature may arise from any act or omission in providing, or failing to provide, informal advice and assistance under the VCP.

## Payment for Services by Customer

The Customer agrees to pay all costs incurred by Ecology in providing the informal site-specific technical consultations requested by the Customer consistent with WAC 173-340-515(6) and 173-340-550(6). Those costs may include the costs incurred by attorneys or independent contractors used by Ecology to provide the requested consultative services. Ecology's hourly costs shall be determined based on the method in WAC 173-340-550(2).

Ecology shall mail the Customer a monthly itemized statement of costs (invoice) by the tenth day of each month (invoice date) that there is a balance on the account. The invoice shall include a summary of the costs incurred, payments received, identity of staff involved, and amount of time staff spent on the project.

The Customer shall pay the required amount by the due date, which shall be thirty (30) calendar days after the invoice date. If payment has not been received by the due date, then Ecology shall withhold

FOR COMPLETION BY ECOLOGY ONLY	Facility / Site Name: <u>Star Lake Elementary</u>
	Facility / Site No.: <u>7890</u>
	VCP Project No.: <u>NW3271</u>

any requested opinions and notify the Customer by certified mail that the debt is past due. If payment has not been received within sixty (60) calendar days of the invoice date, then Ecology shall stop all work under the Agreement and may, as appropriate, assign the debt to a collection agency under Chapter 19.16 RCW. The Customer agrees to pay the collection agency fee incurred by Ecology in the course of debt collection.

### Reservation of Rights / No Settlement

This Agreement does not constitute a settlement of liability to the state under MTCA. This Agreement also does not protect a liable person from contribution claims by third parties for matters addressed by the Agreement. The state does not have the authority to settle with any person potentially liable under MTCA except in accordance with RCW 70.105D.040(4). Ecology's signature on this Agreement in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority.

Ecology reserves all rights under MTCA, 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.

### Effective Date, Modifications, and Severability

The effective date of this Agreement shall be the date on which this Agreement is signed by the Toxics Cleanup Program's Section Manager or delegated representative. This Agreement may be amended by mutual agreement of Ecology and the Customer. Amendments shall be in writing and shall be effective when signed by the Toxics Cleanup Program's Section Manager or delegated representative. If any provision of this Agreement proves to be void, it shall in no way invalidate any other provision of this Agreement.

### Termination of Agreement

Either party may terminate this Agreement without cause by sending written notice by U.S. mail to the other party. The effective date of termination shall be the date Ecology sends notice to the Customer or the date Ecology receives notice from the Customer, whichever occurs first. Unless otherwise directed, issuance of a No Further Action opinion, either for the Site as a whole or for a portion of the real property located within the Site, shall constitute notice of termination by Ecology.

Under this Agreement, the Customer is only responsible for costs incurred by Ecology before the effective date of termination. However, termination of this Agreement shall not affect any right Ecology may have to recover its costs under MTCA or any other provision of law.

### Representations and Signatures

The undersigned representative of the Customer hereby certifies that he or she is fully authorized to enter into this Agreement and to execute and legally bind the Customer to comply with the Agreement.

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY



Signature

Marian L. Abbett for Rebecca Lawson

Printed Name

Section Manager, SWRO

Toxics Cleanup Program Section

Date: 5/19/20

Federal Way Public Schools

Name of Customer

DocuSigned by:



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Signature

Michael Swartz

Printed Name of Signatory

Capital Projects Director

Title of Signatory

Date: 5/12/2020

If you need this document in an alternative format, please call the Toxics Cleanup Program at 360-407-7170. Persons with hearing loss can call 711 for Washington Relay Service. Persons with a speech disability can call 877-833-6341.

ECY 070-324 (revised July 2008)



## **Enclosure B**

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Toxics Cleanup Program Policy 840 Data Submittal Requirements

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# Toxics Cleanup Program

## Policy 840: Data Submittal Requirements

*Established:* August 1, 2005

*Revised:* April 12, 2016

*Contact:* Policy & Technical Support Unit, Headquarters

*Purpose:* This Policy provides guidance on the submission of environmental monitoring data generated or collected during the investigation or cleanup of contaminated sites under the Model Toxics Control Act.

*References:* [WAC 173-340-840 \(5\)](#)  
[Chapter 173-204 WAC](#)  
[Environmental Information Management System Database](#)  
[Sediment Cleanup Users Manual II](#)

*Attachments:* A - Model Grant and Permit Condition

*Disclaimer:* This Policy is intended solely for the guidance of Ecology staff. It is not intended, and cannot be relied on, to create rights, substantive or procedural, enforceable by any party in litigation with the state of Washington. Ecology may act at variance with this Policy depending on site-specific circumstances, or modify or withdraw this Policy at any time.

*Approved by:*

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James J. Pendowski, Program Manager  
Toxics Cleanup Program

**Accommodation Requests:** To request ADA accommodation, including materials in a format for the visually impaired, call Ecology's Toxics Cleanup Program at 360-407-7170. Persons with impaired hearing may call Washington Relay Service at 711. Persons with speech disability may call TTY at 877-833-6341.

## Purpose and Applicability

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The investigation and cleanup of contaminated sites generate a large volume of environmental monitoring data that need to be properly managed to facilitate regulatory decisions. The data also need to be accessible by Ecology staff, site owners, consultants, and the general public.

This Policy describes the requirements for submitting environmental monitoring data generated or collected during the investigation and cleanup of contaminated sites under Chapter 70.105D RCW, Model Toxics Control Act (MTCA).

This Policy applies to Ecology staff and any person who investigates or cleans up contaminated sites and submits related environmental sampling data to Ecology, including potentially liable persons, Voluntary Cleanup Program (VCP) customers, prospective purchasers, government agencies, and Ecology contractors.

**1. Unless otherwise specified by Ecology, all environmental monitoring data generated during contaminated site investigations and cleanups are required to be submitted to Ecology in both written format and electronically through EIM.**

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Environmental monitoring data include biological, chemical, physical, and radiological data generated during site investigations and cleanups under the Model Toxics Control Act Cleanup Regulation (Chapter 173-340 WAC) and the Sediment Management Standards (Chapter 173-204 WAC).

The Environmental Information Management System (EIM) is a searchable database that contains data collected by Ecology (or by environmental contractors on behalf of Ecology), and by Ecology grant recipients, local governments, the regulated community, and volunteers.

Under this Policy, data are considered to be “environmental monitoring data” if generated or collected during:

- a. Site investigations and cleanups conducted under an order, agreed order or consent decree, permit, grant, loan, contract, interagency agreement, memorandum of understanding; or
- b. An independent remedial action.

Under this Policy, data are not considered to be environmental monitoring data if generated or collected for the following studies. This means that entering data into EIM, while encouraged, is optional for:

- a. Non site-specific studies;
- b. Site hazard assessments that result in no further action; and
- c. All initial site investigations.

**2. Orders, agreed orders, consent decrees, or permits must include a condition that site-specific environmental sampling data be submitted in compliance with this Policy.**

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For those reports prepared and submitted for review under an order, agreed order, consent decree, or permit, the environmental sampling data must be entered into EIM at the time of report submittal. If reports for such work do not include documentation that data was submitted in compliance with this Policy, the reports shall be deemed incomplete and a notice will be provided to the submitter.

Generally, Ecology should not review such reports until that documentation is provided. The assistant attorney general assigned to the site should be consulted for an appropriate response when Ecology's review is delayed due to failure of data entry into EIM.

**3. Site-specific environmental sampling data must be entered into EIM before Ecology will review independent remedial action reports under the Voluntary Cleanup Program.**

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For independent remedial action reports prepared and submitted under Ecology's Voluntary Cleanup Program (VCP), environmental sampling data must be entered into EIM at the time any report is submitted requesting an opinion on the sufficiency of the action under the VCP.

However, Ecology may establish an alternate deadline for entering data into EIM if this Policy creates undue hardship on the VCP customer and Ecology does not need the data in EIM to begin the review.<sup>1</sup> But in no case will Ecology issue a No Further Action (NFA) opinion letter under the VCP—either for the whole site or a property located within the site—until the data has been entered into EIM.

If sampling data has not been entered into EIM, Ecology may still review the report for the limited purpose of determining whether it contains sufficient information to provide an opinion. If the report is incomplete, Ecology may also respond to the VCP customer's request for an opinion by issuing an administrative letter rejecting the report and requesting additional information.

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<sup>1</sup> For example, when a site has multiple groundwater sampling events over time, it may be more efficient to enter the data into EIM at one time after monitoring is completed, rather than for each monitoring event. Another example would be where a VCP consultant is using EIM for the first time and needs additional time to learn how to use the system.

**4. Grants, contracts, interagency agreements or memoranda of understanding issued after the effective date of this Policy must include a condition that site-specific data be submitted in compliance with this Policy.**

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Reports on such work will not be accepted as complete until the data have been submitted in compliance with this Policy. If a payment or transfer of funds is involved in the transaction, the relevant payment or transfer shall be withheld until this requirement has been met. Attachment A contains example language to include in these documents.

**5. Data generated during upland investigations and cleanups must be submitted electronically using Ecology's EIM.**

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The Environmental Information Management System is Ecology's main database for environmental monitoring data. Proper submission of data through this system meets the requirement of submitting such data in an electronic format.

Additional information about EIM, including instructions for data submittal, can be found on Ecology's EIM website at <http://www.ecy.wa.gov/eim/>. The Toxic Cleanup Program's (TCP) EIM Coordinator can also provide technical assistance to site managers and consultants who use EIM.

**6. Data generated during sediment investigations and cleanups must be submitted electronically using Ecology's EIM.**

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Effective March 1, 2008, EIM is Ecology's data management system for sediment-related data. Proper submission of data through EIM meets the requirement of submitting such data in an electronic format. Electronic data must be submitted to Ecology simultaneously with the accompanying report.

For additional information on sediment sampling and analysis plan requirements, see Ecology's *Sediment Cleanup Users Manual (SCUM II)* Publication No. 12-09-057, available at: <https://fortress.wa.gov/ecy/publications/summarypages/1209057.html>

The Sediment Data Coordinator in TCP's Aquatic Land Cleanup Unit (ALCU) can also provide technical assistance with EIM.

**7. Data submitted electronically using EIM must be checked by the Toxics Cleanup Program's EIM Coordinator before the data will be officially loaded into EIM.**

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Normally, TCP's EIM Coordinator will receive a notice that data have been submitted through EIM. Upon receipt of the notice, the EIM Coordinator should notify the Cleanup Project Manager. The EIM Coordinator then reviews the submittal for quality control and officially loads the data into the system.

**Attachment A**

**Model Grant and Permit Condition**

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## **Model Grant and Permit Condition**

The following condition is to be inserted in grants, loans, contracts, interagency agreements, and memoranda of understandings where site-specific environmental monitoring data is expected to be generated:

All sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with WAC 173-340-840(5) and Ecology Toxics Cleanup Program Policy 840: Data Submittal Requirements. Electronic submittal of data is not required for site hazard assessments that result in no further action and initial site investigations. (FOR GRANTS, AND LOANS ADD: Failure to properly submit sampling data will result in Ecology withholding payment and could jeopardize future funding.)

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