

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

P&GE, LLC

AGREED ORDER

No. DE 18121

TO: Gary East  
Co-Manager of P&GE, LLC  
6675 NE Windermere Road  
Seattle, WA 98115-7942

Martin Penhallegon  
Co-Manager – P&GE LLC  
11255 Kirkland Way, Suite 300  
Kirkland, WA 98033-6715

**TABLE OF CONTENTS**

I. INTRODUCTION .....	2
II. JURISDICTION .....	2
III. PARTIES BOUND .....	2
IV. DEFINITIONS.....	2
V. FINDINGS OF FACT.....	3
VI. ECOLOGY DETERMINATIONS .....	8
VII. WORK TO BE PERFORMED.....	9
VIII. TERMS AND CONDITIONS.....	12
A. Payment of Remedial Action Costs.....	12
B. Designated Project Coordinators .....	13
C. Performance.....	13
D. Access.....	14
E. Sampling, Data Submittal, and Availability.....	15
F. Public Participation .....	15
G. Retention of Records .....	17
H. Resolution of Disputes .....	17
I. Extension of Schedule .....	18
J. Amendment of Order.....	20
K. Endangerment.....	20
L. Reservation of Rights .....	21
M. Transfer of Interest in Property .....	22
N. Compliance with Applicable Laws .....	22
O. Indemnification .....	24
IX. SATISFACTION OF ORDER .....	24
X. ENFORCEMENT .....	24
EXHIBIT A - Site Location Diagram	
EXHIBIT B - Interim Action Location Diagram	
EXHIBIT C - Scope of Work and Schedule	
EXHIBIT D - Interim Action Work Plan	

## **I. INTRODUCTION**

The mutual objective of the State of Washington, Department of Ecology (Ecology) and P&GE, LLC (P&GE or PLP) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires P&GE to complete the interim action set forth in the Interim Action Work Plan (IAWP), 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 Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

## **III. PARTIES BOUND**

This 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. P&GE agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the PLP's responsibility under this Order. The PLP 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, WAC 173-204, WAC 173-340, and WAC 173-350 shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as Go East Corp Landfill. The Site constitutes a facility under RCW 70.105D.020(8). The Site is defined by where hazardous substances, other than a consumer product in consumer use, have been deposited, stored, disposed of, or placed, or otherwise come to be located. Based upon factors currently known to Ecology, the Site is generally located at 4330 108<sup>th</sup> Street SE, Everett, WA 98208 as shown in the Site Location Diagram

(Exhibit A). The parameters and boundaries of the Site may be amended based on additional data obtained during the remedial investigation, and/or based on conditions at the Site following performance of remedial activities under the IAWP.

B. Parties: Refers to the State of Washington, Department of Ecology and P&GE.

C. Potentially Liable Person (PLP): Refers to P&GE. Ecology reserves the authority to identify additional PLPs for this Site.

D. Property: Refers to real property located at 4330 108<sup>th</sup> Street SE in Everett, WA. The Snohomish County tax parcel number is 2805210040-0200.

E. 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.

## V. FINDINGS OF FACT

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

A. Based upon factors currently known to Ecology, the Site is generally located at 4330 108<sup>th</sup> Street SE, Everett, WA 98208 as shown in the Site Location Diagram (Exhibit A).

B. Ecology adopts by reference the Findings of Fact in Snohomish County Hearing Examiner Order No. 10-101204 SD/REDO, Amended Decision, February 14, 2018. The Site was used as an excavation borrow source beginning in 1969, when a permit was issued for excavation and sand reclamation for a two-year period, ending August 21, 1971. Rekoway, Inc. (Rekoway) purchased the property on February 1, 1972<sup>1</sup>. On March 8, 1972, Rekoway was issued Conditional Use Permit No. CU-7-72 to perform sand and gravel excavation and operate a solid waste landfill accepting “wood, mineral, and concrete solid materials, but not garbage or putrescibles.” In 1974-75, Rekoway sought authorization to accept “tires and bulk packaging material such as cardboard, pallets, large parcel wrappings, shredded paper, and warehousing waste materials.” On September 18, 1975, the county issued Conditional Use Permit CU-3-75 allowing these additional types of

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<sup>1</sup> Snohomish County Recording Nos. 2231490, 2231715, 2231716, 2231717, 2231718, 2231719, 2231720, 2231993, and 2231994.

waste. Rekoway then applied to the Snohomish Health District (SHD) to operate a woodwaste landfill; however in June 1976, Ecology recommended that SHD should not approve a “woodwaste” landfill.

C. Rekoway accepted approximately 200 cubic yards of baghouse dust containing magnesium, phosphate, and aluminum from Northwest Wire and Rope in Seattle and buried the dust near the northwesterly edge of the landfill. Oxidation of the metal dust created a fire on August 21, 1974. The material was excavated, spread on the ground, and extinguished, and thereafter covered with soil. Rekoway also accepted partially burned trees and stumps that may have contributed to ongoing smoldering through 1977, when SHD and Snohomish County suspended the permit.

D. Go East Corporation purchased the property from Rekoway on February 1, 1980<sup>2</sup> after requesting the reinstatement of Permit No. CU-7-72 on August 17, 1979 to allow additional fill to level the site for future development. SHD issued a permit to operate a woodwaste landfill on November 2, 1979, reissued the permit in 1980 and 1981, and inspected the landfill in 1982 and 1983 without finding problems under its regulations. Conditional Use Permit No. CU-7-72 expired on September 18, 1982 and the county issued a stop work order on July 19, 1983. Go East Corporation stopped accepting waste in the summer of 1983.

E. An additional landfill fire began in October 1983 and burned out by January 1986. There have been no subsequent indications of a fire.

F. SHD prepared a Site Hazard Assessment (SHA) under MTCA on May 14, 2004. The SHA recommended that future residential development of the site include and implement a landfill closure plan as outlined in the May 24, 1999 Shannon and Wilson, Inc. proposal for Closure of the Go East Landfill. Beyond this recommendation, SHD recommended No Further Action (NFA) at the Site under MTCA. SHD subsequently issued a NFA letter on June 1, 2004, which stated that Ecology made a determination of NFA at this Site based on the SHA. The NFA letter stated that Ecology reserves that right to initiate further investigation where new information

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<sup>2</sup> Snohomish County Recording No. 8002010259, February 1, 1980.

is received indicating a potential/actual threat to human health and the environment through the release of hazardous substances.

G. P&GE acquired the 40.9-acre property from Go East Corporation in May 2009.<sup>3</sup>

H. P&GE is now proposing to implement the Go East Landfill Closure Plan (LFCP), last revised in January 2018, that has been reviewed and concurred with by Ecology pursuant to WAC 173-350-710(1)(d) and (2)(d), and that has been approved by SHD as part of the landfill permit issued to P&GE by the SHD. P&GE will implement the LFCP as part of its redevelopment of the Property by: (1) removing landfill material and any potential contaminated soil from all areas outside the future landfill limit, thereby reducing the landfill area from 9.6 acres to 6.8 acres; (2) constructing a final landfill cover, stormwater facilities, and gas control trench within the future landfill limit; and (3) subdividing and rezoning the areas outside of the future landfill limit for the development of the Bakerview Plat Subdivision. The Bakerview Plat Subdivision includes 97 parcels zoned for Urban Low Density Residential housing, a roadway, and easements.

I. The proposed landfill cap includes a stormwater flow control pond on top of the cap, as well as a landfill gas ventilation trench along the periphery of the landfill. PACE Engineers, Inc. prepared the LFCP (Revised January 2018) on behalf of P&GE. The LFCP is recorded under Snohomish County Recording No. 201810230623, October 23, 2018.

J. The proposed redevelopment project required several permits and approvals from Snohomish County Planning and Development Services (PDS), as well as a landfill permit from SHD. By agreement between PDS and SHD, PDS led the State Environmental Policy Act (SEPA) evaluation for the landfill closure and subdivision. PDS issued a Mitigated Determination of Non-Significance (MDNS) decision on August 29, 2014 based on conditional approval of the LFCP (January 14, 2014). After appeal, on April 14, 2015, the Snohomish County Hearing Examiner remanded the application to PDS for further review on three topics—impacts of noise, air quality, and truck traffic. After revision of the LFCP (October 28, 2015), after conditional approval of the LFCP by SHD (December 28, 2015), and after approval of third-party evaluations of dust impacts,

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<sup>3</sup> Snohomish County Recording No. 200905210263, May 21, 2009.

noise impacts, and environmental aspects (Golder Associates, August 5, 2016) and construction traffic (Gibson Traffic Consultants, Inc., August 3, 2016), PDS issued a new MDNS on May 7, 2017.

K. Kings Ridge Homeowners Association and the 108<sup>th</sup> St. Point Homeowners Association (collectively, Appellants) appealed the May 7, 2017 MDNS. The Hearing Examiner denied the Appellants' appeals and affirmed the MDNS in Snohomish County Hearing Examiner Order No. 10-101204-SD/REZO, Amended Decision, February 14, 2018. The Hearing Examiner affirmed that the project required a land disturbing activity (LDA) permit for landfill closure from PDS and a hydraulic project approval (HPA) permit from the Washington Department of Fish and Wildlife (WDFW) to relocate the stream on the west side of the Property.

L. SHD issued Solid Waste Facility Permit No. SW-027 for the Go East Woodwaste Landfill on May 11, 2018. Permit No. SW-027 authorized a Limited Purpose Landfill subject to WAC 173-350-400. Permit No. SW-027 requires P&GE to close the landfill in accordance with the approved LFCP (Revised January 2018). Ecology's Solid Waste Management Program has provided technical support to SHD for the authorization and oversight of Permit No. SW-027.

M. Permit No. SW-027 requires P&GE to submit final design drawings, construction specifications, and a Construction Quality Assurance Plan for approval in writing prior to beginning construction. These final design drawings, construction specifications, and Construction Quality Assurance Plan have all been reviewed and approved by SHD and Ecology.

N. Ecology granted coverage under the Construction Stormwater General Permit in Permit No. WAR306901 under the Facility Site Name of Bakerview Everett on November 18, 2015, effective on September 18, 2018 for the Bakerview Plat Subdivision. Ecology issued an Administrative Order for Permit No. WAR306901 on November 13, 2020. The Administrative Order defines indicator levels of contamination and requires P&GE to capture, contain, and treat all contaminated dewatering water or contaminated stormwater prior to discharge to a receiving water body.

O. Two neighboring homeowner associations appealed SHD's issuance of Permit No. SW-027 to the Pollution Control Hearings Board (PCHB). Following an adjudicative hearing on the appeal, the PCHB found that the Appellants had not met their burden to prove either that the LFCP or Permit No. SW-027 violated applicable landfill closure regulations (PCHB No. 18-042, June 5, 2019).<sup>4</sup> The PCHB determined that the LFCP met the closure requirements in WAC 173-350-400(8) (Limited Purpose Landfills, Permit Requirements – Closure), and that additional design evaluation and components could be addressed in the detailed plans, specifications, and construction quality assurance plan that were required to be submitted later by P&GE.

P. Ecology prepared an initial investigation field report for the Site on June 13, 2019. Ecology's initial investigation field report stated that: (1) concentrations of total arsenic, manganese, iron, lead, and chromium reported in unfiltered groundwater samples collected from groundwater monitoring wells in 2009 exceeded MTCA cleanup levels; and (2) concentrations of iron and manganese reported in surface water samples collected in 2009 were elevated.

Q. Ecology rescinded the 2004 NFA on June 18, 2019 and issued an Early Notice Letter on September 9, 2019.

R. The SHD reissued Permit No. SW-027 on March 10, 2020 to address specific conditions in the PCHB ruling. The reissued permit now specifically requires (1) evaluation of soil samples from the planned landfill excavation area and removal of contamination per Ecology regulations; (2) modifications to the landfill cap to improve lateral drainage through the cap; (3) modifications to the gas conveyance layer below the landfill cap geomembrane; and (4) conformance with SHD and Snohomish County regulations regarding air and noise pollution.

S. PACE Engineers modified Go East Landfill Closure Land Disturbance Activity LDA #1 plans (i.e., final design drawings and construction specifications) on April 7, 2020 and updated the Construction Quality Assurance Plan on April 7, 2020. SHD and Ecology reviewed the updated plans, specifications, and quality assurance plan, and SHD provided written approval

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<sup>4</sup> Because the permit cites a now out-of-date version of WAC 173-350, which was updated on August 1, 2018, citations in the PCHB ruling do not align with current regulations.

on April 23, 2020. PACE Engineers revised the Go East Landfill Closure Land Disturbance Activity LDA #1 plans on July 20, 2020; which were approved by SHD on August 26, 2020.

T. Snohomish County PDS authorized LDA Permit #1 for the landfill to P&GE in May 2019, subject to the conditions and requirements of Permit No. SW-027. LDA Permit #1 incorporates the LFCP in addition to additional requirements regarding stream relocation, retaining walls, erosion control and drainage features, and overall site grading for the development.

## **VI. ECOLOGY DETERMINATIONS**

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

A. The PLP is an “owner or operator” as defined in RCW 70.105D.020(22) of a “facility” as defined in RCW 70.105D.020(8).

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 P&GE dated December 23, 2019, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. On January 8, 2020, P&GE voluntarily waived its rights to notice and comment and accepted Ecology’s determination that P&GE is a PLP under RCW 70.105D.040. Ecology issued a final determination of liability letter to P&GE on January 29, 2020, and attached P&GE’s factual clarifications of Ecology’s proposed findings of liability.

D. Pursuant to RCW 70.105D.030(1) and .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, RI/FS, or design of a cleanup action plan.

F. The LFCP calls for consolidation and capping of the landfill, including removal of landfill material and potential contaminated soil from beyond the future landfill limit. Landfill material includes both waste materials and intermixed soil within the landfill envelope. Contaminated soil is soil that contains one or more hazardous substances above applicable MTCA cleanup levels due to a release from the landfill or a release beyond the landfill, pursuant to WAC 173-350-100. Implementation of the LFCP will involve cleanup of hazardous substances and will address threatened releases of hazardous substances at the Site. Based on these circumstances, Ecology has determined that the removal of landfill material and contaminated soil from beyond the future landfill limit is warranted as an interim action under WAC 173-340-430. The capping of the excavated landfill material under the landfill cover is subject to the landfill permit issued under WAC 173-350-400, and is not part of the interim action. Either of the Parties may propose an additional interim action under this Order. If the Parties are in agreement concerning an additional interim action, the Parties will follow the process in Section VII.G. If the Parties are not in agreement, Ecology reserves its authority to require additional interim action 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 PLP take the following remedial actions at the Site. The area within the Site where remedial action may be necessary under RCW 70.105D is shown in the Exhibit A. These remedial actions must be conducted in accordance with WAC 173-340, WAC 173-204, and WAC 173-350:

A. Landfill waste material will be removed from beyond the future landfill limit, consolidated into the landfill, and capped as described in the LFCP referenced in Section V.G. This work will be performed as an interim action under this Order. The area within the Site where

the interim action will be performed is shown in Exhibit B. The landfill closure will be performed pursuant to Solid Waste Facility Permit No. SW-027, as administered by SHD and supported by Ecology. An Interim Action Work Plan (IAWP) is attached to this Order as Exhibit D and is an integral and enforceable part of this Order.

B. The PLP will complete the interim action, prepare and submit a RI/FS, and prepare and submit a preliminary DCAP for the Site in accordance with the schedule and terms of the Scope of Work and Schedule (Exhibit C) and all other requirements of this Order. The following naming conventions shall be used for documents: (1) Agency Review Draft (designation for the first time Ecology receives a document); (2) Public Review Draft (designates a document ready for public comment); (3) Final (designation for a document after public comment and Ecology approval); and (4) the preliminary Draft Cleanup Action Plan (designation for the PLP's version of the DCAP).

C. The PLP shall submit to Ecology written quarterly Progress Reports that describe the actions taken during the previous quarter to implement the requirements of this Order. All Progress Reports shall be submitted by the 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 quarter.
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 quarter and any planned deviations in the upcoming quarter.
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 for the upcoming quarter if different from the schedule.

Validated soil and groundwater analytical data shall be submitted to Ecology's Environmental Information Management (EIM) database within 60 days of receiving the analytical results.

D. The PLP shall provide financial assurance for landfill post-closure care in accordance with SHD Solid Waste Facility Permit No. SW-027 and WAC 173-350-600. Any engineered control obligations (if any) within the proposed housing areas outside of the future landfill limits will be subject to the financial assurance requirements of the future landfill limit area.

E. As detailed in WAC 173-350-400(8)(e) and PCHB Ruling No. 18-042, institutional controls will be required at the Site under Permit No. SW-027.

F. All plans or other deliverables submitted by the PLP 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.

G. If Ecology determines that the PLP 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 30 days advance notice to the PLP, perform any or all portions of the remedial action or at Ecology's discretion allow the PLP opportunity to correct. In an emergency, Ecology is not required to provide notice to the PLP, or an opportunity for dispute resolution. The PLP shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

H. Except where necessary to abate an emergency situation or where required by law, the PLP shall not perform any remedial actions at the Site outside those remedial actions required by this Order or the LFCP to address the release or threatened release of hazardous substances 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 or as permitted by the LFCP, the PLP must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within 24 hours of the discovery of the event.

I. Reports shall be provided in an Americans with Disability Act (ADA) accessible format as identified by Ecology under developing guidance.

### **VIII. TERMS AND CONDITIONS**

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

The PLP 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 recorded \$83,848.96 in remedial action costs related to this Site as of June 30, 2020. For all Ecology costs incurred, the PLP 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:

Alan Noell  
Department of Ecology, Northwest Regional Office  
3190 160<sup>th</sup> Avenue SE  
Bellevue, WA 98008  
Office: 425-213-4803  
Email: [alan.noell@ecy.wa.gov](mailto:alan.noell@ecy.wa.gov)

The project coordinator for the PLP is:

Martin Penhallegon, P.E.  
11255 Kirkland Way, Suite 300  
Kirkland, WA 98033-6715  
Office: 425-827-2014  
Email: [martyp@paceengrs.com](mailto:martyp@paceengrs.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 PLP, 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 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 18.220.

The PLP 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**

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that the PLP 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 PLP'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 PLP. The PLP shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the PLP where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the PLP unless an emergency prevents such notice. All persons who access the Site pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

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

With respect to the implementation of this Order, the PLP 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 PLP shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the PLP pursuant to implementation of this Order. The PLP shall notify Ecology 7 days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the PLP 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 PLP prior to any sample collection activity unless an emergency prevents such notice.

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

**F. Public Participation**

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

Ecology shall maintain the responsibility for public participation at the Site. However, the PLP 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, RI/FS 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 PLP 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 local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the PLP that do not receive prior Ecology approval, the PLP 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. Mill Creek Library  
15429 Bothell Everett Highway  
Mill Creek, WA 98012
- b. Ecology's Northwest Regional Office  
3190 160<sup>th</sup> 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 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 negotiation of this Order, and for 10 years from the date of completion of work performed pursuant to this Order, the PLP 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 new contracts with project contractors and subcontractors. Upon request of Ecology, the PLP shall make all records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right the PLP 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 PLP withholds any requested records based on an assertion of privilege, the PLP 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 PLP elects to invoke dispute resolution the PLP 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 PLP has 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 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 PLP's 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 PLP may then request regional management review of the dispute. This request (Formal Dispute Notice) must be submitted in writing to the Northwest Region Solid Waste Management Program 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.

d. 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 (Work to be Performed) or initiating enforcement under Section X (Enforcement).

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

1. The PLP 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:

- 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 PLP to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

- a. Circumstances beyond the reasonable control and despite the due diligence of the PLP 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 PLP.

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

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

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

3. Ecology shall act upon any PLP's written request for extension in a timely fashion. Ecology shall give the PLP 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 PLP'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 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.K (Endangerment).

**J. Amendment of Order**

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

Except as provided in Section VIII.L (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and the PLP. Ecology will provide its written 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 PLP 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 is received. If Ecology determines that the change is substantial, then the Order must be formally amended. Reasons for the disapproval of a proposed change to this Order shall be stated in writing. If Ecology does not agree to a proposed change, 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 PLP to cease such activities for such period of time as it deems necessary to abate the danger. The PLP shall immediately comply with such direction.

In the event the PLP 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 PLP may cease such activities. The PLP 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 PLP shall provide Ecology with documentation of the basis for the

determination or cessation of such activities. If Ecology disagrees with the PLP's cessation of activities, it may direct the PLP to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, the PLP'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 PLP 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 PLP regarding remedial actions required by this Order, provided the PLP 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 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.

By entering into this Order, the PLP does not admit to any liability for the Site. Although the PLP is committing to conducting the work required by this Order under the terms of this Order, the PLP 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 PLP 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 PLP's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the PLP 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 PLP shall notify Ecology of said transfer. Upon transfer of any interest, the PLP 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. *Applicable Laws.* All actions carried out by the PLP pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits or approvals, 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 Section V. The PLP has a continuing obligation to identify additional applicable 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 PLP, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and the PLP must implement those requirements.

2. *Relevant and Appropriate Requirements.* All actions carried out by the PLP 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 Section V. If additional relevant and appropriate requirements are

identified by Ecology or the PLP, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and the PLP must implement those requirements.

3. Pursuant to RCW 70.105D.090(1), the PLP 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 PLP 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. 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 Section V.

4. The PLP 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 PLP 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 PLP shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the PLP 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 PLP and on how the PLP must meet those requirements. Ecology shall inform the PLP in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The PLP 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 PLP 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 or approvals.

**O. Indemnification**

The PLP 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 PLP, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the PLP 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 PLP's receipt of written notification from Ecology that the PLP has completed the remedial activity required by this Order, as amended by any modifications, and that the PLP has complied with all other provisions of this 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.

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.

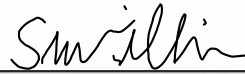
Effective date of this Order: January 29, 2021

P&GE, LLC

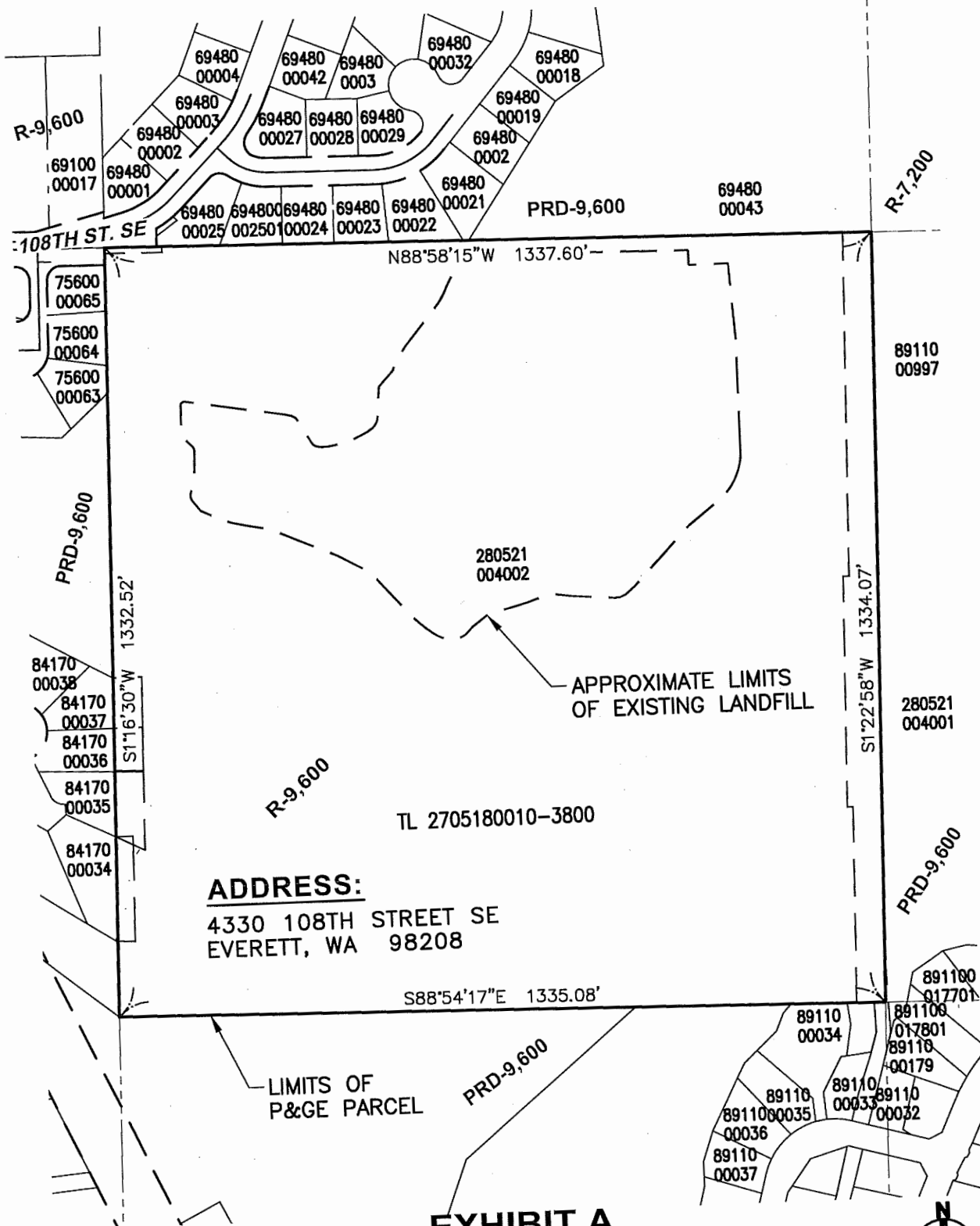


Cary East  
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STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY



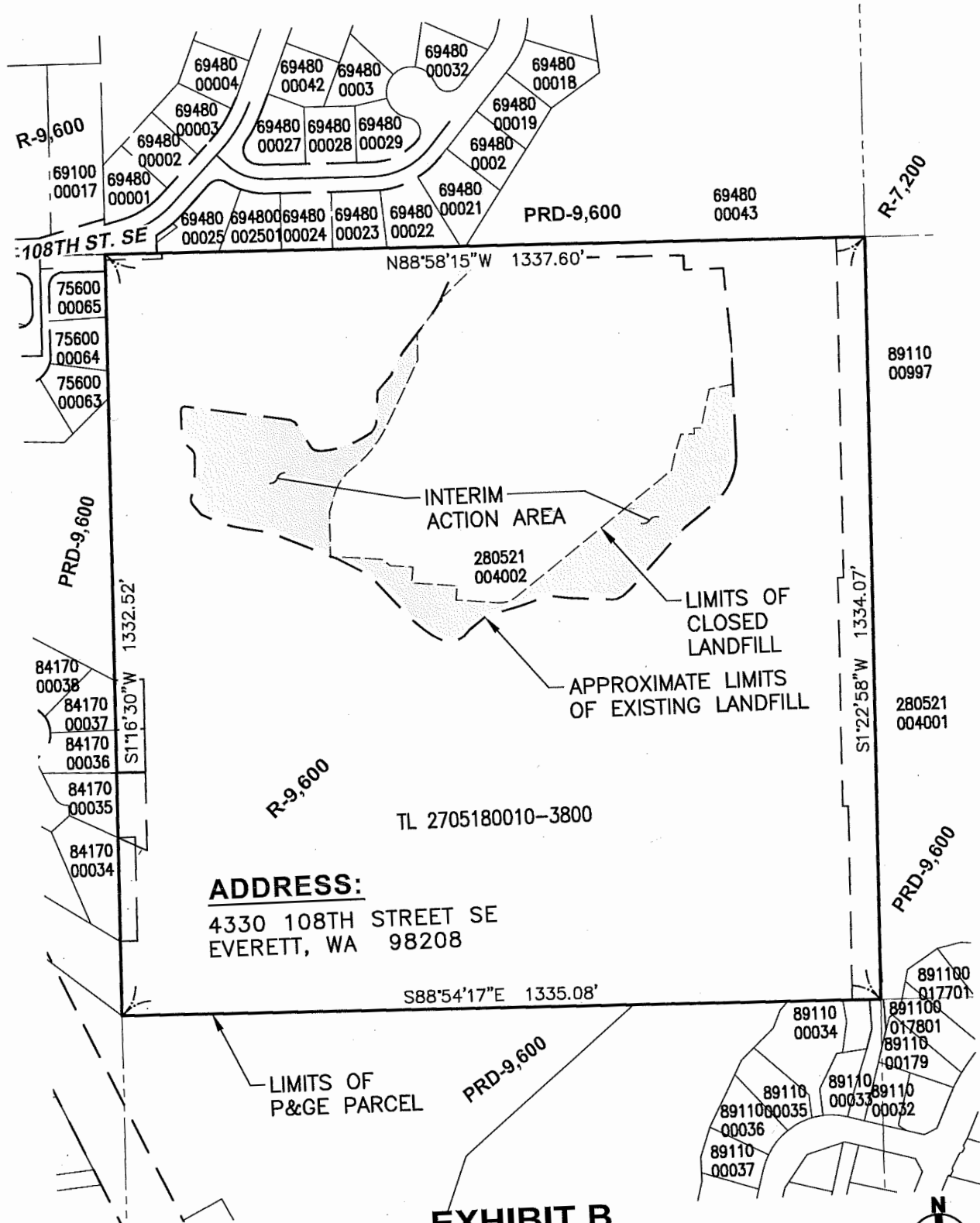
Steven Williams  
Acting Section Manager  
Solid Waste Management Program  
Northwest Regional Office  
425-649-7076



**EXHIBIT A**  
**SITE LOCATION DIAGRAM**

SCALE: 1"=250'





**EXHIBIT B**  
**INTERIM ACTION LOCATION DIAGRAM**  
SCALE: 1"=250'



# **EXHIBIT C – SCOPE OF WORK AND SCHEDULE**

## **SCOPE OF WORK**

### **PURPOSE**

The work under this Agreed Order involves conducting an interim action to remove landfill material and contaminated soils from beyond the future landfill limit during the implementation of the Go East Landfill Closure Plan (LFCP), conducting a Remedial Investigation and Feasibility Study (RI/FS), and preparing a preliminary Draft Cleanup Action Plan (DCAP) to select a final cleanup alternative for approval by Ecology. The purpose of the RI/FS and preliminary DCAP are to provide sufficient data, analysis, and evaluations to select a cleanup action for the Site, inclusive of the work performed under the LFCP.

The PLP shall coordinate with Ecology throughout the implementation of the interim action, the development of the RI/FS, and the development of the preliminary DCAP. The PLP shall keep Ecology informed of changes to any work plan or other project plans, and of any issues or problems as they develop.

The Scope of Work is divided into seven major tasks as follows:

- Task 1. Interim Action
- Task 2. Remedial Investigation Work Plan
- Task 3. Remedial Investigation
- Task 4. Feasibility Study
- Task 5. SEPA Compliance
- Task 6. Draft Cleanup Action Plan
- Task 7. Public Participation

### **TASK 1. INTERIM ACTION**

Remedial actions implemented prior to completion of the RI/FS, including those that:

- are 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;
- correct a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed; or
- are needed to provide for completion of the remedial investigation/feasibility study or design of the cleanup action

will be considered interim actions and will be implemented in accordance with WAC 173-340-430. Remedial actions for contaminated sediments if encountered or performed during interim actions will be designated partial cleanup actions and will be implemented pursuant to WAC 173-204-550(3)(d).

The PLP will implement an interim action involving remedial activities set forth in the approved LFCP<sup>1</sup> (Revised January 2018), and the approved final design drawings, construction specifications, and construction quality assurance plan needed to implement the LFCP, as required by Permit No. SW-027 and WAC 173-350-400(5). By removing landfill material, the interim action eliminates or substantially reduces an exposure pathway for hazardous substances at the Site under the Washington State Model Toxics Control Act (MTCA).

The interim action will implement the following elements of the approved LFCP involving source control and containment elements such as:

- Landfill material and contaminated soil removal from beyond the future landfill limits.
- Consolidation of landfill materials that do not constitute a federal or state hazardous/dangerous waste under a landfill cover constructed pursuant to WAC 173-350-400 for limited purpose landfills.
- Removal and offsite disposal of hazardous materials (asbestos and lead-based paint), federal or state hazardous/dangerous wastes, and polychlorinated biphenyl (PCB) waste (as defined by the federal Toxic Substances Control Act and as further specified in the Interim Action Work Plan) from beyond the future landfill limit, if encountered during the performance of the interim action.
- Backfilling of areas beyond the future landfill limit boundary with clean soil.

The Interim Action Work Plan (IAWP), which is included as Exhibit D of this Agreed Order, provides:

- Interim Action Levels for soil that are conservative and protective of direct contact, groundwater, surface water, and sediment exposure pathways.
- Specific data collection procedures in a Sampling and Analysis Plan (SAP) and Quality Assurance Project Plan (QAPP)<sup>2</sup> in compliance with WAC 173-340-820 that will confirm that landfill material and contaminated soil will be removed from beyond the future landfill limit and that residual soil and clean backfill soil will be compliant with MTCA soil cleanup levels.
- A listing of regulatory requirements applicable to the specific elements of the interim action.

The PLP will submit a copy of the Health and Safety Plan (HASP) to Ecology prior to implementation of the interim action.

P&GE will prepare a construction quality assurance report upon completion of landfill closure, as required under WAC 173-350-400(5) and Permit No. SW-027. The construction quality assurance report is required under the landfill permit.

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<sup>1</sup> The LFCP has already been publicly reviewed, contested, and affirmed by the Snohomish County Hearing Examiner and the Pollution Control Hearings Board.

<sup>2</sup> See requirements of QAPP under the RI Work Plan section.

Under this Order, the PLP will prepare an Interim Action Completion Report (IACR) as a separate deliverable to document compliance with the soil Interim Action Levels beyond the final landfill limit area. The PLP shall prepare two copies of the Agency Review Draft IACR and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and approval. The PLP shall incorporate Ecology's comments and then prepare three copies of the Final IACR and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology.

The PLP or their contractors shall submit all new sampling data generated under the SAP for the IAWP and any other recently collected data to Ecology for entry into the Environmental Information Management System (EIM) in accordance with WAC 173-340-840(5) and Ecology's Toxics Cleanup Program Policy 840: Data Submittal Requirements. Validated data will be entered into the EIM database within 30 days of submittal.

## **TASK 2. REMEDIAL INVESTIGATION WORK PLAN**

The PLP shall prepare a Remedial Investigation Work Plan (RI Work Plan) to address data gaps for the Site, including data needed for post-closure care of the future landfill area and to confirm that environmental media outside the future landfill area meets MTCA cleanup levels. The RI Work Plan shall include an overall description and schedule of all RI activities. The RI Work Plan shall clearly describe the project management strategy for implementing and reporting on RI activities. The responsibility and authority of all organizations and key personnel involved in conducting the RI will be outlined.

A Key Project Meeting will be held prior to submittal of the RI Work Plan. The purpose of the Remedial Investigation (RI) Planning Meeting is to review requirements for the RI Work Plan and plan RI field work, discuss the preliminary Conceptual Site Model, and identify project data needs and the concurrent interim action.

The RI Work Plan shall incorporate information from the LFCP and all other relevant resources regarding general facility information; site history and conditions; including previous operations; past field investigations, including any data collection and analysis of soil, landfill gas, air, groundwater, surface water, and sediments; a conceptual site model describing contaminants, migration pathways in environmental media, and potential receptors; geology and groundwater system characteristics; past, current, and future land use; identification of natural resources and ecological receptors; hazardous substances and their sources, etc., in compliance with WAC 173-340-350 and WAC 173-204-560.

As part of the project background, existing environmental data on soil, groundwater, surface water, and sediments will be compiled and evaluated for data gaps. The data gaps will be used as the basis for conducting additional site investigations, if necessary. The RI Work Plan will also identify specific data collection procedures in a SAP and QAPP in compliance with WAC 173-340-820 and WAC 173-204-600 for defining the nature and extent of contamination. The PLP will also update the HASP for the project as necessary, and submit a copy to Ecology prior to implementation.

The SAP shall identify the proposed number and location of all environmental samples and methods, including soil borings, groundwater monitoring wells, soil, groundwater, and surface water samples, as well as approximate depths. The SAP will describe the sampling objectives, the rationale for the sampling approach (based upon the identified data gaps), and plans for data use, and shall provide a detailed description of sampling tasks. The SAP shall describe specifications for sample identifiers; sampling equipment; the type, number, and location of samples to be collected; the analyses to be performed; descriptions of sampling equipment and methods to be used; sample documentation; sample containers, collection and handling; data and records management; and schedule.

The QAPP will be prepared in accordance with the Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies (Ecology Publication No. 04-030-030) and the Sediment Cleanup Users Manual II (SCUM II, Ecology Publication No. 12-09-057), as appropriate. Laboratories must meet the accreditation standards established in WAC 173-50. Data quality objectives will reflect regulatory criteria applicable to the RI.

The SAP and QAPP will be submitted to Ecology for review and approval. As with all environmental work at the site, work may not begin without written approval from Ecology. The PLP shall provide 7 days' notice to Ecology prior to beginning sampling. Ecology may obtain split samples.

The PLP or their contractors shall submit all new sampling data generated under the SAP for the RI and any other recently collected data to Ecology for entry into the Environmental Information Management System (EIM) in accordance with WAC 173-340-840(5) and Ecology's Toxics Cleanup Program Policy 840: Data Submittal Requirements. Validated data will be entered into the EIM database within 30 days of submittal.

RI Work Plan tasks are anticipated to include sampling and analysis of soil, sediment, groundwater, surface water, landfill gas, and/or soil vapor.

The PLP shall prepare two copies of the Agency Review Draft RI Work Plan and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and comment. After incorporating Ecology's comments on the Agency Review Draft RI Work Plan and after Ecology approval, the PLP shall prepare three copies of the Final RI Work Plan and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology. Once approved by Ecology, the PLP will implement the Final RI Work Plan according to the schedule contained in this Exhibit.

### **TASK 3. REMEDIAL INVESTIGATION**

The PLP shall conduct an RI that meets the requirements of WAC 173-340-350(7) according to the RI Work Plan as approved by Ecology. The RI will determine the nature and extent of contamination (if any) exceeding preliminary MTCA cleanup levels or any other applicable regulatory requirements. The RI must provide sufficient data and information to define the nature and extent of contamination.

Field sampling and analysis will be completed in general accordance with the SAP and QAPP for the RI. Deviation(s) from the approved SAP and QAPP must be communicated to Ecology immediately and documented as required by Ecology.

The PLP shall provide interim data reports and updates to Ecology as new site data and information become available. Laboratory analysis data shall also be provided in electronic format when it has been validated. Raw laboratory data will be provided to Ecology upon request.

A Key Project Meeting will be held for a RI Pre-Report Check-In. Ecology and the PLP will review available data and an updated conceptual site model and discuss the content and organization of the RI/FS report, as described in Task 4, below.

Electronic survey data for monitoring locations, electronic lab data, and geographic information system (GIS) maps of contaminant distribution shall also be provided for the RI/FS report either in the report or as attachments.

If the data collected during this investigation are insufficient to define the nature and extent of contamination and/or to select a cleanup action, then an additional phase of investigation shall be conducted to define the extent of contamination.

#### **TASK 4. FEASIBILITY STUDY**

The PLP shall use the information obtained in the RI to prepare an Agency Review Draft Feasibility Study (FS) that meets the applicable requirements of WAC 173-340-350(8) according to the Schedule in this exhibit. The Agency Review Draft FS will evaluate whether the LFCP is consistent with MTCA and SMS requirements to ensure protection of human health and the environment by eliminating, reducing, or otherwise controlling risk posed through each exposure pathway and migration route, and will evaluate whether additional remedial activities are necessary.

Prior to beginning the FS, a Key Project Meeting will be held to review applicable regulatory requirements and potential remedial alternatives, and to establish points of compliance.

The Agency Review Draft FS will provide a detailed analysis of each remedial alternative according to the applicable requirements of WAC 173-340-350, MTCA Remedial Investigation and Feasibility Study, and WAC 173-204-560, SMS Cleanup Study. The remedial alternatives will be evaluated for compliance with the applicable requirements of WAC 173-340-360, Selection of Cleanup Actions, and WAC 173-204-560(4), including a detailed evaluation of remedial alternatives relative to the following criteria:

- Compliance with Cleanup Standards and Applicable Laws
- Protection of Human Health
- Protection of the Environment
- Provision for a Reasonable Restoration Time Frame
- Use of Permanent Solutions to the Maximum Extent Practicable



- The Degree to which Recycling, Reuse, and Waste Minimization are Employed
- Short-Term Effectiveness
- Long-Term Effectiveness
- Net Environmental Benefit
- Implementability
- Provision for Compliance Monitoring
- Cost-Effectiveness
- Prospective Community Acceptance

The remedial alternative that is judged to best satisfy the evaluation criteria will be identified. Justification for the selection will be provided, and the recommended remedial alternative further developed, in the FS.

The RI/FS report shall be prepared as a single report. The PLP shall prepare two copies of the Agency Review Draft RI/FS and submit them, including one electronic copy in Word (.doc) and Adobe (.pdf) formats, to Ecology for review. After addressing Ecology's comments on the Agency Review Draft RI/FS, the PLP shall prepare three copies of the Public Review Draft RI/FS and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment. The RI/FS will not be considered Final until after a public review and comment period.

#### **TASK 5. SEPA COMPLIANCE**

Ecology will evaluate and confirm whether the MDNS, dated May 7, 2017, meets the criteria for complying with State Environmental Policy Act (SEPA) rules for the RI/FS.

#### **TASK 6. PRELIMINARY DRAFT CLEANUP ACTION PLAN**

Upon Ecology approval of the Agency Review Draft RI/FS Report, a Key Project Meeting will be held regarding the Cleanup Action Plan. The Cleanup Action Plan Meeting will be used to review plans for developing the preliminary Draft Cleanup Action Plan (DCAP).

The PLP shall prepare, for Ecology's review, a preliminary DCAP in accordance with WAC 173-340-380 that provides a proposed cleanup action to address the contamination present on the Site. Where contaminated sediments are included in the remedial action, the cleanup plan will comply with WAC 173-204-580, in addition to the MTCA requirements cited above. The preliminary DCAP shall include a general description of the proposed cleanup action, cleanup standards developed from the RI/FS and rationale regarding their selection, a schedule for implementation, description of any institutional controls proposed, and a summary of applicable local, state, and federal laws pertinent to the proposed cleanup actions.

The PLP will submit a preliminary DCAP for Ecology's review and approval. The PLP shall prepare two copies of the preliminary DCAP and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and approval.

After receiving Ecology's comments on the preliminary DCAP, if any, the PLP shall revise the preliminary DCAP to address Ecology's comments and submit five copies of the final preliminary DCAP including one electronic copy each in Word (.doc) and Adobe (.pdf) formats. Ecology will use the PLP's preliminary DCAP to develop the Draft Cleanup Action Plan.

#### **TASK 7. PUBLIC PARTICIPATION**

The PLP shall support Ecology in presenting the Public Review Draft RI/FS Report and the Draft Cleanup Action Plan in a consolidated public comment process. The PLP will assist Ecology with presentations at any additional meetings or hearings that might be necessary as part of the Public Participation Plan.

After the public comment period is completed, the PLP shall prepare an Agency Review Draft Responsiveness Summary that addresses public comments. The PLP shall prepare two copies of the Agency Review Draft Responsiveness Summary and submit them to Ecology for review and approval, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats.

After addressing Ecology's comments and after Ecology approval, the PLP shall prepare five copies of the Final Responsiveness Summary and submit them to Ecology for distribution, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats. Ecology shall be responsible for distribution of the Final Responsiveness Summary.

### **SCHEDULE OF DELIVERABLES**

The schedule for deliverables described in the Agreed Order and the Scope of Work is presented below. If the date for submission of any item or notification required by this Schedule of Deliverables occurs on a weekend, state or federal holiday, the date for submission of that item or notification is extended to the next business day following the weekend or holiday. Where a deliverable due date is triggered by Ecology notification, comments or approval, the starting date for the period shown is the date the PLP received such notification, comments or approval by certified mail, return receipt requested, unless otherwise noted below. Where triggered by Ecology receipt of a deliverable, the starting date for the period shown is the date Ecology receives the deliverable by certified mail, return receipt requested, or the date of Ecology signature on a hand-delivery form.

<b>RI/FS Deliverables</b>	<b>Completion Times</b>
Agency Review Interim Action Completion Report	90 calendar days following completion of interim action.
Final Interim Action Completion Report	30 calendar days following Ecology's comments on the Agency Review Interim Action Completion Report.
Agency Review Draft RI Work Plan	90 calendar days following effective date of the Agreed Order.
Final RI Work Plan	30 calendar days after receipt of Ecology's comments on the Agency Review Draft RI Work Plan.
Completion of RI Field Work	Within 12 months following Ecology's approval of the Final RI Work Plan.
Agency Review Draft RI/FS	90 days following receipt of laboratory data from RI Field Work. RI/FS should reference the Interim Action Completion Report.
Public Review Draft RI/FS	30 calendar days following receipt of Ecology's comments on the Agency Review Draft RI/FS.
Preliminary Draft Cleanup Action Plan (DCAP)	30 calendar days after receipt of Ecology's comments on the Agency Review Draft RI/FS.
Revised Preliminary DCAP (if applicable)	30 calendar days following Ecology's comments on the Preliminary DCAP.

Agreed Order No. DE 18121

**EXHIBIT D - INTERIM ACTION WORK PLAN**