



Toxics Cleanup Program

Policy 530A: Agreed Orders

Established: December 30, 2016

Revised: March 27, 2017 [added Attachment A: Agreed Order Boilerplate and Example Scope of Work and Schedule]

Contact: Policy and Technical Support Unit, Headquarters

Purpose: This Policy provides Ecology staff guidance on when and how to exercise their authority under the Model Toxics Control Act to enter into an agreed order with a potentially liable person or prospective purchaser to conduct or pay for remedial actions.

References: [RCW 70.105D.020](#) (1) and (29)
[RCW 70.105D.040](#) (6)
[RCW 70.105D.050](#) (1)
[WAC 173-340-510](#)
[WAC 173-340-530](#)
[WAC 173-340-600](#) (11)
[Sediment Cleanup User's Manual II](#)

Attachments: A – Agreed Order Boilerplate and Example Scope of Work and Schedule
B – Expectations Letter Template and General Standards of Work
C – Satisfaction Letter Template: Investigation and Study Phase
D – Satisfaction Letter Template: Cleanup Phase
E – Status Letter Template: Cleanup Phase
F – Satisfaction and Status Letters Checklist

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:

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

The Model Toxics Control Act (MTCA) authorizes the Department of Ecology (Ecology) to issue an agreed order requiring a potentially liable person (PLP) or prospective purchaser to conduct remedial actions or to pay for remedial actions or natural resource damage assessments conducted by Ecology. An agreed order is not a settlement agreement and does not contain a covenant not to sue or provide protection from contributions claims ([RCW 70.105D.020](#)(1), [RCW 70.105D.050](#)(1), and [WAC 173-340-530](#)).

This Policy provides Ecology staff guidance on when and how to exercise this authority. For additional guidance related to sediment cleanups, see the [Sediment Cleanup User's Manual II](#) (SCUM II).

For the purposes of this Policy, the term PLP also includes "prospective purchasers," as defined in [RCW 70.105D.020](#)(29). However, additional requirements may apply to prospective purchasers requesting an agreed order under [RCW 70.105D.040](#)(6).

For related guidance on identifying PLPs, see [Policy 500A](#). For related guidance on using consent decrees and enforcement orders, see [Policy 520A](#) and [Policy 540A](#) respectively. The Policies are available at: <http://www.ecy.wa.gov/programs/tcp/policies/tcppoly.html>.

1. PLP or Ecology may initiate negotiations.

Negotiations for an agreed order may be initiated by either a PLP or Ecology. PLPs are encouraged to initiate negotiations with Ecology to reach agreement on what remedial actions are necessary to investigate and clean up a contaminated site ([WAC 173-340-510](#)).

a. PLP Requests

PLPs may request negotiations for an agreed order by submitting a letter to Ecology. The letter must include the information specified in the MTCA rule, unless waived by Ecology. The request must provide sufficient detail for Ecology and the public to evaluate the proposed scope of work and relative priority of the site ([WAC 173-340-510](#)(2)(b) and [173-340-530](#)(2)).

Ecology will respond to the request within sixty (60) days of receipt, unless additional time is needed to identify PLPs at the site. Ecology will respond by either:

- Accepting the request, if Ecology believes it is in the public interest;
- Denying the request and providing reasons for the denial; or
- Requesting additional information.

If the request is accepted, Ecology will specify a schedule and deadline for negotiations in the response letter.

b. Ecology Requests

Ecology may request negotiations for an agreed order by submitting a letter to the PLPs by certified mail, return receipt requested. At a minimum, the letter should include the name of the facility; a general description of the subject of the agreed order; a schedule and deadline for negotiations; request for names of other persons whom the PLP has reason to believe may be potentially liable; and request a written response of the PLP's willingness to proceed with the negotiations. The letter may also include a draft agreed order and scope of work and request the PLP to respond in writing to them before starting negotiations.

2. For investigation and study phase, Ecology will generally offer all named PLPs opportunity to participate in negotiations.

For the investigation and study phase, Ecology will generally offer all named PLPs the opportunity to participate in negotiations for an agreed order. However, Ecology is not required to enter into an agreement with all named PLPs.

For the cleanup phase, Ecology will determine on a case-specific basis who to offer the opportunity to negotiate an agreed order.

3. Before entering negotiations for investigation and study phase, Ecology will provide PLPs with Ecology's expectations and general standards of work.

Before entering negotiations for the investigation and study phase, Ecology will send the PLPs a letter, signed by the Program Manager, communicating our expectations for:

- Working together.
- Regular communication.
- Meetings as key points in the cleanup process.

The letter will also include Ecology's General Standards of Work for managing cleanup projects under an order or decree.

When drafting the expectations letter, the Cleanup Project Manager (CPM) will use the template developed by Ecology (**Attachment B**). The template is available to staff on Ecology's Enforcement Boilerplates SharePoint site at: <http://partnerweb/sites/EXEC/ComplianceEnforcement/Pages/TCP.aspx>. The CPM may not alter the template.

4. Ecology will notify public when starting negotiations.

When Ecology decides to proceed with negotiations, it will publish a notice in the next Site Register advising the public that negotiations have begun. The notice must include at a minimum the information specified in the MTCA rule ([WAC 173-340-600\(11\)\(b\)](http://www.wac.govt.wa.gov/WAC/20170327/173-340-600(11)(b).htm)).

5. Ecology will seek agreement within negotiation timeframes.

Consistent with the goal of achieving cleanups faster, Ecology will strive to achieve agreement within sixty (60) days, as specified in the MTCA rule. Ecology will specify the schedule and deadline for negotiations in its response letter or request letter to the PLP. Ecology may extend the negotiation deadline only if it determines continued discussions are in the public interest ([WAC 173-340-530\(5\)](#)).

6. Ecology will stay enforcement during negotiations.

Unless an emergency exists, Ecology will stay any enforcement action under MTCA during negotiations for an agreed order. However, the duration of the stay may not exceed sixty (60) days. Ecology may take enforcement action after the end of the stay ([WAC 173-340-530\(6\)](#)).

7. Ecology may withdraw from negotiations.

Ecology may withdraw from negotiations for an agreed order if it determines that:

- Reasonable progress is not being made toward the agreed order acceptable to Ecology; or
- An agreed order is no longer appropriate based on new information or changed circumstances.

Before deciding to withdraw from negotiations, the Cleanup Project Manager will consult with their Section Manager and the assigned Assistant Attorney General. Unless an emergency exists, Ecology may begin an enforcement action only after notifying the PLP in writing of its intent to withdraw from the negotiations ([WAC 173-340-530\(6\)](#)).

8. Ecology will use boilerplate when drafting agreed order.

Ecology has developed a boilerplate agreed order and an example scope of work and schedule (**Attachment A**). The boilerplate and example are available to staff on Ecology's Enforcement Boilerplates SharePoint site at: <http://partnerweb/sites/EXEC/ComplianceEnforcement/Pages/TCP.aspx>. Ecology will use the boilerplate when drafting an agreed order. The Cleanup Project Manager may not alter the boilerplate without consulting with their Section Manager and the assigned Assistant Attorney General.

9. Ecology will provide public with notice and opportunity to comment.

Before or concurrent with issuing an agreed order, Ecology will provide the public with notice and opportunity to comment. The notice must be mailed no later than three (3) days after issuing the order. The notice may be combined with notice of other MTCA documents, such as a cleanup action plan, or notice required under other laws, such as the State Environmental Policy Act, [Chapter 43.21C RCW](#). At a minimum, the notice must:

- Identify and generally describe the facility.
- Identify the persons who are parties to the order.
- Generally describe the remedial actions proposed in the order, including any institutional controls or permit exemptions authorized under [RCW 70.105D.090](#).
- Invite the public to comment on the order ([WAC 173-340-600\(11\)\(c\)](#)).

Ecology will provide the public at least thirty (30) days following the notice to comment on an agreed order. Ecology should provide this opportunity before the effective date of the order. However, the order can become effective before the end of the public comment period ([WAC 173-340-600\(11\)\(c\)](#)).

Based on public comments, the parties may agree to change the agreed order. If the changes are substantial, Ecology will provide the public with notice and an additional opportunity to comment on the order ([WAC 173-340-530\(8\)\(a\)](#) and [173-340-600\(11\)\(d\)](#)).

10. Attorney General may bring action to enforce agreed order.

Under MTCA, the Attorney General is authorized to bring an action in state or federal court against any liable person or prospective purchaser who refuses, without sufficient cause, to comply with an agreed order. Such persons are liable for up to three times the costs incurred by the State as a result of their refusal to comply, and a civil penalty of up to \$25,000 per day for each day they refuse to comply ([RCW 70.105D.050\(1\)](#)). This authority is included as a term in the boilerplate agreed order (**Attachment A**).

If a PLP or prospective purchaser fails to comply with an agreed order without sufficient cause, the Cleanup Project Manager should consult with their Section Manager and assigned Assistant Attorney General to determine the appropriate enforcement approach.

11. Ecology will provide PLPs written notice upon satisfaction of agreed order or completion of cleanup required under agreed order.

An agreed order remains in effect until Ecology determines and notifies the PLPs in writing that the requirements of the order have been satisfied. This is specified in the boilerplate order (**Attachment A**).

Ecology will notify PLPs upon satisfaction of an order (satisfaction letter) or upon completion of a cleanup required under an order (status letter). The letters must be signed by the Section Manager, the person who had the authority to sign the order on behalf of Ecology.

a. Templates

When drafting the satisfaction or status letter, the Cleanup Project Manager (CPM) will use the templates identified below. The templates are available to staff on Ecology's Enforcement Boilerplates SharePoint site at: <http://partnerweb/sites/EXEC/ComplianceEnforcement/Pages/TCP.aspx>. The CPM may not alter the templates without consulting with their Section Manager and the assigned

Assistant Attorney General (AAG). If the templates do not address the site-specific scenario, the CPM should consult with the AAG.

- i. Satisfaction Letter – Investigation and Study Phase (**Attachment C**).
- ii. Satisfaction Letter – Cleanup Phase (**Attachment D**).

Use this template if the cleanup required at the site under the order is complete, the site is delisted, and any post-cleanup remedial actions required at the site under the order are no longer necessary.

- iii. Status Letter – Cleanup Phase (**Attachment E**).

Use this template if the cleanup required at the site under the order is complete and the site is delisted, but post-cleanup remedial actions are still necessary and required under the order to control or monitor the remaining contamination at the site (such as engineered or institutional controls and periodic reviews).

b. Checklist

Before drafting the satisfaction or status letter, the CPM will complete and sign a checklist (**Attachment F**) to confirm that:

- i. All remedial actions required under the order to issue the satisfaction or status letter have been completed.
 - To issue a **satisfaction letter** for either phase, all remedial actions required under the order must be completed.
 - To issue a **status letter** for the cleanup phase, only the remedial actions required under the order through site delisting must be completed.
- ii. All remedial action costs incurred by Ecology under the order to issue the satisfaction or status letter have been recovered.
 - To issue a **satisfaction letter** for either phase, all remedial action costs incurred by Ecology under the order must be recovered.
 - To issue a **status letter** for the cleanup phase, only the remedial action costs incurred by Ecology under the order through site delisting must be recovered.
- iii. For the cleanup phase, the site has been removed from the Hazardous Sites List, if listed.

When submitting the satisfaction or status letter to their Section Manager for signature, the CPM will include the completed checklist.

The checklist is available to staff on Ecology's Enforcement Boilerplates SharePoint site at: <http://partnerweb/sites/EXEC/ComplianceEnforcement/Pages/TCP.aspx>.

c. Records and tracking

The CPM will ensure that the signed letter and checklist are included in the site file and uploaded into Ecology's internal Document Storage and Retrieval System (DSARS) database (<http://ecyaptcp/dsars/>) and that the site status and activities are updated in Ecology's internal Integrated Site Information System (ISIS) database (<http://ecyaptcp/isis/>).

References

- Hazardous Waste Cleanup—Model Toxics Control Act. WASH. REV. CODE § Chapter 70.105D RCW. (2013). Retrieved from: <http://apps.leg.wa.gov/RCW/default.aspx?cite=70.105D>
- Model Toxics Control Act—Cleanup Regulation. WASH. ADMIN CODE § Chapter 173-340 WAC. (2013). Retrieved from: <http://apps.leg.wa.gov/wac/default.aspx?cite=173-340>
- Washington State Department of Ecology. (n.d.). *Toxics Cleanup Program: Policies, procedures and implementation memoranda* [website]. Retrieved from: <http://www.ecy.wa.gov/programs/tcp/policies/tcppoly.html>
- Washington State Department of Ecology. (2015). *Sediment cleanup user's manual II* (SCUM II). (Ecology Publication No. 12-9-057.) Lacey, WA: Ecology, Toxics Cleanup Program. Retrieved from: <https://fortress.wa.gov/ecy/publications/summarypages/1209057.html>
- Washington State Department of Ecology. (rev. 2016). *Toxics Cleanup Program Policy 500A: Identification of potentially liable persons*. (Ecology Publication No. 16-09-051.) Lacey, WA: Ecology, Toxics Cleanup Program. Retrieved from: <https://fortress.wa.gov/ecy/publications/SummaryPages/1609051.html>
- Washington State Department of Ecology. (2016). *Toxics Cleanup Program Policy 520A: Consent decrees*. (Ecology Publication No. 16-09-067.) Lacey, WA: Ecology, Toxics Cleanup Program. Retrieved from: <https://fortress.wa.gov/ecy/publications/SummaryPages/1609067.html>
- Washington State Department of Ecology. (rev. 2016). *Toxics Cleanup Program Policy 540A: Enforcement orders*. (Ecology Publication No. 16-09-070.) Lacey, WA: Ecology, Toxics Cleanup Program. Retrieved from: <https://fortress.wa.gov/ecy/publications/SummaryPages/1609070.html>

Attachment A

**Agreed Order Boilerplate
and
Example Scope of Work and Schedule**

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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:

[Name of Subject PLP(s)]

[MODEL] AGREED ORDER

No. DE _____

TO: [Name]
[Address]

TABLE OF CONTENTS

I. INTRODUCTION.....2

II. JURISDICTION.....2

III. PARTIES BOUND.....2

IV. DEFINITIONS.....2

V. FINDINGS OF FACT.....3

VI. ECOLOGY DETERMINATIONS.....4

VII. WORK TO BE PERFORMED.....5

VIII. TERMS AND CONDITIONS.....8

 A. Payment of Remedial Action Costs.....8

 B. Designated Project Coordinators.....9

 C. Performance.....10

 D. Access.....10

 E. Sampling, Data Submittal, and Availability.....11

 F. Public Participation.....12

 G. Retention of Records.....13

 H. Resolution of Disputes.....14

 I. Extension of Schedule.....15

 J. Amendment of Order.....16

 K. Endangerment.....17

 L. Reservation of Rights.....18

 M. Transfer of Interest in Property.....18

 N. Compliance with Applicable Laws.....19

 O. Land Use Restrictions.....21

 P. Financial Assurances.....22

 Q. Periodic Review.....23

 R. Indemnification.....23

IX. SATISFACTION OF ORDER.....24

X. ENFORCEMENT.....24

EXHIBIT A Site Location Diagram
EXHIBIT B [List all exhibits]

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and [Subject PLP(s)] 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 [Subject PLP(s)] to [briefly describe actions required by Order]. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

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

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. [Subject PLP(s)] agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter [Subject PLP(s)]'s responsibility under this Order. [Subject PLP(s)] 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 (include where the Site might include sediments)] and WAC 173-340 shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as [Site name]. The Site constitutes a facility under RCW 70.105D.020(8). The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located. Based upon factors currently known to Ecology, the Site is

generally located at [street address or general location] as shown in the Site Location Diagram (Exhibit A).

B. Parties: Refers to the State of Washington, Department of Ecology and [name all PLP(s) subject to the AO].

C. Potentially Liable Persons (PLP(s)): Refers to [name all PLP(s) identified by Ecology].

D. Subject PLP(s): Refers to PLP(s) subject to this Order. [Use this definition and phrase only where there are multiple PLPs at the Site, and not every named PLP is subject to the AO. Where all named PLP(s) are subject to the AO, delete this definition and refer throughout the AO to “PLP(s)”.]

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.

F. [Other definitions as applicable.]

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by [Subject PLP(s)]:

A. [State all necessary facts in lettered paragraphs. These facts should be sufficient to show that there has been a release or threatened release of a hazardous substance at a facility that presents a threat to human health or the environment, and that remedial action is thereby required. The Site should be clearly identified. State all known information that defines the extent of contamination and therefore the extent of the Site. The facts supporting the status of the Subject PLP(s) as an owner, operator, generator, etc., should be stated as well. Include a description of independent remedial actions if they are to be included in this AO for remedial action grant purposes. This section should not be used as an opportunity to advocate for a particular legal or factual position for related contribution actions. Be sure to properly use the terms “property” and “Site” in order to avoid using them interchangeably.]

B.

- C.
- D.
- E. [Etc.]

VI. ECOLOGY DETERMINATIONS

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

A. [State liability determination, e.g., [Subject 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). Include all bases for liability, such as “transporter”, etc. Repeat section A., B., and C. for each Subject PLP.].

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 [Subject PLP] dated [date], pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. [Select one of the following two options: [1] After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that [Subject PLP] is a PLP under RCW 70.105D.040 and notified [Subject PLP] of this determination by letter dated [date]; or [2] By letter dated [date], [Subject PLP] voluntarily waived its rights to notice and comment and accepted Ecology’s determination that [Subject PLP] is a PLP under RCW 70.105D.040.]

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

E. [Include this paragraph if an interim action is currently not required at the Site: Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan. Either party may propose an interim action under this Order. If the Parties are in agreement concerning the interim action, the Parties will follow the process in Section VII.D. If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70.105D, or to undertake the interim action itself.]

[Include this paragraph if an interim action is currently required at the Site: Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan. [Describe circumstances at the Site needing to be addressed by an interim action.] Based on these circumstances, Ecology has determined that an interim action is warranted under WAC 173-340-430. Either party may propose an additional interim action under this Order. If the Parties are in agreement concerning the additional interim action, the Parties will follow the process in Section VII.D. If the Parties are not in agreement, Ecology reserves its authority to require additional interim action(s) under a separate order or other enforcement action under RCW 70.105D, or to undertake the interim action(s) itself.]

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that [Subject PLP(s)] take the following remedial actions at the Site. [Include the following if the AO

requires implementation of a CAP: The area within the Site where remedial action is necessary under RCW 70.105D is described in the Remedial Action Location Diagram (Exhibit B).] These remedial actions must be conducted in accordance with WAC 173-340 [and 173-204 (where the Site might include sediments)]:

A. [Set forth scope of work and schedule. Preferred method is to cross-reference to a scope of work exhibit rather than repeat the information, using language in this paragraph such as “[Subject PLP(s)] will [describe work: e.g., “complete a Remedial Investigation/Feasibility Study and submit an Ecology Review preliminary draft Cleanup Action Plan for the Site”] in accordance with the schedule and terms of the Scope of Work and Schedule, Exhibit ____, and all other requirements of this Order.” The following naming conventions shall be used for documents: Agency Review Draft (designation for the first time Ecology receives a document); Public Review Draft (designates a document ready for public comment); Final (designation for a document after public comment and Ecology approval); and the preliminary Draft Cleanup Action Plan (designation for the Subject PLP(s)’s version of the DCAP).]

B. [Optional provision for progress reports: [Subject PLP(s)] shall submit to Ecology written [monthly, quarterly, etc.] Progress Reports that describe the actions taken during the previous [month, quarter, etc.] to implement the requirements of this Order. All Progress Reports shall be submitted by the tenth (10th) day of the month in which they are due after the effective date of this Order. Unless otherwise specified by Ecology, Progress Reports and any other documents submitted pursuant to this Order shall be sent by certified mail, return receipt requested, to Ecology’s project coordinator. The Progress Reports shall include the following:

- a. A list of on-site activities that have taken place during the [month, quarter, etc.];
- b. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests;
- c. Description of all deviations from the Scope of Work and Schedule (Exhibit ____) during the current [month, quarter, etc.] and any planned deviations in the upcoming [month, quarter, etc.];

- d. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule;
 - e. All raw data (including laboratory analyses) received by [Subject PLP(s)] during the past [month, quarter, etc.] and an identification of the source of the sample; and
 - f. A list of deliverables for the upcoming [month, quarter, etc.] if different from the schedule.]
- C. All plans or other deliverables submitted by [Subject PLP(s)] for Ecology's review and approval under the Scope of Work and Schedule (Exhibit ___) shall, upon Ecology's approval, become integral and enforceable parts of this Order.
- D. If the Parties agree on an interim action under Section VI.E, [Subject PLP(s)] shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). The [Subject PLP(s)] shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and [Subject PLP(s)] is required to conduct the interim action in accordance with the approved Interim Action Work Plan.
- E. If Ecology determines that [Subject PLP(s)] has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to [Subject PLP(s)], perform any or all portions of the remedial action or at Ecology's discretion allow the [Subject PLP(s)] opportunity to correct. [Subject PLP(s)] 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).
- F. Except where necessary to abate an emergency situation, [Subject PLP(s)] shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

G. [Include the following when the local government requests, and Ecology agrees, that retroactive costs for the remedial actions conducted prior to the effective date of the Order are eligible for remedial action grant funding: Ecology hereby incorporates into this Order the previous remedial actions described in Section V, Findings of Fact. Reimbursement for specific project tasks under a grant agreement with Ecology is contingent upon a determination by Ecology's Toxics Cleanup Program that the retroactive costs are eligible under WAC 173-332A-320(6), the work performed complies with the substantive requirements of WAC 173-340, and the work is consistent with the remedial actions required under this Order. The costs associated with Ecology's determination on the past independent remedial actions described in Section V, Findings of Fact, are recoverable under this Order.]

VIII. TERMS AND CONDITIONS

A. Payment of Remedial Action Costs

[Subject PLP(s)] 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). [Include the following when Ecology has not previously billed the PLP for this Site: Ecology has accumulated [\$ amount provided by TCP Cost Recovery Coordinator] in remedial action costs related to this Site as of [insert date provided by TCP Cost Recovery Coordinator. NOTE: The date specified by the TCP Cost Recovery Coordinator will be the end of the last quarter, and the amount specified will be the amount as of the end of the last quarter. For costs incurred before this date, Ecology will send the Subject PLP(s) an invoice soon after the Order is signed. For costs incurred after this date, Ecology will send the Subject PLP(s) an invoice quarterly.] For all Ecology costs incurred, [Subject PLP(s)] shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of

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

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

B. Designated Project Coordinators

The project coordinator for Ecology is:

[Name]
[Address]
[Telephone]
[Email]

The project coordinator for [Subject PLP(s)] is:

[Name]
[Address]
[Telephone]
[Email]

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

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

C. Performance

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

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

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

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

[Subject PLP(s)] 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 [Subject PLP(s)] 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 [Subject PLP(s)]'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 [Subject PLP(s)]. [Subject PLP(s)] shall make all reasonable efforts to

secure access rights for those properties within the Site not owned or controlled by [Subject PLP(s)] 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 [Subject PLP(s)] 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, [Subject PLP(s)] 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, [Subject PLP(s)] shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by [Subject PLP(s)] pursuant to implementation of this Order. [Subject PLP(s)] shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow [Subject PLP(s)] and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.D (Access), Ecology shall notify [Subject PLP(s)] prior to any sample collection activity unless an emergency prevents such notice.

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

F. Public Participation

[Include this paragraph only if the Agreed Order is going out for concurrent public notice (i.e., the Order has been signed by both the Subject PLP(s) and Ecology before the public notice begins): 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, [Subject PLP(s)] shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing lists and prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. Likewise, Ecology shall notify [Subject PLP(s)] 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 [Subject PLP(s)] that do not receive prior Ecology approval, [Subject PLP(s)] 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. [Location]
[Address of location]
- b. Ecology's [region] Regional Office
[Address of regional office]

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 [region] Regional Office in [city of regional office], Washington.

G. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, [Subject PLP(s)] shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, [Subject PLP(s)] 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 [Subject PLP(s)] may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If [Subject PLP(s)] withholds any requested records based on an assertion of privilege, [Subject PLP(s)] 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 [Subject PLP(s)] elects to invoke dispute resolution [Subject PLP(s)] 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), [Subject PLP(s)] has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision (Informal Dispute Decision) stating: the nature of the dispute; the [Subject PLP(s)'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. [Subject PLP(s)] may then request regional management review of the dispute. This request (Formal Dispute Notice) must be submitted in writing to the [region] Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

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

2. The Parties 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.E (Work to be Performed) or initiating enforcement under Section X (Enforcement).

I. Extension of Schedule

1. [Subject PLP(s)] request for an extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (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; and
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on [Subject PLP(s)] 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 [Subject PLP(s)] 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 [Subject PLP(s)];

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

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 [Subject PLP(s)].

3. Ecology shall act upon any [Subject PLP(s)'s] written request for extension in a timely fashion. Ecology shall give [Subject PLP(s)] 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 [Subject PLP(s)'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 ninety (90) days only as a result of:

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

b. Other circumstances deemed exceptional or extraordinary by Ecology; or

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 seven (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 [Subject PLP(s)]. 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, [Subject PLP(s)] 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 [Subject PLP(s)] to cease such activities for such period of time as it deems necessary to abate the danger. [Subject PLP(s)] shall immediately comply with such direction.

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

If Ecology concurs with or orders a work stoppage pursuant to this section, [Subject PLP(s)]'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 [Subject PLP(s)] to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against [Subject PLP(s)] regarding remedial actions required by this Order, provided [Subject PLP(s)] 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, [Subject PLP(s)] does not admit to any liability for the Site. Although [Subject PLP(s)] is committing to conducting the work required by this Order under the terms of this Order, [Subject PLP(s)] 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 [Subject PLP(s)] 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 [Subject PLP(s)]'s transfer of any interest in all or any portion of the Site, and during the effective period of this Order, [Subject PLP(s)] shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at

least thirty (30) days prior to any transfer, [Subject PLP(s)] shall notify Ecology of said transfer. Upon transfer of any interest, [Subject PLP(s)] 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

[Ecology makes the final determination on whether applicable permit or substantive requirements are “legally applicable” or “relevant and appropriate” under WAC 173-340-710(2). Seek AAG assistance for help as needed to make this determination.]

1. All actions carried out by [Subject PLP(s)] 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. [Insert Option A: At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order; or Option B: The permits or specific federal, state, or local requirements that the agency has determined are applicable and that are known at the time of the execution of this Order have been identified in Exhibit ____.] [Subject PLP(s)] 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 [Subject PLP(s)], 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. All actions carried out by [Subject PLP(s)] pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. [Insert Option A: At this time, no relevant and appropriate requirements have been identified as being applicable to the actions required by this Order; or Option B: The relevant and appropriate requirements that Ecology has determined apply have been identified in Exhibit ____.] If additional relevant and appropriate requirements are identified by Ecology or the [Subject PLP(s)], 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), [Subject PLP(s)] 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, [Subject PLP(s)] 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. [Insert Option A: At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section; or Option B: The exempt permits or approvals and the applicable substantive requirements of those permits or approvals, as they are known at the time of the execution of this Order, have been identified in Exhibit ____.]

4. [Subject PLP(s)] 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 [Subject PLP(s)] 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 [Subject PLP(s)] shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, [Subject PLP(s)] 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 [Subject PLP(s)] and on how [Subject PLP(s)] must meet those requirements. Ecology shall inform [Subject PLP(s)] in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable

requirements of this Order. [Subject PLP(s)] 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 [Subject PLP(s)] 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. Land Use Restrictions

[Add this section only if the Agreed Order requires implementation of an interim action or cleanup action that requires institutional controls under WAC 173-340-440. Use the following if an Environmental (Restrictive) Covenant will be used to implement the institutional controls. If a property at the Site meets the criteria of WAC 173-340-440(8)(b) or (c), Ecology may approve the use of an administrative mechanism other than an Environmental (Restrictive) Covenant to implement institutional controls on the property. Seek advice from your AAG for this situation. This section would then be revised to describe the property using the alternative mechanism and that process.]

As detailed in the [Interim Action Work Plan or Cleanup Action Plan], institutional controls are required at the Site. Environmental (Restrictive) Covenants will be used to implement the institutional controls. In consultation with [Subject PLP(s)], Ecology will prepare the Environmental (Restrictive) Covenants consistent with WAC 173-340-440, RCW 64.70, and any policies or procedures specified by Ecology. The Environmental (Restrictive) Covenants shall restrict future activities and uses of the Site as agreed to by Ecology and [Subject PLP(s)].

After approval by Ecology, [Subject PLP(s)] shall record the Environmental (Restrictive) Covenant for affected properties it owns with the office of the [] County Auditor as detailed in the Schedule (Exhibit []). [Subject PLP(s)] shall provide Ecology with the original recorded Environmental (Restrictive) Covenants within thirty (30) days of the recording date.

[Use where the remedy requires an environmental covenant on property not owned by the Subject PLP(s).] As detailed in the [Interim Action Work Plan or Cleanup Action Plan], as part of the remedial action for the Site, institutional controls are required on properties not owned by [Subject PLP(s)]. [Subject PLP(s)] will ensure that the owner of each affected property records an Ecology-approved Environmental (Restrictive) Covenant as detailed in the Schedule (Exhibit []). Upon a showing that [Subject PLP(s)] has made a good faith effort to secure an Environmental (Restrictive) Covenant for an affected property and failed to do so, Ecology may provide assistance to [Subject PLP(s)]. Unless Ecology determines otherwise, affected properties include [addresses or parcel numbers]. [Subject PLP(s)] shall provide Ecology with the original recorded Environmental (Restrictive) Covenants within thirty (30) days of the recording date.

P. Financial Assurances

[Add this section only if the Agreed Order requires implementation of a cleanup action that includes engineered and/or institutional controls that require financial assurances under WAC 173-340-440(11). Tailor section accordingly.]

Pursuant to WAC 173-340-440(11), [Subject PLP(s)] shall maintain sufficient and adequate financial assurance mechanisms to cover all costs associated with the operation and maintenance of the remedial action at the Site, including institutional controls, compliance monitoring, and corrective measures.

Within sixty (60) days of the effective date of this Order, [Subject PLP(s)] shall submit to Ecology for review and approval an estimate of the costs under this Order for operation and maintenance of the remedial actions at the Site, including institutional controls, compliance monitoring and corrective measures. Within sixty (60) days after Ecology approves the aforementioned cost estimate, [Subject PLP(s)] shall provide proof of financial assurances sufficient to cover all such costs in a form acceptable to Ecology.

[Subject PLP(s)] shall adjust the financial assurance coverage and provide Ecology's project coordinator with documentation of the updated financial assurance for:

1. Inflation, annually, within thirty (30) days of the anniversary date of the entry of this Order; or if applicable, the modified anniversary date established in accordance with this section, or if applicable, ninety (90) days after the close of [Subject PLP(s)]'s fiscal year if the financial test or corporate guarantee is used.

2. Changes in cost estimates, within thirty (30) days of issuance of Ecology's approval of a modification or revision to the cleanup action plan (CAP) that result in increases to the cost or expected duration of remedial actions. Any adjustments for inflation since the most recent preceding anniversary date shall be made concurrent with adjustments for changes in cost estimates. The issuance of Ecology's approval of a revised or modified CAP will revise the anniversary date established under this section to become the date of issuance of such revised or modified CAP.

Q. Periodic Review

[Add this section only if the Agreed Order requires implementation of a cleanup action that requires a periodic review under WAC 173-340-420(2).]

As remedial action, including groundwater monitoring, continues at the Site, the Parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of monitoring the Site as often as is necessary and appropriate under the circumstances. At least every five (5) years after the initiation of cleanup action at the Site the Parties shall meet to discuss the status of the Site and the need, if any, for further remedial action at the Site.

[Include the following requirement, as appropriate: At least ninety (90) days prior to each periodic review, [Subject PLP(s)] shall submit a report to Ecology that documents whether human health and the environment are being protected based on the factors set forth in WAC 173-340-420(4).] Ecology reserves the right to require further remedial action at the Site under appropriate circumstances. This provision shall remain in effect for the duration of this Order.

R. Indemnification

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

X. ENFORCEMENT

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

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

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

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

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

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

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

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

Effective date of this Order: _____

[NAME OF Subject PLP(s)]

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

[NAME OF SIGNATORY]
[Title of signatory]
[Location]
[Telephone]

[NAME OF SIGNATORY]
Section Manager
Toxics Cleanup Program
[Region] Regional Office
[Telephone]

EXHIBIT B – [EXAMPLE] SCOPE OF WORK (SOW) AND SCHEDULE

SCOPE OF WORK

[This is an example of a SOW and Schedule for a fairly complex site with an upland and sediment component. Your SOW and Schedule may vary in the details and activities required.]

PURPOSE

The work under this Agreed Order (AO) involves conducting a [optional Data Summary Report,] Remedial Investigation (RI) and Feasibility Study (FS), conducting interim actions if required or agreed to by Ecology, and preparing a preliminary Draft Cleanup Action Plan (DCAP) to select a cleanup alternative. The purpose of the RI, FS, and preliminary DCAP for the Site is to provide sufficient data, analysis, and evaluations to enable Ecology to select a cleanup alternative for the Site.

The [Subject PLP(s)] shall coordinate with Ecology throughout the development of the [optional Data Summary Report,] Interim Action, RI/FS and preliminary DCAP and shall keep Ecology informed of changes to any Work Plan or other project plans, and of any issues or problems as they develop.

The SOW is divided into eight major tasks as follows:

- Task 1. [optional Data Summary Report]
- Task 2. RI Work Plan
- Task 3. Remedial Investigation
- Task 4. Interim Action(s) (if required)
- Task 5. Feasibility Study
- Task 6. SEPA Compliance
- Task 7. Public Participation
- Task 8. DCAP

[The use of a Data Summary Report is optional. It may be helpful when a Site has had significant investigation, independent remedial actions, or actions conducted under the VCP.]

TASK 1. DATA SUMMARY REPORT

The [Subject PLP(s)] shall prepare a Data Summary Report that describes general facility information, history and conditions, past investigations including data collection and results, preliminary conceptual contaminant migration pathways, ecological receptors, hazardous

Exhibit B Scope of Work

substances sources etc. The Data Summary Report will include data in tabular and figure form, and will indicate exceedances of industrial and residential screening levels.

TASK 2. RI WORK PLAN

The [Subject PLP(s)] shall prepare a Remedial Investigation Work Plan (Work Plan). The Work Plan shall include an overall description and schedule of all RI activities. The 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 Planning Meeting is to review requirements for the Work Plan and plan Remedial Investigation field work, discuss the preliminary Conceptual Site Model, and identify project data needs and possible interim actions.

The Work Plan shall describe general facility information; site history and conditions; including previous operations; past field investigations, including any data collection and analysis of soils, air, groundwater, surface water, and sediments; a conceptual site model showing contaminants, migration pathways in all 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 site 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 Work Plan will also identify specific data collection procedures in a Sampling and Analysis Plan (SAP) and Quality Assurance Project Plan (QAPP) as part of the Work Plan in compliance with WAC 173-340-820 and WAC 173-204-600 for defining the nature and extent of contamination. The [Subject PLP(s)] will also submit a copy of the Health and Safety Plan (HASP) for the project.

The SAP identifies the proposed number and location of all environmental samples and methods, including soil borings, groundwater monitoring wells, soil, groundwater, stormwater, seep, catch basin and sediment samples, approximate depths, and includes a quality assurance project plan. 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 Quality Assurance Project Plan (QAPP) will be prepared in accordance with the Guidance for Preparation of Quality Assurance Project Plans, EPA Region 10, Quality

Exhibit B Scope of Work

Data Management Program, QA/R-5 and requirements of the EPA Contract Laboratory Program. The QAPP will also follow Ecology's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies (July 2004) ¹and Sediment Sampling and Analysis Plan Appendix (February 2008).² Laboratories must meet the accreditation standards established in WAC 173-50. Data quality objectives will reflect the criteria or threshold values used for the source control evaluation.

The SAP, including the 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 plan shall provide seven (7) days notice to Ecology prior to beginning sampling. Ecology may obtain split samples.

The [Subject PLP(s)] or their contractors shall submit all new sampling data generated under this SAP 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. Only validated data will be entered into the EIM database within 30 days of submittal.

RI Work Plan tasks and subtasks will include the following:

- Sampling and analysis of soil, groundwater, and seeps;
- Sampling and analysis of surface and subsurface sediments;
- Sampling and analysis of stormwater and catch basin solids to determine whether the stormwater system is a source of contamination to sediments;
- Evaluate the potential to contaminate or recontaminate sediments, including analysis of the following pathways:
 - Direct discharges
 - Stormwater discharges
 - Overland flow
 - Groundwater discharges and seeps
 - Soil erosion
 - Site operations
 - Spills, dumping, leaks, housekeeping, and management practices;

The [Subject PLP(s)] will provide Ecology with an Agency Review Draft Work Plan. Once Ecology reviews and approves the Work Plan, it will be considered the Final Work Plan. The Work Plan shall not be implemented until approved by Ecology. Once approved by Ecology, the [Subject PLP(s)] will implement the Final Work Plan according to the schedule contained in this Exhibit.

¹ Found at <http://www.ecy.wa.gov/biblio/0403030.html>

² Found at <http://www.ecy.wa.gov/biblio/qapp.html>

Exhibit B Scope of Work

The [Subject PLP(s)] shall prepare two (2) 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 Work Plan and after Ecology approval, the [Subject PLP(s)] shall prepare three (3) copies of the Final Work Plan and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology.

TASK 3. REMEDIAL INVESTIGATION

The [Subject PLP(s)] shall conduct an RI that meets the requirements of WAC 173-340-350(7) and WAC 173-204-560 according to the Work Plan as approved by Ecology. The RI will determine the nature and extent of contamination exceeding preliminary Model Toxics Control Act (MTCA) cleanup levels, preliminary Sediment Management Standards (SMS) cleanup standards, and other 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. Deviation(s) from the approved SAP and QAPP must be communicated to Ecology immediately and documented as required by Ecology.

The [Subject PLP(s)] 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.

Prior to submittal of the Agency Review Draft RI Report, a Key Project Meeting will be held. During the Remedial Investigation Pre-Report Check-In, Ecology and the [Subject PLP(s)] will review available data and an updated conceptual site model and discuss the content and organization of the Draft RI Report.

The [Subject PLP(s)] shall compile the results of the Site investigation into an Agency Review Draft RI Report. The [Subject PLP(s)] shall prepare two (2) copies of the Agency Review Draft RI Report 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 Report, the [Subject PLP(s)] shall prepare three (3) copies of a Public Review Draft RI Report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment. Electronic survey data for monitoring locations, electronic lab data, and GIS maps of contaminant distribution shall also be provided for both the Agency Review Draft RI Report and Public Review Draft RI Reports either in the report or as attachments. The RI Report will not be considered Final until after a public review and comment period.

Exhibit B Scope of Work

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

TASK 4. INTERIM ACTIONS (if required)

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, will be implemented in accordance with WAC 173-340-430 and the AO, and will be designed in a manner that will not foreclose reasonable alternatives for any final cleanup action that may be required. Remedial actions for contaminated sediments will be designated partial cleanup actions and will be implemented pursuant to WAC 173-204-550(3)(d).

As detailed in the AO, if required by Ecology, or if proposed by the [Subject PLP(s)] and approved by Ecology, the [Subject PLP(s)] will implement an interim action. Based upon information in the Agency Review Draft RI Report, interim action(s) may be needed to expedite control of releases to sediments or other environmental media pursuant to WAC 173-340-430.

The scope of the interim actions may include, but not be limited to, typical source control or containment elements such as:

- Soil or sediment removal
- Groundwater remediation
- Repair, slip lining, replacement, or closure of stormwater conveyances or other structures such as conduit, vaults, catch basins, etc.
- Removal of underground storage tanks and pipes
- Removal of old drain fields or former surface impoundments
- Proper abandonment of old wells
- Removal of contaminated building or other structural material
- Construction of a treatment facility
- Shoreline stabilization such as bulkhead repair, erosion or seepage control, and grading or clearing.

If an interim action is to be performed, the [Subject PLP(s)] will prepare and submit for Ecology approval an Agency Review Draft Interim Action Work Plan (IAWP) with detail

Exhibit B Scope of Work

commensurate with the work to be performed. The Agency Review Draft IAWP shall include, as appropriate:

- Description of the interim action including its purpose, general requirements, and relationship to the (final) cleanup action (to the extent known);
- Summary of relevant RI/FS information, including at a minimum existing site conditions and alternative interim actions considered;
- Information regarding design and construction requirements, including a proposed schedule and personnel roles and responsibilities;
- Compliance Monitoring Plan;
- SAP/QAPP
- Permits required.

The [Subject PLP(s)] will also submit a copy of the Health and Safety Plan for the project. The [Subject PLP(s)] will be responsible for complying with the State Environmental Policy Act (SEPA) Rules including preparing and submitting an environmental checklist for the interim action, and will assist Ecology with presentations at any additional meetings or hearings that might be necessary for SEPA compliance or as part of the Public Participation Plan.

The [Subject PLP(s)] shall prepare two (2) copies of the Agency Review Draft Interim Action Work Plan and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review. The [Subject PLP(s)] shall incorporate Ecology's comments and then prepare two (2) copies of the Public Review Draft Interim Action Work Plan and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology. After a public notice and comment period for the Public Review Draft IAWP (and SEPA determination), Ecology will approve the IAWP (if appropriate) and the document will be considered Final. The [Subject PLP(s)] shall prepare three (3) copies of the Final Interim Action Work Plan submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats. Once approved by Ecology, the [Subject PLP(s)] will implement the interim action according with the approved schedule.

Upon successful completion of the work, an Agency Review Draft Interim Action Report will be prepared as a separate deliverable. The [Subject PLP(s)] shall prepare two (2) copies of the Agency Review Draft Interim Action Report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and approval. After incorporating Ecology's comments on the Agency Review Draft Interim Action Report and after Ecology approval, the [Subject PLP(s)] shall prepare three (3) copies of the Final Interim Action Report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology.

TASK 5. FEASIBILITY STUDY

The [Subject PLP(s)] 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-

Exhibit B Scope of Work

340-350(8) according to the Schedule in this exhibit. The Agency Review Draft FS will evaluate remedial alternatives for site cleanup, 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.

Prior to beginning the FS, a Key Project Meeting will be held to review ARARs, potential remedial alternatives and 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 Report.

The [Subject PLP(s)] shall prepare two (2) copies of the Agency Review Draft 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 FS, the [Subject PLP(s)] shall prepare three (3) copies of the Public Review Draft FS and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment. The FS will not be considered Final until after a public review and comment period.

TASK 6. SEPA COMPLIANCE

Exhibit B Scope of Work

The [Subject PLP(s)] shall be responsible for complying with the State Environmental Policy Act (SEPA) Rules including preparing and submitting an environmental checklist. If the result of the threshold determination is a determination of significance (DS), the [Subject PLP(s)] shall be responsible for the preparation of Draft and final environmental impact statements. The [Subject PLP(s)]s shall assist Ecology with coordinating SEPA public involvement requirements with MTCA public involvement requirements whenever possible, such that public comment periods and meetings or hearings can be held concurrently.

TASK 7. PUBLIC PARTICIPATION

The [Subject PLP(s)] shall support Ecology in presenting the Public Review Draft RI Report and the Public Review Draft FS Reports and SEPA evaluations at one public meeting or hearing. The [Subject PLP(s)] will assist Ecology with presentations at any additional meetings or hearings that might be necessary for SEPA compliance or as part of the Public Participation Plan.

After the public comment periods are completed, the [Subject PLP(s)] shall prepare a Agency Review Draft Responsiveness Summary that addresses public comments. The [Subject PLP(s)] shall prepare two (2) 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, to Ecology for distribution and public comment.

After addressing Ecology's comments and after Ecology approval, the [Subject PLP(s)] shall prepare five (5) 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.

TASK 8. PRELIMINARY DRAFT CLEANUP ACTION PLAN

Upon Ecology approval of the Public Review Draft Remedial Investigation Report and Public Review Draft Feasibility Study, 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 Agency Review preliminary Draft Cleanup Action Plan (DCAP).

The [Subject PLP(s)] shall prepare an Agency Review preliminary DCAP in accordance with WAC 173-340-380 that provides a proposed remedial 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 remedial actions, 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.

Exhibit B Scope of Work

The [Subject PLP(s)] will submit an Agency Review preliminary DCAP for Ecology's review and approval. The Agency Review preliminary DCAP will include, but not be limited to, the information listed under WAC 173-340-380. The [Subject PLP(s)] shall prepare two (2) copies of the Agency Review 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 Agency Review preliminary DCAP, if any, the [Subject PLP(s)] shall revise the preliminary DCAP to address Ecology's comments and submit five (5) copies of the Public Review DCAP including one electronic copy each in Word (.doc) and Adobe (.pdf) formats.

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 [Subject PLP(s)] 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.

RI/FS Deliverables	Completion Times
Data Summary Report	30 calendar days following the effective date of the Agreed Order
Agency Review Draft RI Work Plan	60 calendar days following effective date of the Agreed Order
Completion of RI Field Work	12 months following completion of the Final SAP, QAPP and HSP
Agency Review Draft RI Report	90 days following receipt of laboratory data
Public Review Draft RI Report	45 calendar days following receipt of Ecology comments on Agency Review Draft RI Report
Agency Review Draft FS	90 days following completion of Public Review Draft RI Report
Public Review Draft FS	45 calendar days following receipt of Ecology's comments on the Agency Review draft FS
Agency Review preliminary Draft Cleanup Action Plan (DCAP)	90 calendar days following completion of the Public Review Draft FS

Attachment B

Expectations Letter Template and General Standards of Work

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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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[DATE]

[PLP SIGNATORY]
[PLP COMPANY]
[STREET ADDRESS]
[CITY, STATE] [POSTAL CODE]

Re: Expectations for Working Together to Clean Up the following Contaminated Site:

- **Site Name:** [CLEANUP SITE NAME]
- **Site Address:** [CLEANUP SITE ADDRESS]
- **Cleanup Site ID:** [CLEANUP SITE NUMBER]
- **Facility/Site ID:** [FACILITY/SITE NUMBER]

Dear [PLP SIGNATORY]:

Welcome and thank you for agreeing to work with the Department of Ecology's Toxics Cleanup Program to clean up the [SITE NAME] site (Site). The purpose of this letter is to share our expectations for the cleanup process, and to commit to working collaboratively with you.

Ecology is committed to a clean, healthy, and sustainable environment that supports livable communities and a vibrant economy. Cleaning up and restoring this site helps to achieve that goal. With collaboration and a good working relationship, I believe we can make the cleanup process more efficient, timely, and effective.

The Site is located within our [REGION] region. This region is managed by [SECTION MANAGER NAME]. Your Ecology Cleanup Project Manager is [CPM NAME]. They will be your main point of contact and an active participant in the cleanup project.

Expectations

We have enclosed General Standards of Work for managing cleanup projects. Each site is unique, so these standards should complement the professional judgment of your consultants.

At the start of this project, we will negotiate an agreed order or consent decree. This legal agreement will set a schedule of meetings and a timeline for you to submit key documents. We

[ADDRESSEE]

[DATE]

Page 2

expect you and your consultant to work with Ecology staff and promptly resolve technical issues. We also expect decision makers to participate in the key project meetings described below.

Ecology's goal is to review documents and respond to you within 45 calendar days of receiving them. If we cannot meet this goal, we will let you know when we expect to respond. Good communication and regular meetings will help us prepare to review your documents.

Key Project Meetings

The schedule will list at least five specific project meetings that usually precede key deliverables:

1. **The Cleanup Project Kickoff Meeting** will happen at the start of the project. The purpose is to review site history, identify data gaps, begin planning for public participation, and set the tone for good communication.
2. **The Remedial Investigation Planning Meeting** will happen before you submit the remedial investigation work plan to us for review. Topics include data collection, data needs, and environmental review requirements.
3. **The Remedial Investigation Pre-Report Check-In** will happen before you submit the remedial investigation report to us for review. The purpose is to discuss the contents of the remedial investigation report.
4. **The Feasibility Study Planning Meeting** may be combined with the third meeting. The purpose is to discuss the contents of the feasibility study.
5. **The Cleanup Action Plan Meeting** will happen before preparing the draft cleanup action plan. The purpose is to discuss the remedial investigation and feasibility study, how to choose a cleanup action and develop the cleanup action plan, and any institutional controls.

We look forward to working with you to protect Washington's people and environment in a way that improves the quality of life for all of us.

Sincerely,



James J. Pendowski, Program Manager
Toxics Cleanup Program

Enclosure (1) [ENCLOSE ATTACHED GENERAL STANDARDS OF WORK]

cc: Andy Fitz, Office of the Attorney General
Ecology Site File

[ADDRESSEE]

[DATE]

Page 3

[UPON MAILING LETTER, SECTION ADMINISTRATIVE ASSISTANT:

1. CONVERTS TO PDF AND UPLOADS INTO DSARS.
2. EMAILS DSARS LINK TO SECTION MANAGER, COMMUNICATIONS MANAGER, AND CLEANUP PROJECT MANAGER.
3. SENDS COPY TO SECTION RECORDS MANAGER FOR FILING.]



DEPARTMENT OF
ECOLOGY
State of Washington

Toxics Cleanup Program

General Standards of Work for Formal Cleanup Sites

These General Standards of Work established by the Washington Department of Ecology Toxics Cleanup Program apply to formal cleanup sites where Ecology is the lead agency. Ecology intends that wherever possible the first phase of the cleanup, completing the Remedial Investigation and Feasibility Study (RI/FS), should take no longer than two (2) years. Ecology intends that wherever possible the second phase, completing the Final Cleanup Action Plan, Engineering Design Report, and remedy construction, should take no longer than three (3) years.

Ecology expects that the RI/FS will be conducted under an Agreed Order and the cleanup will be conducted under an Agreed Order or Consent Decree.

Communications

- Ecology and potentially liable persons (PLPs) will together identify stakeholders, local governments, and Tribes and plan for their involvement as appropriate.
- Clear expectations around communications will be established at the start of the project.
- Ecology requires that PLPs select a single point of contact (POC) to lead communications with Ecology. The POC will keep all PLPs informed of site discussions, changes, activities, etc., and will solicit and facilitate input to Ecology.
- Ecology will schedule the following key project meetings at specific points during the project (identified in the Scope of Work). Meeting checklists will be used by the Ecology Cleanup Project Manager (CPM) for creating agendas.
 - Cleanup Project Kickoff Meeting.
 - Remedial Investigation Planning Meeting.
 - Remedial Investigation Pre-Report Check-In.
 - Feasibility Study Planning Meeting.
 - Cleanup Action Plan Meeting.

Project Documents

- The Ecology CPM will review key documents (RI Work Plan; RI/FS Report; etc.) within 45 days of receipt.
- Key documents will be reviewed by Ecology for:
 - Technical accuracy, objectivity, completeness, and clarity.
 - Compliance with the order or decree, MTCA, and other applicable regulations.
- Once tasks required by the Agreed Order are complete, Ecology will issue a letter documenting that requirements of the Agreed Order have been satisfied.

Data Collection

- As time allows and during significant events, the Ecology CPM will participate in field activities so that decisions are made in real time, with observations and discussion through the POC.
- Where appropriate, expedited site assessment techniques should be used to characterize the nature and extent of contamination (for example, source areas and down-gradient plume boundaries).

This includes:

- Existing information from previous site investigations; other nearby sites; and regional soil, geologic, and groundwater studies.
 - Field screening instruments (where possible).
 - Direct-push technology to sample soil and groundwater (as geologic conditions permit).
 - On-site mobile laboratories or off-site fast-turnaround analyses.
- Frequent and regular data reports will facilitate approval of key project documents (the RI Work Plan, RI/FS Report, etc.) after a single review cycle.
- Data reports should be informal, containing only information necessary for effective discussions between Ecology and the PLP/consultants. Include:
- Figures showing sampling locations and currently known character and extent of contamination.
 - Field observations.
 - Laboratory sheets.
 - Tables of analytical results.
- Discuss data interpretations with Ecology as data sets are completed to facilitate mutual understanding of site conditions and data gaps.
- PLPs are required to submit sampling data into Ecology's Environmental Information Management (EIM) system. This should occur as soon as the data has been validated and accepted by Ecology and before key documents are submitted. Ecology data coordinators will assist as needed.

Remedial Action Grants

- For those projects where state funding is available and will help expedite the process, Ecology will provide Remedial Action Grant Guidelines and application instructions. An Ecology Grant Manager will be available to clarify eligible costs and answer questions.
- At the start of the project, the PLPs, contractors, and Ecology will discuss what can be completed during the current biennium. Estimates of funding needs and a schedule for phased expenditures should be reviewed at key project meetings.

Keeping the Project Moving

- Look for activities where the RI and FS work can be performed concurrently.
- Delays or problems in getting permits should be communicated promptly; Ecology may be able to assist in moving the permit process forward.
- Disagreements about technical matters (site characterization) or financial matters (cost recovery) will be resolved through discussions:
- A meeting will occur within 10 days of being requested by Ecology or the PLPs.
 - If no agreement is reached within 10 days following the meeting, the dispute resolution provisions of the Agreed Order will be followed.
- A new Ecology CPM assigned to a site will take no longer than fifteen (15) working days for the transition. Previously approved and agreed-upon work plans, schedules, reports, and protocols will remain.
- At the end of the RI/FS there will be a debriefing meeting to discuss what went well, what could have gone better, and to acknowledge completion of this phase of project work.

Attachment C

Satisfaction Letter Template: Investigation and Study Phase

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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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[DATE]

[PLP SIGNATORY – SEND TO EACH]
[PLP COMPANY]
[STREET ADDRESS]
[CITY, STATE] [POSTAL CODE]

Re: Satisfaction of Agreed Order No. [] for the following Contaminated Site:

- **Site Name:** [CLEANUP SITE NAME]
- **Site Address:** [CLEANUP SITE ADDRESS]
- **Cleanup Site ID:** [CLEANUP SITE NUMBER]
- **Facility/Site ID:** [FACILITY/SITE NUMBER]

Dear [PLP SIGNATORY]:

Thank you for working with the Washington State Department of Ecology (Ecology) on [CLEANUP SITE NAME] (Site). This letter provides written notification that the [INSERT REMEDIAL ACTIONS, SUCH AS: remedial investigation, feasibility study, interim action] required at the Site by Agreed Order No. [] (Order) under the Model Toxics Control Act (MTCA), Chapter 70.105D RCW, have been satisfactorily completed. The Order became effective on [DATE] and was amended on [DATE]. This letter also describes the next steps for the Site.

Completion of Remedial Actions Required by the Order

Ecology has determined the requirements of the Order have been satisfied. Ecology made this determination pursuant to Section [IX] (Satisfaction of Order).

The remedial actions required by the Order are specified in Section [VII] (Work to Be Performed). [PLP] was required to [INSERT BRIEF DESCRIPTION OF WORK TO BE PERFORMED]. After inspecting the Site and reviewing the supporting documentation, Ecology has determined the remedial actions in Section [VII] have been satisfactorily completed.

Next Steps at the Site

[ADDRESSEE]

[DATE]

Page 2

[ADJUST NEXT STEPS AS NECESSARY BASED ON SITE-SPECIFIC CIRCUMSTANCES]

Ecology [has completed / will complete] a Draft Cleanup Action Plan (DCAP) for the Site. After review and consideration of comments received during the public comment period, Ecology will issue a final Cleanup Action Plan (CAP).

[SELECT ONE OF THE FOLLOWING TWO OPTIONS BASED ON WHO INITIATED NEGOTIATIONS.]

OPTION 1 – IF ECOLOGY INITIATED NEGOTIATIONS:

The CAP will be implemented in [an agreed order / a consent decree]. [INSERT ONE OF THE FOLLOWING TWO SENTENCES BASED ON STATUS OF NEGOTIATIONS: [1] Ecology will be contacting you to enter negotiations for the [agreed order / consent decree], and looks forward to continuing this working relationship. [2] Negotiations for the [agreed order / consent decree] are in progress, and Ecology looks forward to continuing this working relationship.]

OPTION 2 – IF PLP INITIATED NEGOTIATIONS:

The CAP will be implemented in [an agreed order / a consent decree]. [PLP] contacted Ecology to enter negotiations for the [agreed order / consent decree] and Ecology accepted the request. Negotiations are in progress, and Ecology looks forward to continuing this working relationship.

Thank You

Thank you for your efforts toward working to clean up the Site. Should you have any questions, please do not hesitate to contact Ecology's cleanup project manager for this Site, [NAME], at [PHONE NUMBER] or [EMAIL ADDRESS].

Sincerely,

[INSERT ELECTRONIC SIGNATURE AFTER ROUTING TO SECTION MANAGER FOR APPROVAL. USE TIFF IMAGE.]

[NAME]

Section Manager

Toxics Cleanup Program, [REGION]

cc: [OTHER EXTERNAL PERSONS, IF ANY]
[ASSIGNED AAG], Office of the Attorney General
[COST RECOVERY COORDINATOR], Ecology
Ecology Site File

[UPON MAILING LETTER, SECTION ADMINISTRATIVE ASSISTANT:

1. CONVERTS TO PDF AND UPLOADS INTO DSARS.

[ADDRESSEE]

[DATE]

Page 3

2. EMAILS DSARS LINK TO SECTION MANAGER AND CPM.
3. SENDS ONE COPY TO SECTION RECORDS MANAGER FOR FILING.
4. SENDS ONE COPY TO INFO & POLICY SECTION ADMINISTRATIVE ASSISTANT FOR INDEXING AND ROUTING TO COST RECOVERY COORDINATOR.]

Attachment D

Satisfaction Letter Template: Cleanup Phase

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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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[DATE]

[PLP SIGNATORY]
[PLP COMPANY]
[STREET ADDRESS]
[CITY, STATE] [POSTAL CODE]

Re: Satisfaction of [Agreed Order/Consent Decree] No. [NUMBER] and No Further Action at the following Contaminated Site:

- **Site Name:** [CLEANUP SITE NAME]
- **Site Address:** [CLEANUP SITE ADDRESS]
- **Cleanup Site ID:** [CLEANUP SITE NUMBER]
- **Facility/Site ID:** [FACILITY/SITE NUMBER]

Dear [PLP SIGNATORY]:

Thank you for working with the Washington State Department of Ecology (Ecology) on [CLEANUP SITE NAME] (Site). This letter provides written notification that the remedial actions required by [Agreed Order/Consent Decree] No. [NUMBER] ([Order/Decree]) have been satisfactorily completed and that no further remedial action is necessary to clean up contamination at the Site under the Model Toxics Control Act (MTCA), Chapter 70.105D RCW. This letter also describes the removal of the Site from Ecology's Hazardous Sites List [and next steps for dismissing the Decree]. The [Order/Decree] became effective on [DATE] [and was amended on [DATE]].

Satisfaction of [Order/Decree]

Ecology has determined the requirements of the [Order/Decree] have been satisfied. Ecology made this determination pursuant to [Section XXVIII (Duration of Decree) / Section [IX] (Satisfaction of Order)].

The remedial actions required by the [Order/Decree] are specified in Section [VII] (Work to Be Performed) and detailed in the Cleanup Action Plan (Exhibit [__]). [PLP] was required to [INSERT BRIEF DESCRIPTION OF WORK TO BE PERFORMED]. After inspecting the Site

[ADDRESSEE]

[DATE]

Page 2

and reviewing the supporting documentation, Ecology has determined that the remedial actions required by the [Order/Decree] have been satisfactorily completed.

No Further Action Determination

Ecology has determined that no further remedial action is necessary to clean up contamination at the Site under MTCA. Ecology has also determined that no post-cleanup controls or monitoring are necessary under MTCA.

Delisting of the Site [INCLUDE IF SITE LISTED; SITE MUST BE DELISTED BEFORE ISSUING THIS LETTER]

Based on the no further action determination, Ecology proposed removing the Site from the Hazardous Sites List (HSL). Ecology published notice of the proposal in the Site Register on [DATE] and provided a 30-day public comment period, from [START DATE] to [END DATE]. [X] comments were received. After review and consideration of the comments, Ecology removed the Site from the HSL on [DATE]. The removal will be reflected in the next publication of the HSL in the Site Register.

Dismissal of the Decree [INCLUDE IF DECREE]

Based on the above determinations, Ecology has decided to dismiss the Decree. The Attorney General's Office will seek joint dismissal of the Decree in [COUNTY] Superior Court.

Upon dismissal of the Decree, Section XII (Retention of Records) will remain in effect for ten years from the date the Decree is no longer in effect. Sections XXII (Contribution Protection) and XXI (Covenant Not to Sue) will remain in effect in perpetuity.

Thank You

Thank you for cleaning up the Site. Should you have any questions, please do not hesitate to contact Ecology's cleanup project manager for this Site, [NAME], at [PHONE NUMBER] or [EMAIL ADDRESS].

Sincerely,

[INSERT ELECTRONIC SIGNATURE AFTER ROUTING TO SECTION MANAGER OR PROGRAM MANAGER FOR APPROVAL. USE TIFF IMAGE.]

[NAME]

[Section Manager (if order) / Program Manager (if decree)]

Toxics Cleanup Program, [[REGION] (if order)]

cc: [OTHER EXTERNAL PERSONS, IF ANY]
[ASSIGNED AAG], Office of the Attorney General

[ADDRESSEE]

[DATE]

Page 3

[COST RECOVERY COORDINATOR], Ecology
Ecology Site File

[UPON MAILING LETTER, SECTION ADMINISTRATIVE ASSISTANT:

1. CONVERTS TO PDF AND UPLOADS INTO DSARS.
2. EMAILS DSARS LINK TO SECTION MANAGER AND CPM.
3. SENDS ONE COPY TO SECTION RECORDS MANAGER FOR FILING.
4. SENDS ONE COPY TO INFO & POLICY SECTION ADMINISTRATIVE ASSISTANT FOR INDEXING AND ROUTING TO COST RECOVERY COORDINATOR.]

Attachment E

Status Letter Template: Cleanup Phase

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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000

711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

[DATE]

[PLP SIGNATORY]

[PLP COMPANY]

[STREET ADDRESS]

[CITY, STATE] [POSTAL CODE]

Re: Status of [Agreed Order/Consent Decree] No. [NUMBER] and No Further Action to complete Cleanup of the following Contaminated Site:

- **Site Name:** [CLEANUP SITE NAME]
- **Site Address:** [CLEANUP SITE ADDRESS]
- **Cleanup Site ID:** [CLEANUP SITE NUMBER]
- **Facility/Site ID:** [FACILITY/SITE NUMBER]

Dear [PLP SIGNATORY]:

Thank you for working with the Washington State Department of Ecology (Ecology) on [CLEANUP SITE NAME] (Site) under the Model Toxics Control Act (MTCA), Chapter 70.105D RCW, and [Agreed Order/Consent Decree] No. [NUMBER] ([Order/Decree]), which became effective on [DATE] and was amended on [DATE].

This letter provides written notification that, under MTCA and the [Order/Decree], no further remedial action is necessary to clean up contamination at the Site, but further remedial action is still necessary to control and monitor the remaining contamination and periodically review conditions at the Site. This letter also describes the status of the [Order/Decree] and the Site.

Completion of Cleanup Required by [Order/Decree]

The remedial actions required by the [Order/Decree] are specified in Section [] (Work to Be Performed) and detailed in the Cleanup Action Plan (Exhibit []). [PLP] was required to [INSERT BRIEF DESCRIPTION OF WORK TO BE PERFORMED]. After inspecting the Site and reviewing the supporting documentation, Ecology has determined that the cleanup required at the Site under the [Order/Decree] has been satisfactorily completed.

Post-Cleanup Remedial Actions Required by [Order/Decree]

[ADDRESSEE]

[DATE]

Page 2

Although the cleanup of contamination at the Site has been completed, further remedial action is still necessary under MTCA and required under the [Order/Decree] to control and monitor the remaining contamination at the Site. [PLP's] responsibilities are specified in Section [VII] (Work to Be Performed) and detailed in the [INSERT APPLICABLE PLAN, SUCH AS: Cleanup Action Plan, Operation and Maintenance Plan, Compliance Monitoring Plan].

Periodic Reviews of Post-Cleanup Conditions Required by [Order/Decree]

Ecology will conduct periodic reviews of post-cleanup conditions at the Site to ensure they remain protective of human health and the environment. This requires continued access to the Site, as provided in Section [] (Access) of the [Order/Decree]. [PLP's] responsibilities are specified in Section [] (Periodic Review) of the [Order/Decree]. Any costs incurred by Ecology in conducting periodic reviews may be recovered from [PLP].

Status of [Order/Decree]

Although the cleanup of contamination at the Site has been completed, further remedial action is still necessary under MTCA and required by the [Order/Decree] to control and monitor the remaining contamination and periodically review the conditions at the Site. The [Order/Decree] will remain in effect until the required post-cleanup remedial actions are completed or are no longer necessary under MTCA.

This letter summarizes [PLP's] remaining responsibilities under the [Order/Decree]; it does not alter or expand [PLP's] responsibilities under the [Order/Decree].

No Further Action Determination

Ecology has determined that no further remedial action is necessary to clean up contamination at the Site under MTCA. However, as explained above, further remedial action is still necessary under MTCA to control and monitor the remaining contamination and periodically review the conditions at the Site.

Delisting of the Site [include if listed; site must be delisted before issuing this letter]

Based on the no further action determination, Ecology proposed removing the Site from the Hazardous Sites List (HSL). Ecology published notice of the proposal in the Site Register on [DATE] and provided a 30-day public comment period, from [START DATE] to [END DATE]. [X] comments were received. After review and consideration of the comments, Ecology removed the Site from the HSL on [DATE]. The removal will be reflected in the next publication of the HSL in the Site Register.

Thank You

[ADDRESSEE]

[DATE]

Page 3

Thank you and congratulations on your work in cleaning up the Site. We look forward to continuing to work with you to make sure your investment in the Site is protected over the long term. Should you have any questions, please do not hesitate to contact Ecology's cleanup project manager for the Site, [NAME], at [PHONE NUMBER] or [EMAIL ADDRESS].

Sincerely,

[INSERT ELECTRONIC SIGNATURE AFTER ROUTING TO SECTION MANAGER OR PROGRAM MANAGER FOR APPROVAL. USE TIFF IMAGE.]

[NAME]

[Section Manager (if order) / Program Manager (if decree)]

Toxics Cleanup Program, [[REGION] (if order)]

cc: [OTHER EXTERNAL PERSONS, IF ANY]
[ASSIGNED AAG], Office of the Attorney General
[COST RECOVERY COORDINATOR], Ecology
Ecology Site File

[UPON MAILING LETTER, SECTION ADMINISTRATIVE ASSISTANT:

1. CONVERTS TO PDF AND UPLOADS INTO DSARS.
2. EMAILS DSARS LINK TO SECTION MANAGER AND CPM.
3. SENDS ONE COPY TO SECTION RECORDS MANAGER FOR FILING.
4. SENDS ONE COPY TO INFO & POLICY SECTION ADMINISTRATIVE ASSISTANT FOR INDEXING AND ROUTING TO COST RECOVERY COORDINATOR.]

Attachment F

Satisfaction and Status Letters Checklist

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Ecology-Supervised Cleanups

Washington State Department of Ecology
Toxics Cleanup Program

SATISFACTION AND STATUS LETTERS CHECKLIST

Instructions for Cleanup Project Manager:

- Complete and sign this form and draft the letter using the applicable boilerplate. Do not alter the boilerplate without consulting with the AAG assigned to the site.
- Submit the completed form and letter for signature by your section manager (if an order) or the program manager (if a decree).
- After the letter is signed and sent to the recipients, ensure the letter and checklist are included in the site file and uploaded into DSARS and that the site status and activities are updated in ISIS.

Step 1: Identify Site

Cleanup Site Name:

Cleanup Site Address:

Cleanup Site Number:

Facility/Site Number:

Step 2: Identify Order or Decree

[Agreed Order / Consent Decree] Number:

Date Effective:

Date Amended (if applicable):

Step 3: Complete Checklist

Read the instructions on the back side before completing this step.

1. Have the remedial actions required under the order or decree been completed?

Yes No If "no," then do not issue the letter.

Have you checked with the AAG assigned to the site to confirm this?

Yes No

2. Have the remedial action costs incurred by Ecology under the order or decree been recovered?

Yes No If "no," then do not issue the letter.

Have you checked with Cost Recovery Coordinator to confirm this?

Yes No

3. If order or decree governs cleanup phase, has the site been removed from the hazardous sites list?

Yes No Not listed If "no," then do not issue the letter.

Check here if order or decree does not govern the cleanup phase:

4. Do any other programs or government agencies have an interest in the status of the site?

Yes No If "yes," then cc: the appropriate program or agency contact.

Step 4: Signature

To the best of my knowledge, the above information is correct.

Cleanup Project Manager Name:

Signature:

Date:

Instructions for Step 3:

Q1. Completion of Remedial Actions

The remedial actions that must be completed depend on which satisfaction or status letter you are issuing.

- To issue a **satisfaction letter** for the **investigation and study phase**, all remedial actions required under the order or decree must be completed by the PLP(s).
- To issue a **satisfaction letter** for the **cleanup phase**, all remedial actions required under the order or decree must be completed by the PLP(s).
- To issue a **status letter** for the **cleanup phase**, only the remedial actions required under the order or decree **through site delisting** must be completed by the PLP(s). The order or decree will remain in effect and the PLP(s) may be required to perform additional remedial actions after the status letter is issued, such as operation and maintenance of engineered controls or long-term monitoring.

Q2. Recovery of Remedial Action Costs

The remedial action costs that must be recovered depend on which satisfaction or status letter you are issuing.

- To issue a **satisfaction letter** for the **investigation and study phase**, all remedial action costs incurred by Ecology under the order or decree must be recovered from the PLP(s).
- To issue a **satisfaction letter** for the **cleanup phase**, all remedial action costs incurred by Ecology under the order or decree must be recovered from the PLP(s).
- To issue a **status letter** for the **cleanup phase**, only the remedial action costs incurred by Ecology under the order or decree **through site delisting** must be recovered from the PLP(s). The order or decree will remain in effect and Ecology may incur and recover additional remedial action costs under the order or decree after the status letter is issued, such as operation and maintenance of engineered controls, long term monitoring, or periodic reviews.

To determine when all of the remedial action costs identified above have been recovered, do the following:

- Identify the last date for charges and notify the Cost Recovery Coordinator (CRC).
- Review and approve the invoice for those charges.
- Confirm with the CRC whether payment for those charges has been received.
- If you are issuing a satisfaction letter for the cleanup phase (i.e., no further cleanup or post-cleanup remedial actions are necessary), request the CRC to close the SIC.

Q3. Removal of Site from Hazardous Sites List

Before issuing a satisfaction or status letter for an order or decree governing the **cleanup phase**, the site must be removed from the hazardous sites list, if listed.

This question only applies if the order or decree governs the cleanup phase. If it does, then answer the question. If it doesn't, then check the box at the bottom to confirm the question does not apply.

Q4. Notifying Other Programs or Agencies

If other Ecology programs or government agencies (such as EPA or a city or county) have an interest in the status of the site, then send them a courtesy copy of the letter.