



# Toxics Cleanup Program

## Policy 520A: Consent Decrees

*Established:* December 30, 2016

*Revised:* April 2018 [updated Attachment A: Consent Decree Boilerplate]

*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 a consent decree (settlement) with a potentially liable person or prospective purchaser.

*References:* [RCW 70.105D.040](#) (4) and (5)  
[WAC 173-340-140](#) (7)  
[WAC 173-340-510](#)  
[WAC 173-340-520](#)  
[WAC 173-340-600](#) (10)  
[TCP Policy 520B: Prospective Purchaser Consent Decrees](#)  
[TCP Policy 520C: De Minimis Consent Decrees](#)  
[Sediment Cleanup User's Manual II](#)

*Attachments:* A – Consent Decree Boilerplate  
B – Satisfaction Letter Template  
C – Status Letter Template  
D – 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**

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The Model Toxics Control Act (MTCA) authorizes the Department of Ecology (Ecology) and the Attorney General to agree to a settlement with a potentially liable person (PLP) or a prospective purchaser. A settlement agreement must be entered as a consent decree issued by a court of competent jurisdiction. As part of the settlement agreement, Ecology and the Attorney General may require a PLP to conduct remedial actions or to pay for remedial actions or natural resource damage assessments conducted by Ecology. The settlement agreement will include protection from claims for contribution regarding matters addressed in the settlement, and may include a covenant not to sue ([RCW 70.105D.040](#)(4) and (5) and [WAC 173-340-520](#)).

This Policy provides Ecology staff general guidance on when and how to exercise this authority. For more specific guidance on entering into a consent decree with a prospective purchaser or a *de minimis* consent decree, see [Policy 520B](#) and [Policy 520C](#) respectively. For additional guidance related to sediment cleanups, see the [Sediment Cleanup User's Manual II](#).

For related guidance on identifying PLPs, see [Policy 500A](#). For related guidance on using agreed orders and enforcement orders, see [Policy 530A](#) and [Policy 540A](#) respectively. The Policies are available at: <https://ecology.wa.gov/Regulations-Permits/Plans-policies/Toxics-cleanup-policies>.

### **1. PLP or Ecology may initiate negotiations.**

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Negotiations for a consent decree may be initiated by either a PLP or Ecology. PLPs are encouraged to initiate negotiations with Ecology and the Attorney General's Office 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 a consent decree by submitting a letter to Ecology and the Attorney General's Office (AGO) by certified mail, return receipt requested, or by personal delivery. The letter must include the information specified in the MTCA rule, unless waived by Ecology and the AGO. The request must provide sufficient detail for Ecology, the AGO, and the public to evaluate the proposed scope of work and relative priority of the site ([WAC 173-340-510](#)(2)(a) and [173-340-520](#)(1)).

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

- Accepting the request and requiring a detailed written proposal by a specified date;
- Denying the request and providing reasons for the denial; or
- Requesting additional information.

If the request is accepted, PLPs must submit the detailed written proposal specified in the MTCA rule to Ecology by the date specified ([WAC 173-340-520\(1\)\(f\)\(ii\)](#) and [\(g\)](#)).

Ecology and the Attorney General will determine whether the proposal provides a sufficient basis for negotiations and respond to the proposal within sixty (60) days of receipt ([WAC 173-340-520\(1\)\(i\)](#)).

Ecology will base its responses in part on a preliminary determination as to whether the proposed settlement would lead to a more expeditious cleanup in compliance with cleanup standards and any orders ([WAC 173-340-520\(1\)\(f\)](#) and [RCW 70.105D.040\(4\)\(a\)](#)). See Section 2 of this Policy for guidance on how to make this determination.

**b. Ecology Requests**

Ecology may request negotiations for a consent decree if it makes a preliminary determination that the proposed settlement would lead to a more expeditious cleanup in compliance with cleanup standards and any orders ([WAC 173-340-510\(3\)\(a\)](#) and [173-340-520\(2\)](#); [RCW 70.105D.040\(4\)\(a\)](#)). See Section 2 of this Policy for guidance on how to make this determination.

To request negotiations, Ecology must submit a letter to a PLP by certified mail, return receipt requested, or by personal delivery. The letter must include the information specified in the rule. The letter may request the PLP to respond in writing to the proposed consent decree and scope of work before starting negotiations ([WAC 173-340-520\(2\)](#)).

**2. Before entering negotiations, Ecology will consider appropriateness of settlement.**

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Before requesting or agreeing to enter negotiations, Ecology will consider whether a settlement agreement (consent decree) is the most appropriate legal mechanism. In particular, Ecology will consider whether a consent decree would lead to a more expeditious cleanup in compliance with cleanup standards and any orders ([RCW 70.105D.040\(4\)\(a\)](#) and [WAC 173-340-520\(1\)\(f\)](#) and [\(2\)](#)). When making this determination, Ecology will consider at a minimum the following factors:

**a. Whether remedial investigation and feasibility study have been satisfactorily completed and draft cleanup action plan has been developed.**

Generally, Ecology will not enter into negotiations for a consent decree until the remedial investigation and feasibility study steps have been completed and a draft cleanup action plan has been developed. This is because until these steps are completed, it is difficult for Ecology to determine:

- The sources of contamination.
- The nature and extent of contamination.
- The persons who are liable for the contamination.
- The cleanup standards that a cleanup action must achieve.
- Whether the proposed cleanup action will achieve those standards within a reasonable restoration timeframe.
- The cost of the cleanup and whether the PLP has the resources to complete the cleanup expeditiously.

**b. Whether the cleanup standards and cleanup action proposed for a site or sediment cleanup unit comply with regulatory requirements.**

Generally, Ecology will not enter into negotiations for a consent decree until Ecology and the PLPs reach an agreement on the cleanup standards and cleanup action proposed for a site. Significant disagreements between the parties could result in protracted settlement negotiations instead of expeditious cleanups.

Generally, Ecology will not enter into negotiations for a consent decree for interim actions which, by definition, do not meet cleanup standards.

**c. The degree of certainty the proposed cleanup action will be successful.**

Generally, even if there is agreement on a proposed cleanup action, Ecology will not enter into negotiations for a consent decree if:

- There is significant uncertainty as to whether the proposed cleanup action will successfully achieve and maintain cleanup standards within a reasonable restoration timeframe; and
- The proposed cleanup action does not include a contingency plan with clearly defined performance criteria for determining when the contingency plan must be implemented.

In such cases, if the PLP wants to enter into a settlement agreement, the PLP should either propose a contingency plan with clearly defined performance standards or propose a different cleanup action that is more likely to be successful.

**d. Whether the PLP is willing and able to complete the proposed cleanup action in a timely fashion and is ready to proceed with the cleanup.**

Ecology should not enter into negotiations for a consent decree unless the PLP is willing and able to complete the proposed cleanup action in a timely fashion. When making this determination, Ecology should consider:

- Whether the PLP has sufficient financial resources to complete the cleanup in a timely fashion. The lack of funding could delay or even prevent completion of the cleanup.
- Whether the PLP has demonstrated a willingness to conduct the cleanup in a timely fashion, as evidenced by their previous cooperation with Ecology or their investment. For example, a PLP who also plans to redevelop the site may be more motivated to get the cleanup done in a timely fashion.

Ecology also should not enter into negotiations for a consent decree until the PLP is ready to proceed with the cleanup.

**e. Whether the PLP has complied with previously issued orders or permits at the site and provided Ecology access to determine compliance or conduct required actions at the site.**

Ecology should consider whether the PLP has cooperated with Ecology at the site, as evidenced by:

- Complying with any order requiring remedial actions, and providing Ecology access to determine compliance or to conduct remedial actions.
- Complying with any other order or permit issued under another authority, and providing Ecology access to determine compliance or take required actions.

The lack of such cooperation, or any effort to impede required actions, could indicate that neither settlement nor cleanup will be completed expeditiously.

**3. Before entering negotiations, Ecology will consult with and obtain concurrence of Attorney General.**

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Under MTCA, the liability of a PLP to the State may not be settled without the concurrence of the Attorney General ([RCW 70.105D.040](#)(4)(a) and (5)(a)). Further, any settlement agreed to by the parties must be entered by the Attorney General as a consent decree issued by a court of competent jurisdiction ([RCW 70.105D.040](#)(4)(b)).

Therefore, when negotiating a settlement, the Attorney General serves both as an independent representative of the State and as a legal adviser to Ecology. A settlement grants a PLP several protections and may limit Ecology's ability to require the PLP to conduct or pay for additional remedial actions at a site. The Attorney General plays an important role as protector of both the State's and Ecology's interests when considering whether to settle and the terms of the settlement.

For these reasons, before requesting or agreeing to negotiations for a settlement, Ecology will consult with the Assistant Attorney General assigned to the site. Ecology will not

request or agree to negotiations without the concurrence of the Assistant Attorney General.

#### **4. Ecology will notify public when starting negotiations.**

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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\(10\)\(b\)](#)).

#### **5. Ecology will seek agreement within negotiation timeframes.**

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Consistent with the goal of achieving cleanups faster, Ecology will strive to achieve agreement within the negotiation timeframes specified in the MTCA rule.<sup>1</sup> Ecology will specify the start date for negotiations and the negotiation timeframe in its response letter or request letter ([WAC 173-340-520\(1\)\(k\)](#) and [\(2\)\(b\)\(iii\)](#)). Ecology may extend the negotiation timeframes only as allowed in the MTCA rule.<sup>2</sup>

#### **6. Ecology will stay enforcement during negotiations.**

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Unless an emergency exists, Ecology will stay any enforcement action under MTCA during negotiations for a consent decree. However, the duration of the enforcement stay may not exceed 120 days for negotiations initiated by PLPs and 90 days for negotiations initiated by Ecology. Ecology may take enforcement action after the end of the stay ([WAC 173-340-520\(1\)\(l\)](#) and [\(2\)\(e\)](#)).

#### **7. Ecology may withdraw from negotiations.**

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Ecology may withdraw from negotiations for a consent decree if it determines that:

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

Before deciding to withdraw from negotiations, the Cleanup Project Manager must 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 173-340-520\(1\)\(l\)](#) and [\(2\)\(e\)](#)).

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<sup>1</sup> For negotiations initiated by Ecology, the initial timeframe must be no more than ninety (90) days ([WAC 173-340-520\(2\)\(b\)\(iii\)](#)). For negotiations initiated by a PLP, the initial timeframe must be no less than that proposed by the PLP, provided the deadline does not exceed one (1) year after the completion of the remedial investigation and feasibility study ([WAC 173-340-520\(1\)\(k\)](#) and [173-340-140\(7\)](#)).

<sup>2</sup> For negotiations initiated by Ecology, the deadline may be extended up to thirty (30) days ([WAC 173-340-520\(2\)\(f\)](#)). For negotiations initiated by a PLP, the deadline may be extended up to one (1) year after the completion of the remedial investigation and feasibility study ([WAC 173-340-520\(1\)\(k\)](#) and [173-340-140\(7\)](#)).

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**8. Ecology will use boilerplate when drafting consent decree.**

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

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

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Before entering a proposed consent decree in court, Ecology will provide the public with notice and opportunity to comment. 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 decree.
- Generally describe the remedial actions proposed in the decree, including any institutional controls or permit exemptions authorized under [RCW 70.105D.090](#).
- Identify the date, time, and place of any public hearing on the decree. If none are planned, explain that a hearing will only be held if requested by at least ten persons and specify the procedures for requesting a hearing.
- Invite the public to comment on the decree.

Ecology will provide at least thirty (30) days following the notice to comment on the proposed decree. Ecology will hold a public hearing on the proposed decree if requested by ten or more persons or if it determines a hearing is in the public interest ([WAC 173-340-600\(10\)\(c\)](#) and (d)).

Based on public comments, the parties may agree to change the proposed consent decree. If the changes are substantial, Ecology will provide the public with notice and an additional opportunity to comment on the decree ([WAC 173-340-600\(11\)\(e\)](#)).

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**10. Ecology will provide PLPs written notice upon satisfaction of decree or completion of cleanup required under decree.**

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A consent decree remains in effect until Ecology determines and notifies the PLPs in writing that the requirements of the decree have been satisfied, and the decree has been dismissed by the court in which it was entered. This is specified in the boilerplate decree (**Attachment A**).

Ecology will notify PLPs upon satisfaction of a decree (satisfaction letter) or upon completion of a cleanup required under a decree (status letter). The letters must be

signed by the Program Manager, the person who had the authority to sign the decree 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 – Cleanup Phase (**Attachment B**).

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

ii. Status Letter – Cleanup Phase (**Attachment C**).

Use this template if the cleanup required at the site under the decree is complete and the site is delisted, but post-cleanup remedial actions are still necessary and required under the decree 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 D**) 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**, all remedial actions required under the decree must be completed.
  - To issue a **status letter**, only the remedial actions required under the decree through site delisting must be completed.
- ii. All remedial action costs incurred by Ecology under the decree to issue the satisfaction or status letter have been recovered.
  - To issue a **satisfaction letter**, all remedial action costs incurred by Ecology under the decree must be recovered.



- To issue a **status letter**, only the remedial action costs incurred by Ecology under the decree through site delisting must be recovered.

iii. The site has been removed from the Hazardous Sites List, if listed.

When submitting the satisfaction or status letter to the Program 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

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- 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. (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>
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- Washington State Department of Ecology. (rev. 2016). *Toxics Cleanup Program Policy 520C: De minimus consent decrees*. (Ecology Publication No. 16-09-068.) Lacey, WA: Ecology, Toxics Cleanup Program. Retrieved from: <https://fortress.wa.gov/ecy/publications/SummaryPages/1609068.html>
- Washington State Department of Ecology. (2016). *Toxics Cleanup Program Policy 530A: Agreed orders*. (Ecology Publication No. 16-09-069.) Lacey, WA: Ecology, Toxics Cleanup Program. Retrieved from: <https://fortress.wa.gov/ecy/publications/SummaryPages/1609069.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**  
**Consent Decree Boilerplate**

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**STATE OF WASHINGTON  
[COUNTY] COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

[List all named PLPs entering into this  
Decree],

Defendant[s].

NO. \_\_\_\_\_

[MODEL] CONSENT DECREE

[An Assistant Attorney General (AAG) will be assigned to any site which is seeking a settlement/consent decree. Consult with your AAG regarding the appropriate boilerplate to use for your site. Different boilerplates exist for partial settlements, de minimis settlements, and prospective purchaser settlements.]

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I. INTRODUCTION

1  
2 1. The mutual objective of the State of Washington, Department of Ecology  
3 (Ecology) and [name all Defendants] (Defendant(s)) under this Decree is to provide for  
4 remedial action at a facility where there has been a release or threatened release of hazardous  
5 substances. This Decree requires Defendant(s) to [briefly describe actions required by this  
6 Decree].

7 2. Ecology has determined that these actions are necessary to protect human health  
8 and the environment.

9 3. The Complaint in this action is being filed simultaneously with this Decree. An  
10 Answer has not been filed, and there has not been a trial on any issue of fact or law in this case.  
11 However, the Parties wish to resolve the issues raised by Ecology’s Complaint. In addition, the  
12 Parties agree that settlement of these matters without litigation is reasonable and in the public  
13 interest, and that entry of this Decree is the most appropriate means of resolving these matters.

14 4. By signing this Decree, the Parties agree to its entry and agree to be bound by  
15 its terms.

16 5. By entering into this Decree, the Parties do not intend to discharge non-settling  
17 parties from any liability they may have with respect to matters alleged in the Complaint. The  
18 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for  
19 sums expended under this Decree.

20 6. This Decree shall not be construed as proof of liability or responsibility for any  
21 releases of hazardous substances or cost for remedial action nor an admission of any facts;  
22 provided, however, that Defendant(s) shall not challenge the authority of the Attorney General  
23 and Ecology to enforce this Decree.

24 7. The Court is fully advised of the reasons for entry of this Decree, and good  
25 cause having been shown:

26 Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

**II. JURISDICTION**

1  
2 1. This Court has jurisdiction over the subject matter and over the Parties pursuant  
3 to the Model Toxics Control Act (MTCA), RCW 70.105D.

4 2. Authority is conferred upon the Washington State Attorney General by  
5 RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if,  
6 after public notice and any required hearing, Ecology finds the proposed settlement would lead  
7 to a more expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that  
8 such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

9 3. Ecology has determined that a release or threatened release of hazardous  
10 substances has occurred at the Site that is the subject of this Decree.

11 4. Ecology has given notice to Defendant(s) of Ecology's determination that  
12 Defendant(s) is a PLP for the Site, as required by RCW 70.105D.020(26) and  
13 WAC 173-340-500.

14 5. The actions to be taken pursuant to this Decree are necessary to protect public  
15 health and the environment.

16 6. This Decree has been subject to public notice and comment [add information  
17 about a public hearing if applicable].

18 7. Ecology finds that this Decree will lead to a more expeditious cleanup of  
19 hazardous substances at the Site in compliance with the cleanup standards established under  
20 RCW 70.105D.030(2)(e) and WAC 173-340.

21 8. Defendant(s) has agreed to undertake the actions specified in this Decree and  
22 consents to the entry of this Decree under MTCA.

**III. PARTIES BOUND**

23  
24 1. This Decree shall apply to and be binding upon the Parties to this Decree, their  
25 successors and assigns. The undersigned representative of each party hereby certifies that he or  
26 she is fully authorized to enter into this Decree and to execute and legally bind such party to



1 comply with this Decree. Defendant(s) agrees to undertake all actions required by the terms  
2 and conditions of this Decree. No change in ownership or corporate status shall alter  
3 Defendant's responsibility under this Decree. Defendant(s) shall provide a copy of this Decree  
4 to all agents, contractors, and subcontractors retained to perform work required by this Decree,  
5 and shall ensure that all work undertaken by such agents, contractors, and subcontractors  
6 complies with this Decree.

#### 7 IV. DEFINITIONS

8 1. Unless otherwise specified herein, all definitions in RCW 70.105D.020[,  
9 WAC 173-204 (include where the Site has sediments)] and WAC 173-340 shall control the  
10 meanings of the terms in this Decree.

11 A. Site: The Site is referred to as [formal site name and cleanup site ID].  
12 The Site constitutes a facility under RCW 70.105D.020(8). The Site is defined by  
13 where a hazardous substance, other than a consumer product in consumer use, has been  
14 deposited, stored, disposed of, or placed, or otherwise come to be located.

15 B. Consent Decree or Decree: Refers to this Consent Decree and each of  
16 the exhibits to this Decree. All exhibits are integral and enforceable parts of this  
17 Consent Decree.

18 C. Defendant(s): Refers to [all named PLPs on the Decree].

19 D. Parties: Refers to the State of Washington, Department of Ecology and  
20 Defendant(s).

#### 21 V. FINDINGS OF FACT

22 1. Ecology makes the following findings of fact without any express or implied  
23 admissions of such facts by Defendant(s). [State all necessary facts in lettered paragraphs  
24 below. These facts should be sufficient to show that there has been a release or threatened  
25 release of a hazardous substance at a facility that presents a threat to human health or the  
26 environment, and that remedial action is thereby required. The Site should be clearly identified.

1 The facts supporting the status of Defendant(s) as an owner, operator, generator, etc., should be  
2 stated as well. Include a description of independent remedial actions if they are to be included  
3 in this Decree for remedial action grant purposes. This section should not be used as an  
4 opportunity to advocate for a particular legal or factual position for related contribution  
5 actions. Be sure to properly use the terms “property” and “Site” in order to avoid using them  
6 interchangeably.]

7 A. Based upon factors currently known to Ecology, the Site is generally  
8 located at [street address (include the City) or general location] as shown in the Site  
9 Location Diagram (Exhibit A). [Describe the location/extent of contamination released  
10 in each media. Should include the State Plane coordinates or latitude/longitude of the  
11 street address, and give the coordinate system (if known and accessible). Potentially  
12 include map of release location. This describes the location of the Site in narrative  
13 form.]

14 B. Between approximately [date] and [date], the Site was used by  
15 \_\_\_\_\_ for [type of uses]. Contamination at the Site is related to [list  
16 appropriate historical operations]. [State facts necessary to show that there has been a  
17 release or threatened release of a hazardous substance at the facility, which represents a  
18 threat to human health or the environment and requires remedial action.]

19 C. [Describe investigations to date, including when the RI/FS was  
20 completed and by whom. If applicable, document that Defendant(s) performed a  
21 supplemental RI/FS.]

22 D. Release(s) and/or potential release(s) of hazardous substances occurred  
23 at the Site. The following hazardous substances at the Site have been detected at  
24 concentrations above MTCA cleanup levels [list substances and media affected].  
25 [Optional: In addition, the following hazardous substances have been detected at the  
26 Site at levels below MTCA cleanup levels: [list substances and media].] These

1 hazardous substances have been, and may continue to be, released at the Site into the  
2 environment including [media (e.g., soil, groundwater, surface water, sediment, or air)].

3 E. Ecology has assigned the Site an overall priority ranking of [rank]  
4 pursuant to MTCA.

5 F. As documented in the Cleanup Action Plan (CAP) (Exhibit \_\_\_),  
6 Ecology has chosen a final cleanup action to be implemented at the Site.

7 G. [Etc.]

## 8 VI. WORK TO BE PERFORMED

9 1. This Decree contains a program designed to protect human health and the  
10 environment from the known release, or threatened release, of hazardous substances or  
11 contaminants at, on, or from the Site. All remedial action(s) conducted by Defendant(s) at the  
12 Site shall be done in accordance with WAC 173-340 [and WAC 173-204 (include where the  
13 Site has sediments)].

14 2. The Defendant(s) shall implement the CAP (Exhibit \_\_) in accordance with the  
15 Scope of Work and Schedule attached to this Decree (Exhibit \_\_). Among other remedial  
16 actions, the CAP requires Defendant(s) to: [brief description of work to be performed. The  
17 following naming conventions shall be used for documents: Agency Review Draft (designation  
18 for the first time Ecology receives a document); Public Review Draft (designates a document  
19 ready for public comment); Final (designation for a document after public comment and  
20 Ecology approval).]

21 3. [Optional language if there are multiple Defendants taking ownership of certain  
22 parts of the cleanup action: To effectuate the work to be performed under this Decree in the  
23 most efficient manner, certain Defendants have elected to take the lead in performing various  
24 aspects of the work required under this Decree. Language in this Decree, and the exhibits  
25 attached hereto, may reflect this agreement among the Defendants. However, the Defendants  
26 remain strictly, jointly, and severally liable for the performance of any and all obligations

1 under this Decree. In the event the party identified as a lead should fail to timely and properly  
2 complete performance of all or any portion of its work, all Defendants must perform that  
3 remaining work, if any.]

4 4. All plans or other deliverables submitted by Defendant(s) for Ecology's review  
5 and approval under the CAP (Exhibit \_\_\_\_ ) or Scope of Work and Schedule (Exhibit \_\_\_\_ ) shall,  
6 upon Ecology's approval, become integral and enforceable parts of this Decree.

7 5. If Defendant(s) learns of a significant change in conditions at the Site, including  
8 but not limited to a statistically significant increase in contaminant and/or chemical  
9 concentrations in [media (e.g., soil, groundwater, surface water, air, and/or sediments)],  
10 Defendant(s), within seven (7) days of learning of the change in condition, shall notify Ecology  
11 in writing of said change and provide Ecology with any reports or records (including  
12 laboratory analyses, sampling results) relating to the change in conditions.

13 6. [Add this section only if the Decree requires implementation of a cleanup action  
14 that includes engineered and/or institutional controls that require financial assurances under  
15 WAC 173-340-440(11).] Pursuant to WAC 173-340-440(11), Defendant(s) shall maintain  
16 sufficient and adequate financial assurance mechanisms to cover all costs associated with the  
17 operation and maintenance of the remedial action at the Site, including institutional controls,  
18 compliance monitoring, and corrective measures.

19 A. Within sixty (60) days of the effective date of this Decree, Defendant(s)  
20 shall submit to Ecology for review and approval an estimate of the costs associated  
21 with the operation and maintenance of the remedial action at the Site that it will incur in  
22 carrying out the terms of this Decree. Within sixty (60) days after Ecology approves the  
23 aforementioned cost estimate, Defendant(s) shall provide proof of financial assurances  
24 sufficient to cover those costs in a form acceptable to Ecology.  
25  
26

1 B. Defendant(s) shall adjust the financial assurance coverage and provide  
2 Ecology's project coordinator with documentation of the updated financial assurance  
3 for:

4 i. Inflation, annually, within thirty (30) days of the anniversary  
5 date of the entry of this Decree; or if applicable, the modified anniversary date  
6 established in accordance with this section, or if applicable, ninety (90) days  
7 after the close of Defendant's fiscal year if the financial test or corporate  
8 guarantee is used.

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

17 7. [Use only where an Environmental (Restrictive) Covenant will be required  
18 under WAC 173-340-440. If a property at the Site meets the criteria of WAC 173-340-  
19 440(8)(b) or (c), Ecology may approve the use of an administrative mechanism other than an  
20 Environmental (Restrictive) Covenant to implement institutional controls on the property. Seek  
21 advice from your AAG for this situation. This section would then be revised to describe the  
22 property using the alternative mechanism and that process.] As detailed in the CAP,  
23 institutional controls are required at the Site. Environmental (Restrictive) Covenants will be  
24 used to implement the institutional controls.

25 A. In consultation with Defendant(s), Ecology will prepare the  
26 Environmental (Restrictive) Covenants consistent with WAC 173-340-440,

1 RCW 64.70, and any policies or procedures specified by Ecology. The Environmental  
2 (Restrictive) Covenants shall restrict future activities and uses of the Site as agreed to  
3 by Ecology and Defendant(s).

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

9 C. [Use where the remedy requires an environmental covenant on property  
10 not owned by the Defendant(s).] As detailed in the CAP, as part of the remedial action  
11 for the Site, institutional controls are required on properties not owned by Defendant(s).  
12 Defendant(s) will ensure that the owner of each affected property records an Ecology-  
13 approved Environmental (Restrictive) Covenant as detailed in the Schedule (Exhibit [  
14 ])]. Upon a showing that Defendant(s) has made a good faith effort to secure an  
15 Environmental (Restrictive) Covenant for an affected property and failed to do so,  
16 Ecology may provide assistance to Defendant(s). Unless Ecology determines otherwise,  
17 affected properties include [addresses or parcel numbers]. Defendant(s) shall provide  
18 Ecology with the original recorded Environmental (Restrictive) Covenant within thirty  
19 (30) days of the recording date.

20 8. Unless otherwise directed by Ecology, Defendant(s) shall submit to Ecology  
21 written monthly Progress Reports that describe the actions taken during the previous month to  
22 implement the requirements of this Decree. All Progress Reports shall be submitted by the  
23 tenth (10th) day of the month in which they are due after the effective date of this Decree.  
24 Unless otherwise specified in writing by Ecology, Progress Reports and any other documents  
25 submitted pursuant to this Decree shall be sent by [identify preferred format, e.g.: certified  
26

1 mail, return receipt requested,] to Ecology's project coordinator. The Progress Reports shall  
2 include the following:

- 3 A. A list of on-site activities that have taken place during the month.
- 4 B. Description of any sample results which deviate from the norm.
- 5 C. Detailed description of any deviations from required tasks not otherwise  
6 documented in project plans or amendment requests.
- 7 D. Description of all deviations from the Scope of Work and Schedule  
8 (Exhibit \_\_\_ ) during the current month and any planned deviations in the upcoming  
9 month.
- 10 E. For any deviations in schedule, a plan for recovering lost time and  
11 maintaining compliance with the schedule.
- 12 F. All raw data (including laboratory analyses) received during the  
13 previous quarter (if not previously submitted to Ecology), together with a detailed  
14 description of the underlying samples collected.
- 15 G. A list of planned activities for the upcoming month.

16 9. Except in the case of an emergency, Defendant(s) agrees not to perform any  
17 remedial actions at the Site outside the scope of this Decree without prior written approval of  
18 Ecology. In the case of an emergency, Defendant(s) must notify Ecology of the event and  
19 remedial action(s) as soon as practical, but no later than twenty-four (24) hours after discovery  
20 of the emergency.

## 21 VII. DESIGNATED PROJECT COORDINATORS

22 1. The project coordinator for Ecology is:

23 [Name]  
24 [Address]  
25 [Telephone]  
26 [Email]

2. The project coordinator for Defendant(s) is:

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

3. Each project coordinator shall be responsible for overseeing the implementation of this Decree. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and Defendant(s) and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Decree 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 Decree.

4. 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.

### VIII. PERFORMANCE

1. Except as otherwise provided for by RCW 18.43 and 18.220, all geologic and hydrogeologic work performed pursuant to this Decree 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.

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

3. Except as otherwise provided for by RCW 18.43.130, all construction work performed pursuant to this Decree shall be under the direct supervision of a professional engineer registered by the State of Washington or a qualified technician under the direct supervision of a professional engineer registered by the State of Washington.





1 prevents such notice. All Parties who access the Site pursuant to this section shall comply with  
2 any applicable health and safety plan(s). Ecology employees and their representatives shall not  
3 be required to sign any liability release or waiver as a condition of Site property access.

4 **X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY**

5 1. With respect to the implementation of this Decree, Defendant(s) shall make the  
6 results of all sampling, laboratory reports, and/or test results generated by it or on its behalf  
7 available to Ecology by submitting data as detailed in this section. Pursuant to WAC 173-340-  
8 840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats  
9 in accordance with Section XI (Progress Reports), Ecology's Toxics Cleanup Program  
10 Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by  
11 Ecology for data submittal.

12 2. If requested by Ecology, Defendant(s) shall allow Ecology and/or its authorized  
13 representative to take split or duplicate samples of any samples collected by Defendant(s)  
14 pursuant to the implementation of this Decree. Defendant(s) shall notify Ecology seven (7)  
15 days in advance of any sample collection or work activity at the Site. Ecology shall, upon  
16 request, allow Defendant(s) and/or its authorized representative to take split or duplicate  
17 samples of any samples collected by Ecology pursuant to the implementation of this Decree,  
18 provided that doing so does not interfere with Ecology's sampling. Without limitation on  
19 Ecology's rights under Section IX (Access), Ecology shall notify Defendant(s) prior to any  
20 sample collection activity unless an emergency prevents such notice.

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

24 **XI. RETENTION OF RECORDS**

25 1. During the pendency of this Decree, and for ten (10) years from the date this  
26 Decree is no longer in effect as provided in Section XXVIII (Duration of Decree),

1 Defendant(s) shall preserve all records, reports, documents, and underlying data in its  
2 possession relevant to the implementation of this Decree and shall insert a similar record  
3 retention requirement into all contracts with project contractors and subcontractors. Upon  
4 request of Ecology, Defendant(s) shall make all records available to Ecology and allow access  
5 for review within a reasonable time.

6 2. Nothing in this Decree is intended by Defendant(s) to waive any right it may  
7 have under applicable law to limit disclosure of documents protected by the attorney work-  
8 product privilege and/or the attorney-client privilege. If Defendant(s) withholds any requested  
9 records based on an assertion of privilege, Defendant(s) shall provide Ecology with a privilege  
10 log specifying the records withheld and the applicable privilege. No Site-related data collected  
11 pursuant to this Decree shall be considered privileged.

## 12 **XII. TRANSFER OF INTEREST IN PROPERTY**

13 1. No voluntary conveyance or relinquishment of title, easement, leasehold, or  
14 other interest in any portion of the Site shall be consummated by Defendant(s) without  
15 provision for continued operation and maintenance of any containment system, treatment  
16 system, and/or monitoring system installed or implemented pursuant to this Decree.

17 2. Prior to Defendant's transfer of any interest in all or any portion of the Site, and  
18 during the effective period of this Decree, Defendant(s) shall provide a copy of this Decree to  
19 any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and,  
20 at least thirty (30) days prior to any transfer, Defendant(s) shall notify Ecology of said transfer.  
21 Upon its transfer of any interest, Defendant(s) shall notify all transferees of the restrictions on  
22 the activities and uses of the property under this Decree and incorporate any such use  
23 restrictions into the transfer documents.

## 24 **XIII. RESOLUTION OF DISPUTES**

25 1. In the event that Defendant(s) elects to invoke dispute resolution, Defendant(s)  
26 must utilize the procedure set forth below.

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

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

13           C.     Defendant(s) may then request regional management review of the  
14 dispute. This request (Formal Dispute Notice) must be submitted in writing to the  
15 [region] Region Toxics Cleanup Section Manager within seven (7) calendar days of  
16 receipt of Ecology’s Informal Dispute Decision. The Formal Dispute Notice shall  
17 include a written statement of dispute setting forth: the nature of the dispute; the  
18 disputing Party’s position with respect to the dispute; and the information relied upon  
19 to support its position.

20           D.     The Section Manager shall conduct a review of the dispute and shall  
21 issue a written decision regarding the dispute (Decision on Dispute) within thirty (30)  
22 calendar days of receipt of the Formal Dispute Notice.

23           E.     If Defendant(s) finds Ecology’s Regional Section Manager’s decision  
24 unacceptable, Defendant(s) may then request final management review of the decision.  
25 This request (Final Review Request) shall be submitted in writing to the Toxics  
26 Cleanup Program Manager within seven (7) calendar days of Defendant’s receipt of the

1 Decision on Dispute. The Final Review Request shall include a written statement of  
2 dispute setting forth: the nature of the dispute; the disputing Party's position with  
3 respect to the dispute; and the information relied upon to support its position.

4 F. Ecology's Toxics Cleanup Program Manager shall conduct a review of  
5 the dispute and shall issue a written decision regarding the dispute (Final Decision on  
6 Dispute) within thirty (30) calendar days of receipt of the Final Review Request. The  
7 Toxics Cleanup Program Manager's decision shall be Ecology's final decision on the  
8 disputed matter.

9 2. If Ecology's Final Decision on Dispute is unacceptable to Defendant(s),  
10 Defendant(s) has the right to submit the dispute to the Court for resolution. The Parties agree  
11 that one judge should retain jurisdiction over this case and shall, as necessary, resolve any  
12 dispute arising under this Decree. Under RCW 70.105D.060, Ecology's investigative and  
13 remedial decisions shall be upheld unless they are arbitrary and capricious.

14 3. The Parties agree to only utilize the dispute resolution process in good faith and  
15 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.  
16 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,  
17 the other party may seek sanctions.

18 4. Implementation of these dispute resolution procedures shall not provide a basis  
19 for delay of any activities required in this Decree, unless Ecology agrees in writing to a  
20 schedule extension or the Court so orders.

21 5. In case of a dispute, failure to either proceed with the work required by this  
22 Decree or timely invoke dispute resolution may result in Ecology's determination that  
23 insufficient progress is being made in preparation of a deliverable, and may result in Ecology  
24 undertaking the work under Section XXV (Implementation of Remedial Action).

**XIV. AMENDMENT OF DECREE**

1  
2 1. The Parties may agree to minor changes to the work to be performed without  
3 formally amending this Decree. Minor changes will be documented in writing by Ecology.

4 2. Substantial changes to the work to be performed shall require formal  
5 amendment of this Decree. This Decree may only be formally amended by a written stipulation  
6 among the Parties that is entered by the Court, or by order of the Court. Ecology will provide  
7 its written consent to a formal amendment only after public notice and opportunity to comment  
8 on the formal amendment. Such amendment shall become effective upon entry by the Court.  
9 Agreement to amend the Decree shall not be unreasonably withheld by any party.

10 3. When requesting a change to the Decree, Defendant(s) shall submit a written  
11 request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing  
12 and in a timely manner after the written request is received. If Ecology determines that the  
13 change is substantial, then the Decree must be formally amended. Reasons for the disapproval  
14 of a proposed change to this Decree shall be stated in writing. If Ecology does not agree to the  
15 requested change, the disagreement may be addressed through the dispute resolution  
16 procedures described in Section XIV (Resolution of Disputes).

**XV. EXTENSION OF SCHEDULE**

17  
18 1. Defendant's request for an extension of schedule shall be granted only when a  
19 request for an extension is submitted in a timely fashion, generally at least thirty (30) days  
20 prior to expiration of the deadline for which the extension is requested, and good cause exists  
21 for granting the extension. All extensions shall be requested in writing. The request shall  
22 specify:

- 23 A. The deadline that is sought to be extended.  
24 B. The length of the extension sought.  
25 C. The reason(s) for the extension.  
26

1 D. Any related deadline or schedule that would be affected if the extension  
2 were granted.

3 2. The burden shall be on Defendant(s) to demonstrate to the satisfaction of  
4 Ecology that the request for such extension has been submitted in a timely fashion and that  
5 good cause exists for granting the extension. Good cause may include, but may not be limited  
6 to:

7 A. Circumstances beyond the reasonable control and despite the due  
8 diligence of Defendant(s) including delays caused by unrelated third parties or Ecology,  
9 such as (but not limited to) delays by Ecology in reviewing, approving, or modifying  
10 documents submitted by Defendant(s).

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

13 C. Endangerment as described in Section XVII (Endangerment).

14 3. However, neither increased costs of performance of the terms of this Decree nor  
15 changed economic circumstances shall be considered circumstances beyond the reasonable  
16 control of Defendant(s).

17 4. Ecology shall act upon any Defendant's written request for extension in a timely  
18 fashion. Ecology shall give Defendant(s) written notification of any extensions granted  
19 pursuant to this Decree. A requested extension shall not be effective until approved by Ecology  
20 or, if required, by the Court. Unless the extension is a substantial change, it shall not be  
21 necessary to amend this Decree pursuant to Section XV (Amendment of Decree) when a  
22 schedule extension is granted.

23 5. At Defendant's request an extension shall only be granted for such period of  
24 time as Ecology determines is reasonable under the circumstances. Ecology may grant  
25 schedule extensions exceeding ninety (90) days only as a result of one of the following:  
26





**XVII. COVENANT NOT TO SUE**

1  
2 1. Covenant Not to Sue: In consideration of Defendant’s compliance with the  
3 terms and conditions of this Decree, Ecology covenants not to institute legal or administrative  
4 actions against Defendant(s) regarding the release or threatened release of hazardous  
5 substances at [Use the following when the settlement involves the entire Site: the Site, as  
6 described in [Section V.[ ] (Findings of Fact)]. Use the following when the settlement involves  
7 limitations such as a hazardous substance or geographic area: the Settlement Area, as detailed  
8 in Exhibit [ ], Settlement Area Diagram, which includes only the hazardous substances detailed  
9 in [Section V.[ ] (Findings of Fact)]. This Covenant Not to Sue does not cover any other  
10 hazardous substance(s) or area. Ecology retains all of its authority relative to any hazardous  
11 substance(s) or area not covered by this Decree.

12 This Covenant Not to Sue shall have no applicability whatsoever to:

- 13 A. Criminal liability.
- 14 B. Liability for damages to natural resources.
- 15 C. Any Ecology action, including cost recovery, against PLPs not a party to  
16 this Decree.

17 2. Pursuant to RCW 70.105D.040(4)(c), the Court shall amend this Covenant Not  
18 to Sue if factors not known at the time of entry of this Decree are discovered and present a  
19 previously unknown threat to human health or the environment.

20 3. Reopeners: Ecology specifically reserves the right to institute legal or  
21 administrative action against Defendant(s) to require it to perform additional remedial actions  
22 at the [Site or Settlement Area] and to pursue appropriate cost recovery, pursuant to  
23 RCW 70.105D.050, under any of the following circumstances:

- 24 A. Upon Defendant’s failure to meet the requirements of this Decree.
- 25 B. Failure of the remedial action to meet the cleanup standards identified in  
26 the CAP (Exhibit \_\_\_\_).

1 C. Upon Ecology's determination that remedial action beyond the terms of  
2 this Decree is necessary to abate an imminent and substantial endangerment to human  
3 health or the environment.

4 D. Upon the availability of information previously unknown to Ecology  
5 regarding [Site or Settlement Area] factors including the nature, quantity, migration,  
6 pathway, or mobility of hazardous substances, and Ecology's determination, in light of  
7 this information, that further remedial action is necessary at the [Site or Settlement  
8 Area] to protect human health or the environment.

9 E. Upon Ecology's determination that additional remedial actions are  
10 necessary to achieve cleanup standards within the reasonable restoration time frame set  
11 forth in the CAP.

12 4. Except in the case of an emergency, prior to instituting legal or administrative  
13 action against Defendant(s) pursuant to this section, Ecology shall provide Defendant(s) with  
14 fifteen (15) calendar days' notice of such action.

#### 15 **XVIII. CONTRIBUTION PROTECTION**

16 1. With regard to claims for contribution against Defendant(s), the Parties agree  
17 that Defendant(s) is entitled to protection against claims for contribution for matters addressed  
18 in this Decree as provided by RCW 70.105D.040(4)(d).

#### 19 **XIX. INDEMNIFICATION**

20 1. Defendant(s) agrees to indemnify and save and hold the State of Washington, its  
21 employees, and agents harmless from any and all claims or causes of action (1) for death or  
22 injuries to persons, or (2) for loss or damage to property to the extent arising from or on  
23 account of acts or omissions of Defendant(s), its officers, employees, agents, or contractors in  
24 entering into and implementing this Decree. However, Defendant(s) shall not indemnify the  
25 State of Washington nor save nor hold its employees and agents harmless from any claims or  
26 causes of action to the extent arising out of the negligent acts or omissions of the State of

1 Washington, or the employees or agents of the State, in entering into or implementing this  
2 Decree.

3 **XX. COMPLIANCE WITH APPLICABLE LAWS**

4 [Ecology makes the final determination on whether applicable permit or substantive  
5 requirements are “legally applicable” or “relevant and appropriate” under WAC 173-340-  
6 710(2). Seek AAG assistance for help as needed to make this determination.]

7 1. *Applicable Law.* All actions carried out by Defendant(s) pursuant to this Decree  
8 shall be done in accordance with all applicable federal, state, and local requirements, including  
9 requirements to obtain necessary permits, except as provided in RCW 70.105D.090. [Insert  
10 Option A: At this time, no federal, state, or local requirements have been identified as being  
11 applicable to the actions required by this Decree; or Option B: The permits or specific federal,  
12 state, or local requirements that the agency has determined are applicable and that are known at  
13 the time of the execution of this Decree have been identified in Exhibit \_\_\_\_.] Defendant(s) has  
14 a continuing obligation to identify additional applicable federal, state, and local requirements  
15 which apply to actions carried out pursuant to this Decree, and to comply with those  
16 requirements. As additional federal, state, and local requirements are identified by Ecology or  
17 the Defendant(s), Ecology will document in writing if they are applicable to actions carried out  
18 pursuant to this Decree, and the Defendant(s) must implement those requirements.

19 2. *Relevant and Appropriate Requirements.* All actions carried out by  
20 Defendant(s) pursuant to this Decree shall be done in accordance with relevant and appropriate  
21 requirements identified by Ecology. [Insert Option A: At this time, no relevant and appropriate  
22 requirements have been identified as being applicable to the actions required by this Decree; or  
23 Option B: The relevant and appropriate requirements that Ecology has determined apply have  
24 been identified in Exhibit \_\_\_\_.] If additional relevant and appropriate requirements are  
25 identified by Ecology or the Defendant(s), Ecology will document in writing if they are  
26

1 applicable to actions carried out pursuant to this Decree and the Defendant(s) must implement  
2 those requirements.

3 3. Pursuant to RCW 70.105D.090(1), Defendant(s) may be exempt from the  
4 procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any  
5 laws requiring or authorizing local government permits or approvals. However, Defendant(s)  
6 shall comply with the substantive requirements of such permits or approvals. For permits and  
7 approvals covered under RCW 70.105D.090(1) that have been issued by local government, the  
8 Parties agree that Ecology has the non-exclusive ability under this Decree to enforce those  
9 local government permits and/or approvals. [Insert Option A: At this time, no state or local  
10 permits or approvals have been identified as being applicable but procedurally exempt under  
11 this section; or Option B: The exempt permits or approvals and the applicable substantive  
12 requirements of those permits or approvals, as they are known at the time of the execution of  
13 this Decree, have been identified in Exhibit \_\_\_\_.]

14 4. Defendant(s) has a continuing obligation to determine whether additional  
15 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the  
16 remedial action under this Decree. In the event either Ecology or Defendant(s) determines that  
17 additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be  
18 required for the remedial action under this Decree, it shall promptly notify the other party of its  
19 determination. Ecology shall determine whether Ecology or Defendant(s) shall be responsible  
20 to contact the appropriate state and/or local agencies. If Ecology so requires, Defendant(s) shall  
21 promptly consult with the appropriate state and/or local agencies and provide Ecology with  
22 written documentation from those agencies of the substantive requirements those agencies  
23 believe are applicable to the remedial action. Ecology shall make the final determination on the  
24 additional substantive requirements that must be met by Defendant(s) and on how Defendant(s)  
25 must meet those requirements. Ecology shall inform Defendant(s) in writing of these  
26 requirements. Once established by Ecology, the additional requirements shall be enforceable

1 requirements of this Decree. Defendant(s) shall not begin or continue the remedial action  
2 potentially subject to the additional requirements until Ecology makes its final determination.

3 5. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the  
4 exemption from complying with the procedural requirements of the laws referenced in  
5 RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is  
6 necessary for the state to administer any federal law, the exemption shall not apply and  
7 Defendant(s) shall comply with both the procedural and substantive requirements of the laws  
8 referenced in RCW 70.105D.090(1), including any requirements to obtain permits or  
9 approvals.

#### 10 **XXI. REMEDIAL ACTION COSTS**

11 1. Defendant(s) shall pay to Ecology costs incurred by Ecology pursuant to this  
12 Decree and consistent with WAC 173-340-550(2). These costs shall include work performed  
13 by Ecology or its contractors for, or on, the Site under RCW 70.105D, including remedial  
14 actions and Decree preparation, negotiation, oversight, and administration. These costs shall  
15 include work performed both prior to and subsequent to the entry of this Decree. Ecology's  
16 costs shall include costs of direct activities and support costs of direct activities as defined in  
17 WAC 173-340-550(2). For all costs incurred, Defendant(s) shall pay the required amount  
18 within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a  
19 summary of costs incurred, an identification of involved staff, and the amount of time spent by  
20 involved staff members on the project. A general statement of work performed will be  
21 provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-  
22 340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized  
23 statement of costs will result in interest charges at the rate of twelve percent (12%) per annum,  
24 compounded monthly. [Before the start of the public comment period for the Decree, Ecology  
25 will send the PLP(s) a summary of remedial action costs accumulated for the Site to date, as  
26 provided by the Ecology's Fiscal Office (Revenue and Receivables Unit). This amount will be

1 included in the first billing statement sent after the Decree becomes effective. NOTE: The date  
2 specified by Ecology's Fiscal Office (Revenue and Receivables Unit) in the summary of  
3 remedial action costs will be the end of the last quarter, and the amount specified will be the  
4 amount as of the end of the last quarter. The first bill under the Decree will be similar, but may  
5 not be exactly the same, as the summary of remedial action costs.]

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

## 9 **XXII. IMPLEMENTATION OF REMEDIAL ACTION**

10 1. If Ecology determines that the Defendant(s) has failed to make sufficient  
11 progress or failed to implement the remedial action, in whole or in part, Ecology may, after  
12 notice to Defendant(s), perform any or all portions of the remedial action or at Ecology's  
13 discretion allow the Defendant(s) opportunity to correct. In an emergency, Ecology is not  
14 required to provide notice to Defendant(s), or an opportunity for dispute resolution. The  
15 Defendant(s) shall reimburse Ecology for the costs of doing such work in accordance with  
16 Section XXIV (Remedial Action Costs).

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

**XXIII. PERIODIC REVIEW**

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

1. So long as remedial action continues at the Site, the Parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of monitoring the Site as often as is necessary and appropriate under the circumstances. Unless otherwise agreed to by Ecology, at least every five (5) years after the initiation of cleanup action at the Site the Parties shall confer regarding the status of the Site and the need, if any, for further remedial action at the Site. [Include the following requirement, as appropriate: At least ninety (90) days prior to each periodic review, Defendant(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).] Under Section XVIII (Covenant Not to Sue), 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 Decree.

**XXIV. PUBLIC PARTICIPATION**

1. Ecology shall maintain the responsibility for public participation at the Site. However, Defendant(s) shall cooperate with Ecology, and shall:

A. If agreed to by Ecology, develop appropriate mailing lists, 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.

B. 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,

1 Ecology shall notify Defendant(s) prior to the issuance of all press releases and fact  
2 sheets related to remedial action work to be performed at the Site, and before meetings  
3 related to remedial action work to be performed at the Site with the interested public  
4 and/or local governments. For all press releases, fact sheets, meetings, and other  
5 outreach efforts by Defendant(s) that do not receive prior Ecology approval,  
6 Defendant(s) shall clearly indicate to its audience that the press release, fact sheet,  
7 meeting, or other outreach effort was not sponsored or endorsed by Ecology.

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

11 D. When requested by Ecology, arrange and/or continue information  
12 repositories at the following locations:

- 13 i. [Location]  
14 [Address of location]
- 15 ii. Ecology's [region] Regional Office  
16 [Address of regional office]

17 At a minimum, copies of all public notices, fact sheets, and documents relating to public  
18 comment periods shall be promptly placed in these repositories. A copy of all documents  
19 related to this Site shall be maintained in the repository at Ecology's [region] Regional Office  
20 in [city of regional office], Washington.

## 21 XXV. DURATION OF DECREE

22 1. The remedial program required pursuant to this Decree shall be maintained and  
23 continued until Defendant(s) has received written notification from Ecology that the  
24 requirements of this Decree have been satisfactorily completed. This Decree shall remain in  
25 effect until dismissed by the Court. When dismissed, Section XII (Retention of Records), and  
26 Section XVIII (Covenant Not to Sue) shall survive.



**XXVI. CLAIMS AGAINST THE STATE**

1  
2 1. Defendant(s) hereby agrees that it will not seek to recover any costs accrued in  
3 implementing the remedial action required by this Decree from the State of Washington or any  
4 of its agencies; and further, that Defendant(s) will make no claim against the State Toxics  
5 Control Account, the Local Toxics Control Account, the Environmental Legacy Stewardship  
6 Account, or a MTCA Cleanup Settlement Account for any costs incurred in implementing this  
7 Decree. Except as provided above, however, Defendant(s) expressly reserves its right to seek  
8 to recover any costs incurred in implementing this Decree from any other PLP. This section  
9 does not limit or address funding that may be provided under WAC 173-322A.

**XXVII. EFFECTIVE DATE**

10  
11 1. This Decree is effective upon the date it is entered by the Court.

**XXVIII. WITHDRAWAL OF CONSENT**

12  
13 1. If the Court withholds or withdraws its consent to this Decree, it shall be null  
14 and void at the option of any party and the accompanying Complaint shall be dismissed  
15 without costs and without prejudice. In such an event, no party shall be bound by the  
16 requirements of this Decree.

17  
18 STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON  
Attorney General

19  
20 \_\_\_\_\_  
[NAME OF SIGNATORY]  
Program Manager  
21 Toxics Cleanup Program  
[Telephone]

20 \_\_\_\_\_  
[NAME OF SIGNATORY, WSBA #]  
Assistant Attorney General  
[Telephone]

22  
23 Date: \_\_\_\_\_

Date: \_\_\_\_\_

24 [DEFENDANT]

25  
26 \_\_\_\_\_  
[NAME OF SIGNATORY]

1 [Title of signatory]  
2 [Telephone]

3 Date: \_\_\_\_\_

4 ENTERED this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

5  
6 \_\_\_\_\_  
7 JUDGE  
8 [county] County Superior Court  
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**Attachment B**

**Satisfaction Letter Template**

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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: 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.]

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**Attachment C**  
**Status Letter Template**

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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.]

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## **Attachment D**

### **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.