

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

Abitibi Consolidated Sales Corporation

MODEL AGREED ORDER

No. DE 3154

TO: Abitibi Consolidated Sales Corporation
c/o Abitibi Consolidated, Inc.
1155 Metcalfe Street, Suite 800
Montreal, Canada H3B 5H2
Attn: Francine Dorion

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Abitibi Consolidated Sales Co. (Abitibi) 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 Abitibi to compile existing investigative data and prepare a remedial investigation and feasibility study (RI/FS) report, perform an interim action to remove hydrocarbon contaminated soil in one area of the Site, and draft a cleanup action plan (CAP) for the Site. 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 the Order. Abitibi agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Abitibi's responsibility under this Order. Abitibi 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 Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as Abitibi Consolidated Sales Corporation Site and is generally located at 4302 Chambers Creek Road, Steilacoom, WA. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. Based upon factors currently known to Ecology, the Site is more particularly described in Exhibit A to this

Order, which includes a detailed Site diagram. The Site constitutes a Facility under RCW 70.105D.020(4).

B. Parties: Refers to the State of Washington, Department of Ecology and Abitibi Consolidated Sales Corporation.

C. Potentially Liable Person (PLP): Refers to Abitibi Consolidated Sales Corporation (Abitibi).

D. Agreed Order or Order: Refers to this Order and each of the exhibits to the Order. All exhibits are integral and enforceable parts of this Order. The terms “Agreed Order” or “Order” shall include all exhibits to this Order.

V. FINDINGS OF FACT

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

A. Abitibi is the registered owner of the following property: Parcel Nos. 0220294002, 0220294007, 0220294021, 0220294009, 0220321009, and 761000021. Abitibi acquired the facility in January 1998 from Stone Consolidated. Other owners had operated the mill since 1919. The presence of the contaminants at the facility appears to have predated Abitibi’s ownership, based on documentation Abitibi provided. Abitibi operated the facility until December 2000.

B. Investigations conducted by the company on its property have documented the presence of petroleum hydrocarbons and benzene in soil and groundwater, and also arsenic in the groundwater, on the property. These contaminants are currently the chemicals of concern (COCs) for the Site. Investigations include a Phase I Environmental Site Assessment, dated January 2001; a Phase II Environmental Site Assessment, dated May 2005; a soil and groundwater field investigation, dated July 2005; and additional soil and groundwater characterization performed in February 2006. The soil and groundwater investigations found COCs above MTCA Method A standards in both soils and groundwater.

VI. ECOLOGY DETERMINATIONS

A. Abitibi Consolidated Sales Corporation is an "owner or operator" as defined in RCW 70.105D.020(12), of a "facility" as defined in RCW 70.105D.020(4).

B. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(20) and RCW 70.105D.020(7), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to Abitibi dated January 6, 2006, pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500. 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 Abitibi is a PLP under RCW 70.105D.040 and notified Abitibi of this determination by letter dated March 9, 2006.

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. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health and 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. The localized petroleum hydrocarbon contamination at the Site has been characterized prior to the issuance of this Agreed Order. Abitibi is prepared to move forward with remediation of the localized contamination in the front parking area of the Site. That and the general close proximity of the contaminated area to a surface water body (Chambers Bay) warrants performing the remediation

of the localized release of petroleum hydrocarbons as an interim action, consistent with WAC 173-340-430.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that Abitibi take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

A. Remedial Investigation/Feasibility Study (RI/FS)

Based on investigations conducted to date, Abitibi has gathered sufficient data to meet the requirements for a remedial investigation necessary to determine the extent and nature of the petroleum hydrocarbon, benzene and arsenic contamination identified on the Site, pursuant to WAC 173-340-350(7). Data from some of these investigations are reported in *Phase II Environmental Site Assessment, Abitibi West Tacoma Mill, Steilacoom, WA, CH2M HILL, May 2005*; and *West Tacoma Mill Supplemental Field Investigation, May 2005 Groundwater and Soil Sample Results, CH2M HILL, July 2005*. Abitibi also performed additional sampling in February 2006.

1. Scope of Work

a. RI/FS: Based on the results of the site investigations, Abitibi shall prepare a draft RI/FS report in accordance with WAC 173-340-350 that provides information adequately documenting the nature and extent of contamination at the Site. The RI/FS shall report the results of remedial investigations of the Site including vertical and lateral distribution of contaminants in soil and groundwater and concentrations of COCs in both media. The report shall include an overview of the facility operations as a whole, including an analysis of the cause of arsenic contaminated groundwater that has been documented, and any conclusions that can be drawn regarding potential off-site contribution or migration of contaminants to nearby surface water. Additionally, the report shall include an

analysis of potential remedial alternatives and recommendations regarding a preferred remedial action to be implemented.

b. Schedule: Abitibi shall submit the draft RI/FS report to Ecology for review and approval within one hundred and twenty (120) days of the effective date of this Order. Abitibi shall submit a revised draft RI/FS report to Ecology for review and approval within thirty (30) days of the receipt of Ecology's comments.

B. Draft Cleanup Action Plan (CAP)

Upon Ecology approval of the final RI/FS report, Abitibi shall prepare a Draft CAP in accordance with WAC 173-340-380 that details the proposed cleanup action for addressing the contamination present on the Site, and addresses the requirements for developing a cleanup action in WAC 173-340-350 through 173-340-390, including Ecology's expectations for cleanup alternatives in WAC 173-340-370.

1. Scope of Work

a. CAP: The Draft CAP shall meet the requirements of WAC 173-340-380, and include a general description of the proposed cleanup action, cleanup standards from the RI/FS and a rationale regarding their selection, a proposed schedule for implementation, description of any institutional controls proposed, and a summary of federal, state and local laws that are applicable to the proposed cleanup action.

b. Schedule: Abitibi shall submit the Draft CAP to Ecology for review within ninety (90) days of Ecology's review and acceptance of the final RI/FS.

C. Interim Action

Abitibi will perform an interim action to remove petroleum hydrocarbon contaminated soil in the northern portion of the Site. Abitibi shall submit to Ecology a work plan that describes the scope of work expected.

1. Scope of Work

a. Interim Action: The work will consist of removal of soil that has been contaminated by petroleum hydrocarbons and a determination of the extent of groundwater contamination that has occurred. Additionally, it is expected that monitoring wells will be installed to provide ongoing monitoring of groundwater in the vicinity of the release and down gradient between the release area and nearby surface water.

b. Schedule: Within 60 days of the effective date of this Order, Abitibi shall provide to Ecology for review and approval a work plan to implement the interim action. The work plan shall describe the work to be performed, including how excavated material will be disposed. In accordance with Section VIII.P of this Order, the work plan shall also identify any federal, state or local requirements applicable to this action, including any state or local permits or approvals that are procedurally exempt under RCW 70.105D.090, and as necessary Abitibi shall consult with the City of Steilacoom or other affected state or local jurisdiction to identify any such substantive requirements pursuant to 173-340-710(9)(d)(ii). Once approved by Ecology, the interim action shall be performed in accordance with the work plan and schedule provided in the work plan.

D. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this Section, Ecology may complete and issue the final deliverable.

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notice

This Order has been the subject of public notice and comment pursuant to WAC 173-340-600.

B. Remedial Action Costs

Abitibi 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 Chapter 70.105D RCW, 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. Abitibi shall pay the required amount within ninety (90) 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.

Pursuant to RCW 70.105D.055, Ecology has authority to recover unreimbursed remedial action costs by filing a lien against real property subject to the remedial actions.

C. Implementation of Remedial Action

If Ecology determines that Abitibi has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to Abitibi, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of Abitibi's failure to comply with its obligations under this Order, Abitibi shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.B (Remedial Action Costs), provided that Abitibi is not obligated under this section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

Except where necessary to abate an emergency situation, Abitibi 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.

D. Designated Project Coordinators

The project coordinator for Ecology is:

Marv Coleman, Site Manager/Inspector
Southwest Regional Office
Toxics Cleanup Program
Phone: (360) 407-6259
Email: mcol461@ecy.wa.gov

The project coordinator for Abitibi is:

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 Abitibi, 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 coordinator(s).

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.

E. Performance

All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a licensed professional engineer or licensed hydrogeologist, or equivalent with experience and expertise in hazardous waste site investigation and cleanup. Abitibi shall notify Ecology in writing of the identity of such engineer(s), or hydrogeologist(s), or others, and of any contractor(s) and subcontractor(s) to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

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

F. Access

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that Abitibi 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 Abitibi'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 Abitibi. Abitibi shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by Abitibi 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 Abitibi unless an emergency prevents such notice. All persons who access the Site pursuant to Section VIII.F (Access) shall comply with the Health and Safety Plan. Ecology employees and their representative shall not be required to sign any liability release or waiver as a condition of Site property access.

G. Sampling, Data Reporting, and Availability

With respect to the implementation of this Order, Abitibi 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) provided at <http://www.ecy.wa.gov/eim/>, and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, Abitibi shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by Abitibi pursuant to the implementation of this Order. Abitibi shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow Abitibi 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.F (Access), Ecology shall notify Abitibi 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 Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

H. Public Participation

The public participation plan for this Site is attached as Exhibit B.

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

1. If agreed to by Ecology, develop appropriate mailing list, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, RI/FS reports, CAPs, 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 major meetings with the interested public and local governments. Likewise, Ecology shall notify Abitibi prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments. For all press releases, fact sheets, major meetings, and other outreach efforts by Abitibi that do not receive prior Ecology approval, Abitibi 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. Citizens for a Healthy Bay
917 Pacific Avenue Suite 100
Tacoma, WA 98402
- b. Tacoma Public Library – Main Branch
Northwest Room
1102 Tacoma Avenue South

Tacoma, WA 98402

- c. Ecology's Southwest Regional Office
300 Desmond Drive
Lacey, WA 98503

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

I. 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, Abitibi 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, Abitibi shall make all records available to Ecology and allow access for review within a reasonable time.

J. Resolution of Disputes

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII.B (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

a. Upon receipt of Ecology's project coordinator's written decision or the itemized billing statement, Abitibi has fourteen (14) days within which to notify Ecology's project coordinator in writing of its objection to the decision or itemized statement.

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

c. Abitibi may then request regional management review of the decision. This request shall be submitted in writing to the Southwest Region Toxics Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of Abitibi's request for review. The Section Manager's decision 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.

K. Extension of Schedule

1. 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 Abitibi 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 includes, but is not limited to:

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

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

c. Endangerment as described in Section VIII.M (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 Abitibi.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give Abitibi written notification in a timely fashion of any extensions granted pursuant to the 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.L (Amendment of Order) when a schedule extension is granted.

4. 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.M (Endangerment).

L. 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.N (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 Abitibi. Abitibi shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or

disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to the Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to the Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J (Resolution of Disputes).

M. Endangerment

In the event Ecology determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct Abitibi to cease such activities for such period of time as it deems necessary to abate the danger. Abitibi shall immediately comply with such direction.

In the event Abitibi determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, Abitibi may cease such activities. Abitibi 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 Abitibi shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Abitibi's cessation of activities, it may direct Abitibi to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to Section VIII.M (Endangerment), Abitibi'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.K (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.

N. Reservation of Rights

This Order is not a settlement under Chapter 70.105D RCW. 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 Abitibi to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against Abitibi regarding remedial actions required by this Order, provided Abitibi complies with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

O. 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 Abitibi 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 Abitibi's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, Abitibi 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, Abitibi shall notify Ecology of said transfer. Upon transfer of any interest, Abitibi shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

P. Compliance with Applicable Laws

1. All actions carried out by Abitibi pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. At this time, no federal,

state or local requirements have been identified as being applicable to the actions required by this Order.

2. Pursuant to RCW 70.105D.090(1), Abitibi is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, Abitibi shall comply with the substantive requirements of such permits or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

Abitibi 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 Abitibi 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 Abitibi shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Abitibi 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 Abitibi and on how Abitibi must meet those requirements. Ecology shall inform Abitibi in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Abitibi shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

3. 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 Abitibi 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.

Q. Indemnification

Abitibi 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 for death or injuries to persons or for loss or damage to property to the extent arising from or on account of acts or omissions of Abitibi, its officers, employees, agents, or contractors in entering into and implementing this Order. However, Abitibi 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 Abitibi's receipt of written notification from Ecology that Abitibi has completed the remedial activity required by this Order, as amended by any modifications, and that Abitibi 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. In the event Abitibi refuses, without sufficient cause, to comply with any term of this Order, Abitibi 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; and

2. Civil penalties of up to \$25,000 per day for each day it refuses to comply.

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D. This Order is not appealable to the Washington Pollution Control Hearings Board.
This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: _____

ABITIBI CONSOLIDATED SALES CORP.

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

Rebecca S. Lawson, P.E.
Section Manager, Toxics Cleanup Program
Southwest Regional Office
(360) 407-6241

EXHIBIT A
SITE DIAGRAM

EXHIBIT B
PUBLIC PARTICIPATION PLAN