

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

AGREED ORDER

Grant County  
and  
The City of Ephrata

No. DE 3810

TO: Grant County  
P.O. Box 37  
Ephrata, WA 98823

City of Ephrata  
121 Alder Street SW  
Ephrata, WA 98823

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Exhibit A: Landfill Diagram and Legal Description

- Exhibit B: Remedial Investigation Work Plan
- Exhibit C: Interim Remedial Action Work Plan
- Exhibit D: Schedule
- Exhibit E: Required Permits and Applicable Substantive Provisions

## **I. INTRODUCTION**

The mutual objective of the State of Washington, Department of Ecology (Ecology), Grant County (County), and the City of Ephrata (City) under this Agreed Order (Order) is to provide for remedial actions at a facility where there has been a release or threatened release of hazardous substances. This Order requires the County and the City to conduct a remedial investigation and feasibility study (RI/FS) to investigate the nature and extent of releases or threatened releases at the Ephrata Landfill and to propose cleanup options. The Order also requires the County and the City to conduct the following interim remedial actions: remove the approximately 2,000 drums of waste and the associated contaminated soils located in the northern portion of the landfill, extract and treat water from the area in the old landfill known as “the Hole”, construct a final cover system over the waste disposal areas currently undergoing closure and manage landfill gas and control surface water during the RI/FS process. Ecology believes the actions required by this Order are in the public interest.

## **II. JURISDICTION**

This Agreed Order is issued pursuant to the authority of 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. The County and the City agree to undertake all actions required by the terms and conditions of this Order. The County and the City 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 Revised Code Washington (RCW) and Chapter 173-340 Washington Administrative Code (WAC) shall control the meanings of the terms used in this Order.

1. Site: The Site is referred to as the Ephrata Landfill and is generally located at about three miles south of the City of Ephrata, east of Highway 28, in the western portion of Section 33, Township 21 North, Range 26 East, Willamette Meridian. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site.

2. Ephrata Landfill: The Ephrata Landfill or Landfill includes the waste management facilities at the Site and the property on which they are located. The legal description of the Landfill is attached as Exhibit A together with a drawing showing the location of the landfill facilities.

3. The Hole: The Hole is a subsurface depression in the basalt beneath the old landfill located in the northwest corner of the old landfill. It is 10 to 20 feet deep and about 450 feet in diameter. The bottom of the depression is filled with a sediment-refuse mix.

4. Parties: Refers to the State of Washington, Department of Ecology, Grant County, and the City of Ephrata.

5. PLP: Refers to the Potentially Liable Parties, Grant County, and the City of Ephrata.

6. 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 the Order.

#### V. FINDINGS OF FACT

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

1. The Ephrata Landfill is located about three miles south of the City of Ephrata on the east side of Highway 28 in the western portion of Section 33, Township 21 North, Range 26 East, Willamette Meridian.

2. The City of Ephrata began operating the Ephrata Landfill in approximately 1942 and owned and operated it until 1974. The City owned part of the property set aside for the landfill and leased additional property from the United States Bureau of Reclamation.

3. The landfill was operated as an open dump prior to 1962. The landfill operated continually as an unlined cell until a new lined cell was opened in 2005.

4. In 1974, the City and the County entered into the first of a series of agreements under which the County leased the landfill from the City and operated the facility. In 1990, the Bureau of Reclamation transferred its landfill property to the County. In 1994, the City deeded its landfill property to the County.

5. Approximately 2,000 drums of industrial waste were buried at the landfill in August 1975. In December 1975, the Grant County Health District stopped disposal of drums at the landfill due to health concerns.

6. The Site was added to the Environmental Protection Agency (EPA) list of potential hazardous sites in 1979.

7. Ecology submitted a Preliminary Assessment to the EPA in 1984 and recommended a follow-up Site Investigation. The EPA conducted a preliminary Site Investigation in 1986. Ecology completed a Phase I Site Investigation in 1987.

8. Groundwater monitoring began at the Site in 1988. Since then, the network of wells has been systematically expanded. The County has drilled and sampled twenty-five (25) monitoring wells and two (2) extraction wells at the Site. The current well network includes twenty-one (21) on- and off-site wells.

9. The Roza aquifer is one of several aquifers underlying the Site. In January 1990, the "Ephrata Landfill Geohydrologic Assessment Report" described the results of the earliest groundwater sampling at the site. This report predates the Water Quality Standards for Ground Waters of the State of Washington, Ch. 173-200 WAC and the regulations implementing the

state Model Toxics Control Act found in Ch. 173-340 WAC. The report states that the levels of total organic halogens found in the Roza aquifer at MW-3 were “significantly higher” than those found at the other Roza aquifer wells. Additionally, the report noted the detection in MW-3 at “relatively high concentrations” of, for example, 1,1-dichloroethane, 1,2-dichloroethane, 1,1,1-trichloroethane, trichloroethene, tetrachloroethene, vinyl chloride and other breakdown products, benzene, toluene, xylenes, and the pesticide, 1,2-dichloropropane.

10. Data reported in the 2004 annual report on groundwater monitoring activities at the Ephrata Landfill were compared to the groundwater quality criteria found in Ch. 173-200 WAC and the Method B criteria found in Ch. 173-340 as required by the Assessment Monitoring Plan for the old part of the landfill. In that report, the Roza aquifer is described as “characterized by high concentrations of inorganic constituents and corresponding high total dissolved solids.” The report states that consistently high concentrations of organic contaminants were found in the Roza aquifer, and that these concentrations were increasing. According to the report, the Interflow aquifer was less contaminated, with a few organic constituents exceeding criteria and several inorganic and metal concentrations exceeding relevant criteria. The report stated that the Outwash aquifer contained moderate total dissolved solids and nitrate concentrations, arsenic concentrations that exceeded criteria but were likely naturally-occurring, fairly constant low-level concentrations of 1,1-dichloroethane and tetrachloroethene that exceeded groundwater criteria, and a detectable concentration of trichlorofluoromethane.

11. Of the aquifers that underlie the Site, the three that are closest to the ground surface all contained contaminants at levels exceeding groundwater standards in 2004. The total distance between contaminated wells at the Site is approximately 4,000 feet in a north-south direction and 2200 feet in an east-west direction. However, the landfill is likely not the only source of contamination to the area, and contamination may extend beyond these wells.

## **VI. ECOLOGY DETERMINATIONS**

1. Grant County is an "owner or operator" as defined in RCW 70.105D.020(12), of a "facility" as defined in RCW 70.105D.020(4) because it currently owns the property and owns and operates the Ephrata Landfill.

2. The City of Ephrata is an “owner or operator” as defined in RCW 70.105D.020(12), of a “facility” as defined in RCW 70.105D.020(4) because it operated the landfill until 1974 and owned the property where the original landfill is located from January 20, 1942 until January 4, 1994.

3. 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.

4. Based upon credible evidence, Ecology issued potentially liable person status letters to Grant County and the City of Ephrata dated October 20, 2000, pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500. By letter dated November 28, 2000, Grant County voluntarily waived its rights to notice and comment and accepted Ecology’s determination that Grant County is a potentially liable person (PLP) under RCW 70.105D.040. By letter dated December 6, 2000, the City of Ephrata voluntarily waived its rights to notice and comment and accepted Ecology’s determination that the City of Ephrata is a potentially liable person under RCW 70.105D.040. Ecology issued Final Determinations of Potentially Liable Person Status to the City of Ephrata and Grant County on January 10, 2005.

5. 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.

6. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study or design of a cleanup action.

7. The approximately 2,000 drums of industrial waste buried in the northern portion of the landfill constitute an ongoing threat to human health and the environment. Some of the contaminants detected in the groundwater at the Site are the same chemicals that are believed to be in the drums. Moreover, the drums may have deteriorated over time and released chemicals into the soil and groundwater. In addition, the County is in the process of closing and capping the portion of the landfill in which the drums are located. Once the County has capped the area, it will cost substantially more to remove the drums. These circumstances warrant removal of the drums as an interim action consistent with WAC 173-340-430.

8. The Hole has been identified as a likely source of contamination of the Roza aquifer due to the presence of refuse below the water table. The groundwater found in the bottom 5 to 7 feet of the hole is contaminated. The existing extraction well provides a means to remove the groundwater from the refuse in the Hole and maintain a gradient toward the well. These circumstances warrant extraction and disposal of the water in the Hole.

9. The presumptive remedy at a municipal landfill includes closure capping, landfill gas controls and surface water controls. Constructing a cap will decrease the infiltration of water into the landfill and also decrease the amount of water moving from the refuse into the surrounding soils and groundwater. The cap will also prevent direct human and animal contact with refuse and thus with the contaminants at the site. The gas controls prevent offsite gas migration and decrease the diffusion of contaminants into groundwater. Surface water controls prevent the flow of water from offsite onto the landfill and minimize the erosion potential. Construction of these presumptive remedies will decrease the risk or potential risk of the release of hazardous substances from the landfill and is warranted. As presumptive remedies, these measures should be implemented as soon as practicable.

## **VII. WORK TO BE PERFORMED**

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that PLPs 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)**

**1. Remedial Investigation Work Plan**

a. An RI/FS Work Plan is attached as Exhibit B and is incorporated herein by this reference.

b. The PLPs shall perform the tasks described in the Work Plan in accordance with the Schedule, attached as Exhibit D. Exhibit D is subject to revision as described in Section VIII.K (Extension of Schedule).

**2. Remedial Investigation and Feasibility Report**

a. PLPs shall submit a draft remedial investigation and feasibility study (RI/FS) (Ecology Review Draft RI/FS) to Ecology in accordance with WAC 173-340-350 for Ecology review and comment by the date shown on the Project Schedule, Exhibit D. Ecology will provide written comments on the draft RI/FS within 30 days of receipt of the draft.

b. Within forty-five (45) days of receiving Ecology's comments on the Ecology Review Draft RI/FS, PLPs shall submit a revised RI/FS to Ecology addressing Ecology's comments on the Ecology Review Draft RI/FS. If Ecology comments require additional sampling, a Revised Draft RI/FS will be submitted to Ecology within forty-five (45) days of receipt of the analytical results on the additional samples. If either or both PLPs disagree(s) with Ecology's comments, it may trigger the Dispute Resolution process described in Section VIII J.

c. After Ecology has determined the Revised Draft RI/FS has adequately addressed Ecology's comments, Ecology will make the draft available to the public consistent with WAC 173-340-600(13)(c). Following completion of the review period, Ecology will, in cooperation with the PLPs, prepare a responsiveness summary if any public comments are received.

d. Within forty-five (45) days of receipt of Ecology's responsiveness summary, the PLPs shall submit a revised RI/FS addressing issues raised during public comment. Once Ecology determines that public comments have been adequately addressed, Ecology will declare the RI/FS final (the "Final RI/FS").

### **3. Progress Reports**

During performance of RI/FS pursuant to this Order, the PLPs will submit written progress reports to Ecology. The progress reports will summarize work performed during the reporting period, and the work anticipated during the following quarter. Progress reports shall be submitted to the Ecology project coordinator by the 10<sup>th</sup> day of every second month following the effective date of the Agreed Order.

### **4. Performance**

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.

## **B. Interim Actions**

1. An Interim Remedial Action Work Plan (IRAP) is attached as Exhibit C and is incorporated herein by this reference.

2. Under the direct supervision of a registered professional engineer, licensed professional hydrogeologist, or other qualified professional, the PLPs will commence the first interim remedial action within 60 days of the date of the Agreed Order.

3. All Interim Action sampling and analysis shall be conducted pursuant to the Sampling and Analysis Plan incorporated into the IRAP. The PLPs shall perform the Interim Actions in accordance with the Health and Safety Plan incorporated into the IRAP. The PLPs will conduct compliance monitoring in accordance with the IRAP and WAC 173-340-410.

4. During performance of the Interim Action, the PLPs shall maintain detailed records including photographic documentation of substantive aspects of the work performed, including construction techniques and materials used, items installed, and tests and measurements performed. During the drum removal portion of the interim actions only, the PLPs' project coordinators or designees shall provide progress reports to Ecology's project coordinator on a weekly basis. Each progress report shall identify accomplishments for the prior week and expected accomplishments for the upcoming weeks. At all other times during the interim actions, PLPs will submit written monthly progress reports to Ecology unless an alternate

schedule is requested by the PLPs and agreed to by Ecology in writing. The progress reports will summarize work performed during the month, and the work anticipated during the following month. Progress reports shall be submitted to the Ecology project coordinator by the 10<sup>th</sup> day of every month during which Interim Actions are underway.

### **VIII. TERMS AND CONDITIONS OF ORDER**

#### **A. Public Notices**

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

#### **B. Remedial Action Costs**

PLPs 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 the Order. PLPs 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 as well as Site Logs for each staff member billing time to this project. 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 the application of interest charges at the rate of twelve percent (12%) per annum, compounded monthly. If, however, a PLP disputes costs included in an

Ecology itemized statement of costs incurred, the dispute resolution procedures described in Section VIII.L. below must be triggered within fourteen (14) days of receipt of the statement.

**C. Implementation of Remedial Action**

Except where necessary to abate an emergency situation, PLPs 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:

Cole H. Carter  
Solid Waste and Financial Assistance Program  
Eastern Regional Office, Washington State Dep't of Ecology  
4601 N. Monroe  
Spokane, WA 99205  
(509) 329-3609

The project coordinator for Grant County is:

Derek Pohle, P.E.  
Public Works Director/County Engineer  
124 Enterprise Street S.E.  
Ephrata, WA 98823  
(509) 754-6084

The project coordinator for the City of Ephrata is:

Wes Crago  
City Administrator  
121 Adler Street S.W.  
Ephrata, WA 98823  
(509) 754-4601

The project coordinators shall be responsible for overseeing the implementation of this Order. The Ecology project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and PLPs, 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).

Ecology and PLPs may change their respective project coordinators, but must provide ten (10) days advance written notification of the change to the other parties.

**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 as approved by Ecology, with experience and expertise in hazardous waste site investigation and cleanup. PLPs shall notify Ecology in writing of the identity of such engineer(s), or hydrogeologist(s), or others, and of any contractors and subcontractors 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 the 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. For well construction, supervision by a licensed geologist is appropriate and allowed.

**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 PLPs either own, control, or have 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 PLPs' 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 PLPs. Each of the PLPs shall keep all records related to its compliance with this Order in a specified location; shall notify Ecology of that location; and shall provide Ecology access to those records upon request. PLPs shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by PLPs 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 PLPs unless an emergency prevents such notice. All persons who access the Site pursuant to this paragraph shall comply with the approved health and safety plan, if any.

Ecology employees and their representative shall not be required to sign any release or waiver as a condition of site property access.

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

With respect to the implementation of this Order, PLPs 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), and Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements). If requested by Ecology, PLPs shall allow split or duplicate samples to be taken by Ecology and/or its authorized representative of any samples collected by PLPs pursuant to implementation of this Order. PLPs shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order to be taken by PLPs or their authorized representatives provided it does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.F. of this Order, Ecology shall notify PLPs seven (7) days prior to any sample collection activity that will occur at a time when the PLPs' groundwater consultants are not scheduled to be on-site 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**

A public participation plan is required for this Site. Ecology shall maintain the lead responsibility for public participation at the Site. However, Ecology shall work cooperatively with PLPs to develop a public participation plan for activities at the Site. The public participation plan shall authorize Ecology to delegate to PLPs all or portions of these tasks:

1. Provide information to the public, public notice, and opportunities to comment as specified in WAC 173-340-600 for upcoming activities at the Site;

2. Prepare drafts of press releases, public notices, and fact sheets at important stages of the remedial investigation, feasibility study, and interim actions at the Site;
3. Coordinate press, public notice, and fact sheet releases before major meetings and presentations with the interested public and local government;
4. Arrange for and/or continue information repositories to be located at the following locations:
  - a. Ephrata City Library  
45 Alder Street N.W.  
Ephrata, WA 98823
  - b. Ecology's Eastern Regional Office  
4601 N. Monroe Street  
Spokane, WA 99105

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 actions required by this Order shall be promptly placed in these repositories.

PLPs and Ecology shall work cooperatively to implement public participation activities for the Site. This shall include the issuance of press releases, distribution of fact sheets, and participation in public meetings and presentations on the progress of the remedial actions at the Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

In the event of a disagreement over the contents of any document or action prepared for purposes of public participation, issues shall be resolved in a mutually agreeable manner. Disagreements between PLPs' and Ecology's project managers shall be elevated to their respective section heads or directors for resolution if they cannot be resolved by the project managers.

#### **I. Retention of Records**

During the pendency of this Order and for ten (10) years past the period required under WAC 173-351-500 for post-closure care, as areas of the landfill are closed, PLPs 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, PLPs 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 the Ecology project coordinator's decision or the itemized billing statement, PLP has fourteen (14) days within which to notify Ecology's project coordinator 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. The PLP may then request Ecology management review of the decision. This request shall be submitted in writing to the Eastern Region Solid Waste 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 sixty (60) days of PLP'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 the reason(s) the extension is needed. 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 PLPs 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 PLPs, 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 PLPs; or

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

- c. Endangerment as described in Section VIII.M. of this Order.

Generally, neither increased costs of performance of the terms of an Agreed Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of the PLPs. However, because the PLPs in this circumstance are small municipalities that are: (1) subject to unpredictable revenue streams; (2) responsible for addressing unknown emergencies, disasters and threats to public health in their communities that may require significant financial resources; and (3) subject to legal and procedural budgetary constraints that may limit, or delay, the availability of financial resources, in some circumstances increased costs

of performance or changed economic circumstances may present good cause for an extension. Ecology retains discretion to weigh such factors in granting or denying any extension.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give PLPs 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. 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. of this Order.

**L. Amendment of Order**

1. The project coordinators may orally 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.

2. Except as provided in Section VIII.N. of this Order, substantial changes to the work to be performed under this Order, including substantial changes to the Work Plan, shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and PLPs.

a. PLPs 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 additional public notice and opportunity to comment. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J. of this Order.

b. Should Ecology wish to amend this Order, Ecology will notify the PLPs. If the requested amendment represents a substantial change, the Parties will provide additional public notice and opportunity to comment. If a PLP disagrees with the proposed amendment, it can request a meeting with Ecology or invoke the dispute resolution process described in Section VIII.J. of this Order.

**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 PLPs to cease such activities for such period of time as it deems necessary to abate the danger. PLPs shall immediately comply with such direction.

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

If Ecology concurs with or orders a work stoppage pursuant to this section, PLPs' 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 for such period of time as Ecology determines is reasonable under the circumstances.

Either PLP may utilize the Dispute Resolution Provisions of Section VIII.J. of this Order if it disagrees with Ecology's determinations regarding the existence of conditions necessitating work stoppage or the refusal to extend any affected deadlines. If, however, Ecology requires a work stoppage, the PLPs agrees to stop work during the dispute resolution process, and Ecology agrees to move expeditiously through the dispute resolution process.

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/No Settlement**

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 Ecology rights or authority. Ecology will not, however, bring an action against PLPs to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against PLPs regarding remedial actions required by this Order, provided PLPs comply 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 PLPs 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 a PLP's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, PLP shall provide a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, PLP shall notify Ecology of said transfer. Upon transfer of any interest, PLP 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 PLPs 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. A list of the required permits known at the time of entry of this Order has been included in Exhibit E.

2. Pursuant to RCW 70.105D.090(1), PLPs are 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, PLPs shall comply with the substantive requirements of such permits or approvals. A list of such permits and approvals and/or the substantive requirements of those permits and approvals as they are known to be applicable at the time of entry of this Order, have been included in Exhibit E.

PLPs have 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 a PLP determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other parties of its determination. Ecology shall determine whether Ecology or PLPs shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, PLPs 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 PLPs and on how PLPs must meet those requirements. Ecology shall inform PLPs in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. PLPs shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

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 which is necessary for the state to administer any federal law, the exemption shall not apply and PLPs 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**

PLPs agree 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 arising from or on account of acts or omissions of PLPs, their officers, employees, agents, or contractors in entering into and implementing this Order. However, the PLPs shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in implementing the activities pursuant to this Order.

The State of Washington agrees to indemnify and save and hold PLPs, their officials, officers, employees and contractors harmless to the extent allowed by law.

**IX. SATISFACTION OF ORDER**

The provisions of this Order shall be deemed satisfied upon PLPs' receipt of written notification from Ecology that they have completed the remedial actions required by this Order, as amended by any modifications, and that the PLPs have complied with all other provisions of this Agreed Order.

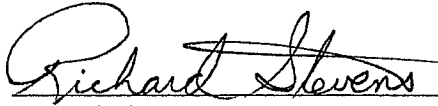
**X. ENFORCEMENT**

This Order may be enforced pursuant to RCW 70.105D.050.

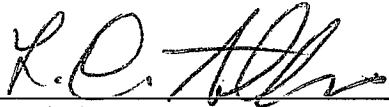
This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: \_\_\_\_\_

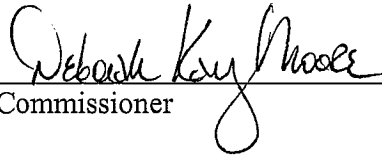
**GRANT COUNTY**



Commissioner



Commissioner



Commissioner

12/11/06

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

Michael A. Hibbler  
Section Manager  
Solid Waste and Financial Assistance Program  
Eastern Regional Office  
(509) 329-3466

**CITY OF EPHRATA**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Administrator

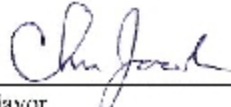
**GRANT COUNTY**

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

\_\_\_\_\_  
Commissioner

**CITY OF EPHRATA**

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
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**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

\_\_\_\_\_  
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