

6.0 APPLICABLE OR RELEVANT AND APPROPRIATE REQUIREMENTS

Applicable or relevant and appropriate requirements (ARARs) were developed by USACE for the Starr Road remedial action and were presented in the Starr Road Final Design Analysis Report (USACE, 2006b). Due to the proximity of the sites in question, and the similarity of site contaminants, sources, remedial action objectives and remedial alternatives, the Starr Road ARARs are generally applicable to the Island Complex, Murray Road, and Harvard Road North projects. Specific regulatory approaches to incorporation of ARARs within each remedial design will vary from that taken for the Starr Road site due to several factors including Ecology's role as lead agency rather than EPA. For example, state-lead projects must obtain a permit from the USACE where federal-lead projects may rely on the substantive requirements process. The Starr Road ARARs are summarized below. As the remedial design for the Island Complex, Murray Road, and Harvard Road North sites are developed, the chemical-, location- and action-specific ARARs for each site will be refined.

6.1 U.S. Army Corps of Engineers Nationwide Permit

Permitting by the U.S. Army Corps of Engineers (USACE) is required for projects located within waters of the United States. Projects having minimal impact to the environment are permitted under the Nationwide Permit (NWP) program. Specifically, toxics cleanup projects have been assigned a specific type of NWP termed a NWP 38. Based on past project experience, it is expected that Island Complex, Harvard Road North and the other Spokane River shoreline metals cleanup projects will be permitted under the NWP 38.

As part of the NWP 38 approval process, state-lead projects are required to comply with the Endangered Species Act of 1973 (ESA). Specific requirements of the ESA, as well as other permit requirements, will be identified and Ecology will ensure that each project is carried out in a manner that satisfies all requirements.

As part of the design process for the Starr Road remediation project, the segment of the Spokane River that will be affected by the Island Complex remediation was evaluated by USACE for the presence of threatened and/or endangered species. The following is the list of federally designated threatened and endangered species that may exist within the vicinity of the project:

- Grizzly Bear (*Ursus arctos horribillis*) – Threatened
- Gray Wolf (*Canus lupus*) – Endangered
- Canada lynx (*Lynx Canadensis*) – Threatened
- Bald Eagle (*Haliaeetus leucocephalus*) – Threatened
- Water Howellia (*Howellia aquatilis*) – Threatened
- Ute ladies'-tresses (*Spiranthes diluvialis*) – Threatened

The results of this biological evaluation are documented in Appendix 4 of the Starr Road Final Design Report (USACE, 2006b). USACE has determined that the project will have *no effect* on any of these listed species.

Consultations with the WDFW identified the presence of locally important spawning habitat for rainbow trout in the Spokane River, specifically the gravel bar area targeted for remediation at the Starr Road site. No threatened and/or endangered fish species are present in the Spokane River.

6.2 Clean Water Act, Section 401/404 Compliance

The Clean Water Act (CWA) requires that any 'discharge' to waters of the United States demonstrate consistency with State water quality standards (as developed by each state). The remedy for the Island Complex site may include excavation or placement of fill material within the Spokane River, which is considered a water of the United States under the CWA. Normally, a project including these actions would be required to obtain USACE permits under Sections 401 and 404, including the requirement to obtain a Water Quality Certification (WQC) from the appropriate state agency (Ecology). However, for toxics cleanup projects, permitting by USACE under the NWP 38 program is common. Projects permitted under the NWP 38 are not required to obtain a state WQC. Regardless of whether a WQC is required, Ecology will identify any appropriate water quality monitoring requirements for the remedy and ensure that these requirements are included in the construction documents for these projects.

6.3 Cultural Resources and Historic Preservation

The State Environmental Policy Act (SEPA) as well as the Governor's Executive Order No. 05-05 require that state agencies and local governments consider impacts to cultural resources during their public environmental review process on capital projects. Ecology will ensure that the shoreline metals remediation projects are completed in a manner that respects cultural resources and complies with applicable state law, regulations, and guidance including necessary surveys or assessments of the cultural resources and consultation with affected tribes. The Coeur d'Alene and Spokane Tribes are the potentially affected tribal governments for these projects.

All cultural resource assessment documentation will be provided to the appropriate stakeholders to include at a minimum the tribes cited above as well as the Washington State Department of Archaeology and Historic Preservation (DAHP) for their review.

6.4 Hydraulic Project Approval

Under Washington State Law (Revised Code of Washington [RCW] 77.55), any construction project to be conducted within waters of the State (hydraulic project) must obtain a permit from the WDFW in the form of a Hydraulic Project Approval (HPA). Permits issued under this statute may be conditioned by WDFW in order to protect fish life.

Under RCW 70.105D.090, remedial actions conducted by Ecology are exempt from the procedural requirements of chapters 70.94 [Air], 70.95 [Solid Waste], 70.105 [Hazardous Waste], 77.55 [Hydraulic Permit], 90.48 [Water Quality], 90.58 [Shorelands], and the procedural requirements of any laws requiring or authorizing local government permits or approvals for the remedial action. Ecology has developed policy concerning the implementation of these permit exemptions to ensure that such remedial actions comply with the substantive requirements adopted pursuant to such laws, and that consultation with the state agencies and local governments charged with implementing these laws occurs.

Any substantive requirements identified by the WDFW will be identified during the stakeholder review process (approximately the 90% design level) and addressed in the design.

6.5 Shoreline Management Act (and local shoreline regulations)

As discussed above, the substantive requirements of state or local permits must be satisfied by remedial actions performed by Ecology, including shoreline permitting requirements.

Depending on project location, shoreline requirements originating in the State of Washington Shoreline Management Act, and implemented through local Shoreline Master Programs may apply via the appropriate local municipal government agency (Spokane County, City of Spokane, City of Spokane Valley, or City of Liberty Lake).

Any substantive requirements identified by Ecology or a local authority as cited above will be identified during the stakeholder review process (approximately the 90% design level) and addressed in the design.