

**STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY**

In the Matter of:

DEQ NO. LQVC-WR-21-03

MPC Builders, LLC
1700 Chapel
Philomath, OR 97370

ORDER ON CONSENT

Respondent

Pursuant to ORS 465.260(4) the Director of the Oregon Department of Environmental Quality (“DEQ”) issues this Order on Consent (Consent Order) to MPC Builders, LLC or “Respondent”, collectively the “Parties”. This Consent Order contains the following provisions:

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Exhibit A: Site Maps

Exhibit B: Scope of Work

1. Purpose

The mutual objective of DEQ and Respondent is to determine the nature and extent of releases of hazardous substances at the Site, and to develop, evaluate, and select appropriate removal and/or remedial measures in a manner that complies with the applicable provisions of ORS 465.200 through 465.420 and regulations promulgated thereto.

2. Stipulations

Respondent consents and agrees:

- A. To issuance of this Consent Order;
- B. To perform and comply with all provisions of this Consent Order;
- C. In any proceeding brought by DEQ to enforce this Consent Order, to not challenge DEQ's jurisdiction to issue and enforce this Consent Order;
- D. To waive any right Respondent might have, before commencement of action by DEQ to enforce this Consent Order, to seek judicial review or review by the Environmental Quality Commission of this Consent Order;
- E. To not litigate, in any proceeding brought by DEQ to enforce this Consent Order or to assess penalties for noncompliance with this Consent Order, any issue other than Respondent's compliance with this Consent Order;
- F. To not assert, in any proceeding brought by DEQ to enforce this Consent Order or to assess penalties for noncompliance with this Consent Order, that performance of any interim or removal measures or phase of work by Respondent discharges Respondent's duty to fully perform all remaining provisions of this Consent Order; and
- G. To waive any right Respondent might have under ORS 465.260(7) to seek reimbursement from the Hazardous Substances Remedial Action Fund of costs incurred under this Consent Order.

H. For purposes of this Consent Order, "day" means calendar day unless otherwise specified.

3. Findings of Fact

DEQ makes the following findings without admission of any such facts by Respondent:

- A. Respondent is MPC Builders, LLC, an Oregon limited liability company.
- B. The former Philomath Mill Site and the current Millpond Crossing Subdivision is located on the NW corner of Chapel Dr. and S. 15th St., in Philomath, Oregon (the "Site"). The general location of the site is shown on Exhibit A to this Consent Order.
- C. The Site was a former sawmill facility, including two large log ponds and a refueling area that occupied approx. 30 acres. The mill operated under various names (Hobin Mill, Quad Mill, etc.) between 1955 and 1998. The two log ponds were reportedly filled with wood waste and rock during the 1980s. In 2020, residential development and occupancy for the Millpond Crossing subdivision began along the western edge of the Site. The Site has been subdivided into residential parcels that have been purchased, or may be later purchased, by individual residential property owners ("Residential Owners").
- D. In 2018, petroleum hydrocarbons were found in subsurface soils above DEQ's allowable risk-based concentrations (RBCs) for the proposed use of the property as a residential development. In 2020, methane gas was identified in a few locations across the property above its lower explosive limit (LEL) of 5%.

4. Conclusions of Law and Determinations

Based on the above findings of fact and the administrative record, DEQ determines, without admission of any such determinations by Respondent, that:

- A. MPC Builders, LLC is a "person" within the meaning of ORS 465.200(21).
- B. The chemicals described in Subsection 3.D. are "hazardous substances" within the meaning of ORS 465.200(16).
- C. The presence of hazardous substances in soil, groundwater and air at the site constitutes a "release" or "threat of release" into the environment within the meaning of ORS 465.200(22).
- D. The site described in Subsection 3.B. is a "facility" within the meaning of ORS 465.200(13).

- E. The activities required by this Consent Order are necessary to protect public health, safety, and welfare and the environment.

Based upon the above Stipulations, Findings of Fact, Conclusions of Law and Determinations, DEQ ORDERS:

5. Work to be Performed

A. Remedial Investigation and Feasibility Study

Respondent must perform a remedial investigation and feasibility study (“RI/FS”) satisfying OAR Chapter 340 Division 122, the terms and schedules set forth in the Scope of Work (SOW) contained in Exhibit B to this Consent Order, and the terms and schedules set forth in any DEQ-approved work plan. Once approved by DEQ, a work plan is deemed to be incorporated into and made a fully enforceable part of this Consent Order.

B. Additional Measures

- (1) Respondent may elect at any time during the term of this Consent Order to undertake measures, beyond those required under this Consent Order and the SOW, as necessary to address the release or threatened release of hazardous substances at the facility. Such additional measures (including but not limited to engineering or institutional controls and other removal or remedial measures) are subject to prior approval by DEQ. DEQ’s approval will be granted if DEQ determines that the additional measures will not compromise the validity of the RI/FS or threaten human health or the environment and will comply with applicable laws.
- (2) DEQ may determine that, in addition to work specified in the SOW or an approved work plan, additional work is necessary to complete the RI/FS in satisfaction of the SOW and OAR Chapter 340 Division 122, or is necessary to address unanticipated threats to human health or the environment. DEQ may require that such additional work be incorporated into the applicable work plan by modification and/or be performed in accordance with a DEQ-specified schedule. Respondent must modify the work plan and/or implement the additional work in accordance with DEQ's directions and schedule, or invoke dispute resolution under Subsection 7.L. within 14 days of receipt of DEQ's directions.

6. Public Participation

Upon issuance of this Consent Order, DEQ will provide public notice of this Consent Order through issuance of a press release describing the measures required under this Consent Order. Copies of the Consent Order will be made available to the public. DEQ will provide Respondent a draft of such press release and consider any comments by Respondent on the draft press release, before publication.

7. General Provisions

A. Project Managers

- (1) To the extent possible, all reports, notices, and other communications required under or relating to this Consent Order must be directed to:

<u>DEQ Project Manager:</u> Anthony Chavez Department of Environmental Quality Western Region 165 E. 7 th Avenue, Suite 100 Eugene, OR 97401 541-687-7348 anthony.chavez@deq.state.or.us	<u>Respondent Project Manager</u> Levi Miller PO Box 1059 Philomath, OR 97370 (541) 390-6977 levim@cedarcreekind.com
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- (2) The Project Managers or their respective designees must be available and have the authority to make day-to-day decisions necessary to implement the work plan. The Project Managers also may modify, by mutual agreement in writing, the SOW and work plans as necessary to complete the RI/FS in satisfaction of OAR Chapter 340 Division 122 or as necessary to address unanticipated threats to human health or the environment.

B. Supervising Contractor

- (1) All aspects of the work to be performed by Respondent pursuant to this Consent Order must be performed under the direction and supervision of a qualified employee or contractor having experience in hazardous substance investigation or remediation and knowledge of applicable state and federal laws, regulations, and guidance.
- (2) No later than 14 days after the Effective Date of this Consent Order, Respondent will notify DEQ in writing of the name, title, and qualifications of any proposed supervising contractor. DEQ may for good cause disapprove the proposed

contractor. In the event of such disapproval, DEQ will notify Respondent in writing of the reasons for its disapproval within 14 days of receipt of the initial notice from Respondent. Respondent, within 14 days of receiving DEQ's notice of disapproval, will notify DEQ of the name, title, and qualifications of an alternative supervising contractor, subject to DEQ's right to disapprove under the terms and schedule specified above. If DEQ subsequently disapproves the alternative supervising contractor, DEQ may terminate this Consent Order, and reserves its authority to perform the RI/FS work and seek reimbursement of costs from Respondent.

- (3) If, during the course of work required under this Consent Order, Respondent proposes to change its supervising contractor, Respondent will notify DEQ in accordance with the provisions of the preceding paragraph. DEQ may disapprove such contractor, under the terms and schedule specified in this Subsection.
- (4) In accordance with this Subsection, Respondent has proposed, and DEQ approves as of the Effective Date, PBS Engineering & Environmental as the supervising contractor for purposes of this Consent Order.

C. DEQ Approvals

- (1) Where DEQ review and approval is required for any plan or activity under this Consent Order, Respondent may not proceed to implement the plan or activity until DEQ approval is received. Any DEQ delay in granting or denying approval correspondingly extends the time for completion by Respondent. Prior approval is not required in emergencies; provided, Respondent will notify DEQ immediately after the emergency and evaluate the impact of its actions.
- (2) After review of any plan, report, or other item required to be submitted for DEQ approval under this Consent Order, DEQ will: (a) approve the submission in whole or in part; or (b) disapprove the submission in whole or in part and notify Respondent of its deficiencies and/or request modifications to cure the deficiencies.
- (3) DEQ approvals, rejections, modifications, or identification of deficiencies will be given as soon as practicable in writing and will state DEQ's reasons with reasonable specificity.
- (4) In the event of DEQ disapproval or request for modification of a submission,

Respondent will, within 30 days of receipt of the DEQ notice or such longer time as may be specified in the notice, correct the deficiencies and resubmit the revised report or other item for approval.

- (5) In the event of two deficient submittals of the same deliverable that are deficient for the same reasons due to Respondent's failure to cure the original deficiency, DEQ may modify the submission to cure the deficiency.
- (6) In the event of approval or modification of a submission by DEQ, Respondent will implement the action(s) required by the plan, report, or other item, as so approved or modified, or invoke dispute resolution under Subsection 7.L.

D. Access to Property

- (1) Respondent will allow DEQ to enter all portions of the Site owned by or under the control of Respondent at all reasonable times for the purpose of overseeing Respondent's performance under this Consent Order, including but not limited to inspecting records relating to work under this Consent Order, observing Respondent's progress in implementing this Consent Order, conducting such tests and taking such samples as DEQ deems necessary, verifying data submitted to DEQ by Respondent, conducting periodic review, and using camera, sound recording, or other recording equipment. DEQ will make available to Respondent, upon Respondent's request, any photographs or recorded or videotaped material taken.
- (2) Respondent will also seek to obtain access to property not owned or controlled by Respondent as necessary to perform the work required in this Consent Order, including access by DEQ for purposes described in Paragraph 7.D.(1). DEQ may use its statutory authority to obtain access to property on behalf of Respondent if DEQ determines that access is necessary and that Respondent has exhausted all good faith efforts to obtain access.

E. Records

- (1) In addition to those reports and documents specifically required under this Consent Order, Respondent will provide to DEQ, within 10 days of DEQ's written request, copies of QA/QC memoranda and audits, raw data, final plans, task memoranda, field notes (not made by or at the direction of Respondent's attorney), and

laboratory analytical reports relating to the work to be performed under this Consent Order.

- (2) Respondent will preserve all records and documents in possession or control of Respondent or its employees, agents, or contractors that relate in any way to activities under this Consent Order for at least five years after termination under Section 8 of this Consent Order. Upon DEQ's request, Respondent will provide to DEQ, or make available for copying by DEQ, copies of non-privileged records. For a period of 10 years after termination, Respondent will provide DEQ 60 days notice before destruction or other disposal of such records or documents. Ten years after termination, Respondent has no further obligation to preserve documents or records.
- (3) Subject to Paragraph 7.E.(4), Respondent may assert a claim of confidentiality under the Oregon Public Records Law regarding any documents or records submitted to or copied by DEQ pursuant to this Consent Order. DEQ will treat documents and records for which a claim of confidentiality has been made in accordance with ORS 192.410 through 192.505. If Respondent does not make a claim of confidentiality at the time the documents or records are submitted to or copied by DEQ, the documents or records may be made available to the public without notice to Respondent.
- (4) Respondent will identify to DEQ (by addressor-addressee, date, general subject matter, and distribution) any document, record, or item withheld from DEQ on the basis of attorney-client or attorney work-product privilege, except to the extent that such identifying information is itself subject to a privilege. Attorney-client and work-product privileges may not be asserted with respect to any records required to be submitted under Paragraph 7.E.(1). DEQ reserves its rights under law to obtain documents DEQ asserts are improperly withheld by Respondent.

F. Notice and Samples

- (1) Respondent will make every reasonable effort to notify DEQ of any excavation, drilling, sampling, or other fieldwork to be conducted under this Consent Order at least five working days before such activity, but in no event less than 24 hours before such activity. Upon DEQ's verbal request, Respondent will make every reasonable effort to provide a split or duplicate sample to DEQ or allow DEQ to

take a split or duplicate of any sample taken by Respondent while performing work under this Consent Order. DEQ will provide Respondent with copies of all analytical data from such samples as soon as practicable.

- (2) If DEQ conducts any sampling or analysis in connection with this Consent Order, DEQ will, except in an emergency, make every reasonable effort to notify Respondent of any excavation, drilling, sampling, or other fieldwork, at least 72 hours before such activity. Upon Respondent's verbal request, DEQ will make every reasonable effort to provide a split or duplicate sample to Respondent or allow Respondent to take a split or duplicate of any sample taken by DEQ, and will provide Respondent with copies of all analytical data for such samples. Respondent will provide DEQ with copies of all analytical data from such samples as soon as practicable.

G. Quality Assurance

- (1) Respondent will conduct all sampling, sample transport, and sample analysis in accordance with the Quality Assurance/ Quality Control ("QA/QC") provisions approved by DEQ as part of the work plan. All plans prepared and work conducted as part of this Consent Order must be consistent with DEQ's *Quality Assurance Policy for the Environmental Cleanup Programs* (DEQ10-LQ-0063-QAG). Respondent will make every reasonable effort to ensure that each laboratory used by Respondent for analysis performs such analyses in accordance with such provisions.
- (2) If DEQ conducts sampling or analysis in connection with this Consent Order, DEQ will conduct sampling, sample transport, and sample analysis in accordance with the QA/QC provisions of the approved work plan. Upon written request, DEQ will provide Respondent with copies of DEQ's records regarding such sampling, transport, and analysis.

H. Progress Reports

During each month of this Consent Order, Respondent will deliver to DEQ, on or before the tenth day of each month, a progress report containing:

- (1) Actions taken by Respondent under this Consent Order during the previous month;

- (2) Actions scheduled to be taken by Respondent in the next two months;
- (3) A summary of sampling, test results, and any other data generated or received by Respondent during the previous month; and
- (4) A description of any problems experienced during the previous month and actions taken to resolve them.

DEQ may approve less frequent reporting by Respondent, if warranted. Progress reports may be submitted in electronic form. If submitted in hard-copy written form, two copies must be provided to DEQ.

I. Other Applicable Laws

- (1) Subject to ORS 465.315(3), all actions under this Consent Order must be performed in accordance with applicable federal, state, and local laws and regulations.
- (2) All activities under this Consent Order must be performed in accordance with any applicable federal, state, and local laws related to archeological objects and sites and their protection, including requirements for consulting with the State Historic Preservation Office to determine whether any information exists to indicate that the site is within an area likely to contain cultural resources. If archeological objects or human remains are discovered during any investigation, removal, or remedial activity at the Property, Respondent will, at a minimum: (a) stop work immediately in the vicinity of the find; (b) provide any notifications required by ORS 97.745 and ORS 358.920; (c) notify the DEQ Project Manager within 24 hours of the discovery; and (d) use best efforts to ensure that Respondent and its employees, contractors, counsel, and consultants keep the discovery confidential, including but not limited to refraining from contacting the media or any third party or otherwise sharing information regarding the discovery with any member of the public. An Inadvertent Discovery Plan, provided by the State Historic Preservation Office, outlines key steps and contact information in the event of a discovery. Any project delay caused by the discovery of archeological object or human remains is a Force Majeure under Subsection 7.K.

J. Reimbursement of DEQ Costs

- (1) Respondent has accrued \$55,546.94 in DEQ oversight costs as of June 24, 2021

under the Cost Recovery Agreement dated November 1, 2018 (“Past Costs”).

Respondent will pay \$10,000 per month to DEQ for Past Costs until Past Costs are paid in full. Respondent’s first payment for Past Costs will be made within 30 days of DEQ’s monthly invoice sent to Respondent in July 2021. Respondent’s final payment of Past Costs may be less than \$10,000 if the balance due for such final payment is less than \$10,000. Past Costs shall not be subject to dispute resolution under Subsection 7.L.

- (2) DEQ will submit to Respondent a monthly invoice of costs incurred by DEQ on or after June 1, 2021 in connection with development and approval of this Consent Order and any activities related to the oversight and periodic review of Respondent’s implementation of this Consent Order. Each invoice must include a summary of costs billed to date.
- (3) DEQ oversight costs payable by Respondent include direct and indirect costs. Direct costs include site-specific expenses, DEQ contractor costs, and DEQ legal costs actually and reasonably incurred by DEQ under ORS 465.200 et seq. DEQ’s direct cost summary must include a Land Quality Division (“LQD”) direct labor summary showing the persons charging time, the number of hours, and the nature of work performed. Indirect costs include those general management and support costs of DEQ and of the LQD allocable to DEQ oversight under this Consent Order and not charged as direct, site-specific costs. Indirect charges are based on actual costs and applied as a percentage of direct personal services costs. DEQ will maintain work logs, payroll records, receipts, and other documents to document work performed and expenses incurred under this Consent Order and, upon request, will provide copies of such records to Respondent.
- (4) Within 30 days of receipt of DEQ’s invoice, Respondent will pay the amount of costs billed by check payable to the “State of Oregon, Hazardous Substance Remedial Action Fund,” or invoke dispute resolution under Subsection 7.L. After 30 days, any unpaid amounts that are not the subject of pending dispute resolution, or that have been determined owing after dispute resolution, become a liquidated debt collectible under ORS 293.250 or other applicable law.
- (5) Respondent will pay simple interest of 9% per annum on the unpaid balance of any

DEQ oversight costs, which interest begins to accrue at the end of the 30-day payment period, unless dispute resolution has been invoked. Interest on any amount disputed under Subsection 7.L. begins to accrue 30 days from final resolution of any such dispute.

K. Force Majeure

- (1) If any event occurs that is beyond Respondent's reasonable control and that causes or might cause a delay or deviation in performance of the requirements of this Consent Order despite Respondent's reasonable efforts ("Force Majeure"), Respondent will promptly, upon learning of the event, notify DEQ's Project Manager verbally of the cause of the delay or deviation, its anticipated duration, the measures that have been or will be taken to prevent or minimize the delay or deviation, and the timetable by which Respondent proposes to carry out such measures. Respondent will confirm in writing this information within five working days of the verbal notification. Failure to comply with these notice requirements precludes Respondent from asserting Force Majeure for the event and for any additional delay caused by the event.
- (2) If Respondent demonstrates to DEQ's satisfaction that the delay or deviation has been or will be caused by Force Majeure, DEQ will extend times for performance of related activities under this Consent Order as appropriate. Circumstances or events constituting Force Majeure might include but are not limited to acts of God, unforeseen strikes or work stoppages, unanticipated site conditions, fire, explosion, riot, sabotage, war, and delays in receiving a governmental approval or permit. Normal inclement weather, increased cost of performance, or changed business or economic circumstances may not be considered Force Majeure.

L. Dispute Resolution

- (1) Except as provided in Paragraph 7.L.(4), if Respondent disagrees with DEQ regarding any matter during implementation of this Consent Order, Respondent will promptly notify DEQ in writing of its objection. DEQ and Respondent then will make a good-faith effort to resolve the disagreement within 14 days of Respondent's written objection. At the end of the 14-day period, DEQ will provide

Respondent with a written statement of its position from DEQ's Western Region Cleanup Manager. If Respondent still disagrees with DEQ's position, then Respondent, within 14 days of receipt of DEQ's position from the Cleanup Manager, will provide Respondent's position and rationale in writing to DEQ's Western Region Administrator. The Region Administrator may discuss the disputed matter with Respondent and, in any event, will provide Respondent with DEQ's final position in writing as soon as practicable after receipt of Respondent's written position.

- (2) If Respondent refuses or fails to follow DEQ's final position pursuant to Paragraph 7.L.(1), and DEQ seeks to enforce its final position, the Parties, subject to Section 2, are entitled to such rights, remedies, and defenses as are provided by applicable law.
- (3) During the pendency of any dispute resolution under this subsection, the time for completion of work or obligations affected by such dispute is extended for a period of time not to exceed the actual time taken to resolve the dispute. Elements of work or obligations not affected by the dispute must be completed in accordance with the applicable schedule.
- (4) Dispute resolution under this subsection does not apply to: (a) DEQ approval or modification of the RI/FS work plan required under the SOW (which approval or modification is nonetheless subject to Subsection 7.C.); or (b) DEQ assessment of stipulated penalties under Subsection 7.M. (after dispute resolution has been exhausted, before assessment of a penalty, regarding the alleged violation).

M. Stipulated Penalties

- (1) Subject to Subsections 7.C., 7.K., and 7.L., upon any violation by Respondent of any provision of this Consent Order, and upon Respondent's receipt from DEQ of written notice of violation, Respondent will pay the stipulated penalties set forth in the following schedule:
 - (a) \$5,000 for the first week of violation or delay and \$ 2,500 per day of violation or delay thereafter, for:
 - (i) failure to allow DEQ access to the Site under Subsection 7.D.

- (ii) failure to provide notice and samples under Subsection 7.F.
 - (iii) failure to provide records under Subsection 7.E.
- (b) \$ 2,500 for the first week of violation or delay and \$ 1,000 per day of violation or delay thereafter, for:
 - (i) failure to submit a final work plan in accordance with the SOW's schedule and terms;
 - (ii) failure to perform work in accordance with an approved work plan's schedule and terms;
 - (iii) failure to perform additional work required by DEQ under Subsection 5.B.; or
 - (iv) failure to submit a final report in accordance with an approved work plan's schedule and terms.
- (c) \$500 for the first week of violation or delay and \$500 per day of violation or delay thereafter, for:
 - (i) failure to submit a draft work plan in accordance with the SOW's schedule and terms;
 - (ii) failure to submit draft reports in accordance with the SOW's schedule and terms or progress reports in accordance with Subsection 7.H or
 - (iii) any other violation of the Consent Order, SOW, or an approved work plan.
- (2) Violations arising out of the same facts or circumstances or based on the same deadline are considered as one violation per day.
- (3) Stipulated penalties do not begin to accrue under this subsection until Respondent receives a notice of violation from DEQ describing the violation and what is necessary to correct it. If the violation was not intentional, is capable of cure, and Respondent corrects the violation within 30 days of receipt of such notice of violation or such other period as may be specified in the notice, DEQ in its sole discretion may waive in writing the stipulated penalties. This opportunity to cure does not apply to violations subject to Subparagraph 7.M.(1)(a).
- (4) Respondent will, within 30 days of receipt of the notice, pay the amount of such

stipulated penalty not waived by DEQ in writing as provided in Paragraph 7.M.(3) by check made payable to the “State of Oregon, Hazardous Substance Remedial Action Fund,” or request a contested case hearing in accordance with Paragraph 7.M.(5). Respondent will pay simple interest of 9% per annum on the unpaid balance of any stipulated penalties, which interest begins to accrue at the end of the 30-day payment period. Any unpaid amounts that are not the subject of a pending contested case, or that have been determined owing after a contested case, are a liquidated debt collectible under ORS 293.250 and other applicable law.

- (5) Respondent may request a contested case hearing regarding the penalty assessment in accordance with OAR Chapter 340, Division 11. The scope of any such hearing must be consistent with the stipulations set forth in Section 2, be limited to the occurrence or non-occurrence of the alleged violation, and not review the amount of penalty assessed. Further penalties regarding the alleged violation subject to the penalty assessment do not accrue from the date DEQ receives a request for a contested case, through disposition of that case.
- (6) If DEQ assesses stipulated penalties pursuant to this subsection for any failure of Respondent to comply with this Consent Order, DEQ may not seek civil penalties from Respondent for the same violation under ORS 465.900 or other applicable law.

N. Enforcement of Consent Order

- (1) In lieu of stipulated penalties under Subsection 7.M., DEQ may assess civil penalties under ORS 465.900 for Respondent’s failure to comply with this Consent Order. Penalties may not accrue pending any contested case regarding the alleged violation. In addition to penalties, DEQ may seek any other available remedy for failure by Respondent to comply with any requirement of this Consent Order, including but not limited to termination of this Consent Order or court enforcement of this Consent Order.
- (2) Subject to Section 2, Respondent does not admit any liability, violation of law, or factual or legal findings, conclusions, or determinations made by DEQ under this Consent Order.
- (3) Subject to Subsection 2.G., nothing in this Consent Order prevents DEQ, the State

of Oregon, or Respondent from exercising any rights each might have against any person not a party to this Consent Order.

O. Indemnification

- (1) Respondent will indemnify and hold harmless the State of Oregon and its commissions, agencies, officers, employees, contractors, and agents from and against any and all claims arising from acts or omissions related to this Consent Order of Respondent or its officers, employees, contractors, agents, receivers, trustees, or assigns. DEQ may not be considered a party to any contract made by Respondent or its agents in carrying out activities under this Consent Order.
- (2) To the extent permitted by Article XI, Section 7, of the Oregon Constitution and by the Oregon Tort Claims Act, the State of Oregon will indemnify and hold harmless Respondent and its officers, employees, contractors, and agents from and against any and all claims arising from acts or omissions related to this Consent Order of the State of Oregon or its commissions, agencies, officers, employees, contractors, or agents (except for acts approving or omissions constituting approval of any activity of Respondent under this Consent Order). Respondent may not be considered a party to any contract made by DEQ or its agents in carrying out activities under this Consent Order.

P. Parties Bound

- (1) This Consent Order is binding on the Parties and their respective successors, agents, and assigns. The undersigned representative of each Party certifies that he or she is fully authorized to execute and bind such party to this Consent Order. No change in ownership, corporate, or partnership status in any way alters Respondent's obligations under this Consent Order, unless otherwise approved in writing by DEQ. Respondent will notify and provide a copy of this Consent Order to any prospective successor, purchaser, lessee, assignee, or mortgagee of the facility during the term of this Consent Order.
- (2) Notwithstanding the provisions set forth in Paragraph 7.P.(1) of this Consent Order, Residential Owners unaffiliated with Respondent shall not be considered a successor, prospective successor, purchaser or assignee under Paragraph 7.P.(1) and

shall have no obligations under that Paragraph or under this Consent Order except for any access rights or obligations pursuant to Paragraph 7.D(2).

Q. Modification

DEQ and Respondent may modify this Consent Order by mutual written agreement.

R. Effective Date

The effective date of this Consent Order is the date of signature by the DEQ's Western Region Cleanup Program Manager.

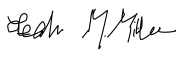
8. Duration

This Consent Order is deemed satisfied upon completion of work required under this Consent Order and payment by Respondent of any outstanding oversight costs and penalties. DEQ will determine whether work under this Consent Order is satisfactorily completed and the Consent Order terminated, by letter issued within 60 days of receipt of the last deliverable required from Respondent under this Consent Order, or as soon thereafter as reasonably practicable.

9. Signatures

STIPULATED, AGREED, and APPROVED FOR ISSUANCE:

MPC Builders, LLC
Respondent

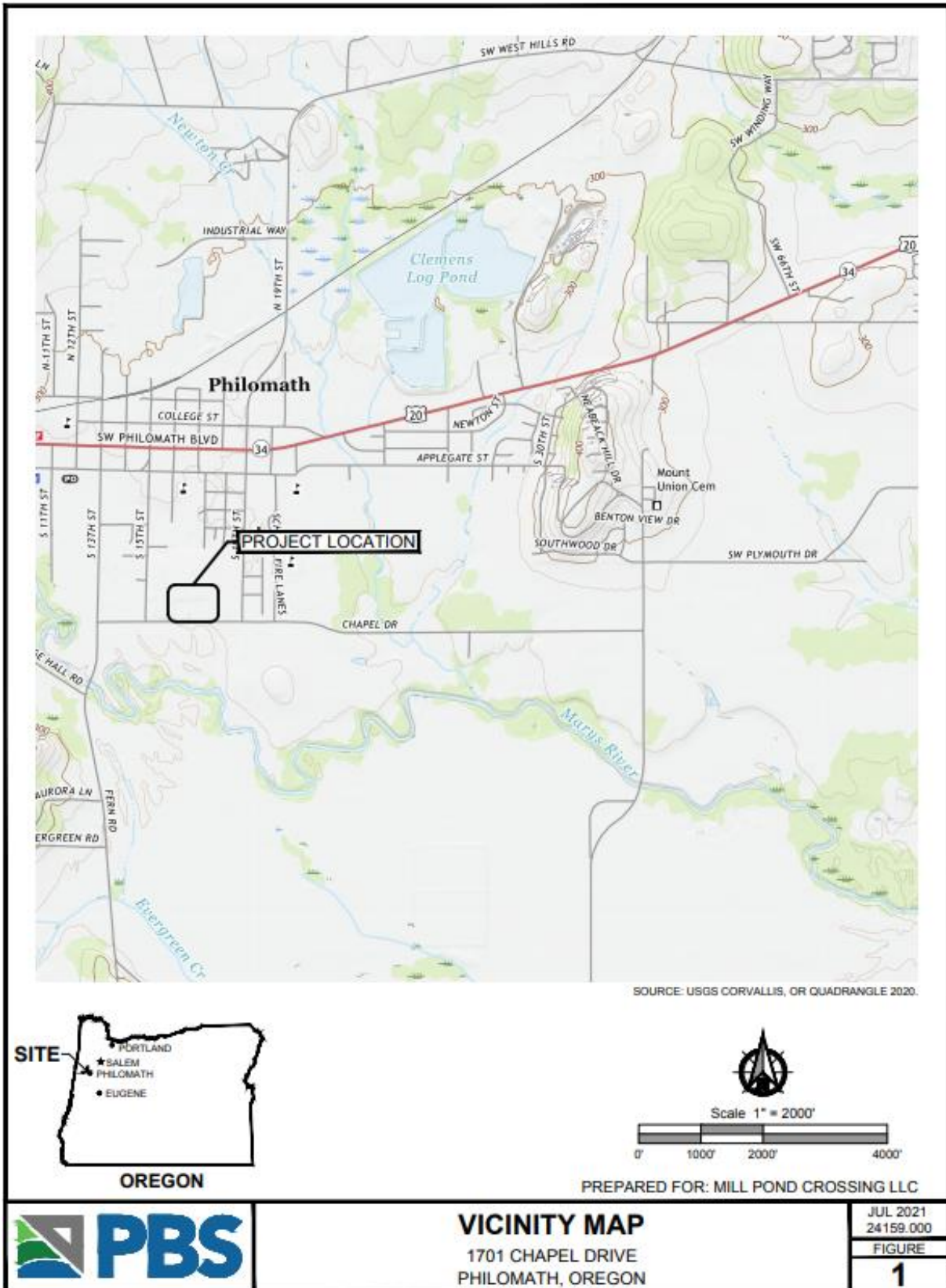
By:  Date: 07/27/2021
Levi Miller

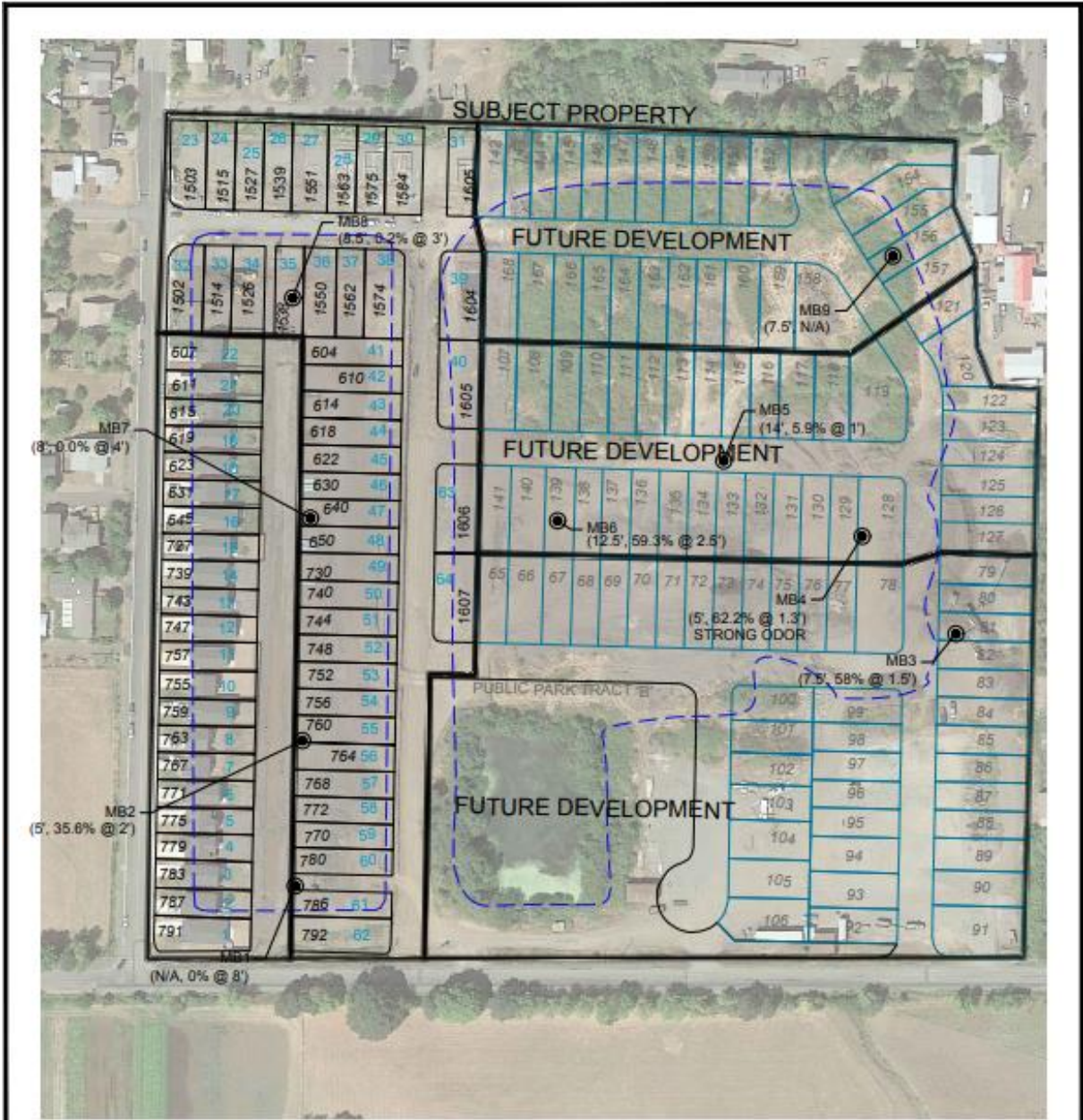
STIPULATED, AGREED, and SO ORDERED:

State of Oregon
Department of Environmental Quality

By:  Date: 07/27/2021
Michael E. Kucinski
Cleanup Program Manager, Western Region

Exhibit A – Site Maps





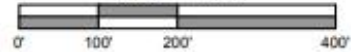
SOURCE: © 2019 GOOGLE EARTH PRO

LEGEND

- MB-1 FEBRUARY 2021 PRT TEMPORARY BORINGS
- - - HISTORICAL LOG POND FILLED WITH CLAY & ORGANIC MATERIAL
- ▭ PLAT OF COMPLETED HOUSE WITH HOUSE NUMBER & LOT NUMBER
- ▭ FUTURE DEVELOPMENT PLAT WITH LOT NUMBER



Scale 1" = 200'



PREPARED FOR: MILL POND CROSSING LLC



SITE PLAN
 1701 CHAPEL DRIVE
 PHILOMATH, OREGON

JUL 2021
 24159.000

FIGURE

2

Exhibit B – Scope of Work

I. INTRODUCTION

This Scope of Work (“SOW”) describes the objectives and activities to be undertaken by Millpond Crossing, LLC (Respondent) to complete a Remedial Investigation, Risk Assessment and Feasibility Study (“RI/RA/FS”) for the former Philomath Mill Site (the “Site”). The purpose of the RI/RA/FS is to determine the nature, extent, distribution, and movement of methane in Site soil, groundwater and air, the risks to people exposed to methane from the Site, and the feasibility of remedial alternatives for the Site.

II. SCHEDULE

Respondent shall submit for DEQ review and approval an Updated Methane Investigation Work Plan which includes:

1. Modifications to the DEQ-approved work plan that occurred during initial methane monitoring on April 13-14, 2021.
2. Installation of additional methane monitoring points, including those described as confined spaces (i.e., utility vaults, transformer boxes, electrical panels, etc.).
3. Preliminary methane mitigation options and planning, including coordination with local utility companies.

The Updated Methane Investigation Work Plan will address all elements of this Scope of Work (SOW). Elements of the SOW may be addressed by alternative means or by using existing data or information to the extent that the data are applicable, meet the objectives of the RI/RA/FS, and are of acceptable quality and quantity.

All work completed under this Consent Order shall proceed in accordance with the following schedule:

SUBMITTALS	SCHEDULE
Draft Updated Methane Investigation Monitoring Work Plan	To DEQ within 21 days of issuance of this Consent Order.
DEQ Review and Comment	To Respondent within 5 business days of receipt of draft monitoring work plan.
Final Updated Methane Investigation Monitoring Work Plan	To DEQ within 5 business days of receipt of DEQ’s comments on draft monitoring work plan.
Implementation of Updated Methane Investigation Work Plan	Begin implementation within 7 days of Final Work Plan approval.
Methane Investigation Risk Assessment and Feasibility Study Report	To be specified in Project Management section of the Methane Monitoring Work Plan.

The schedule for additional deliverables specified in this SOW (e.g., Methane Investigation Risk Assessment and Feasibility Study) should be specified in the Project Management section of the Methane Investigation Work Plan.

Respondent, as necessary to reflect or incorporate newly discovered information and/or environmental conditions, may amend all work plans. Additional work plans and work plan amendments are subject to DEQ review and approval and will be processed according to schedules negotiated between the parties at the time of each phase change or task addition. Respondent shall initiate and complete work according to the schedule specified in the applicable approved work plan or amendment.

III. OBJECTIVES

- A. Work performed under this Consent Order shall complement and incorporate existing site information with the following overall objectives:
1. Determine the nature, extent, and distribution of methane gas on the site.
 2. Identify migration pathways and receptors.
 3. Determine the risk to human health and the environment.
 4. Identify and delineate methane hot spots.
 5. Develop the information necessary to evaluate remedial action alternatives and select a remedial action.
 6. Generate or use data of sufficient quality for site characterization, risk assessment, and the subsequent analysis and selection of remedial alternatives.
- B. Work performed under this Consent Order shall complement and incorporate existing site information with the following specific objectives:
1. Reinstall probe locations MP-3/7, MP-6, MP-10, MP-12.
 2. Delineate hot spots near MP-11, MP-5, and MP-3, accounting for limitations caused by private property ownership, existing structures and similar features.
 3. Add a minimum of 4 additional monitoring points adjacent to lots #1-22.
 4. Add a minimum of 3 additional monitoring points near the NW corner of the site to assess for offsite migration. Points should be installed to depths based on observed organic material thickness.
 5. Add confined space monitoring points in at least 6 locations spread along 15th Street.
 6. Add confined space monitoring points adjacent to homes near hot spots at MP-11, MP-5, and MP-3.
 7. Continue accurate documentation of observed organic thickness for landfill characterization.
 8. Provide preliminary methane mitigation options, including sealing all potential methane entry points into subsurface vaults, and all underground electrical conduit wherever it connects to electrical boxes or devices in vaults or at any above-ground electrical boxes or devices and identifying, and sealing and/or venting all other utility vaults manholes, etc., that have potential to accumulate methane; and

9. Consult and coordinate with Utilities to ensure that: 1) The Utilities are informed about potential risks to the safety of their workers, and 2) so they, in turn, can inform the developer and DEQ about the intricacies of their facilities/systems, so all important details are incorporated in determining strategies for monitoring and mitigation of confined spaces for methane gas.

IV. UPDATED METHANE INVESTIGATION WORK PLAN

The updated work plan shall be developed in accordance with applicable Oregon Administrative Rules (OAR 340-122-0010 through -0115), DEQ guidance and, as appropriate, the Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA, OSWER Directive 9355.3-01, 1988. Existing data may be used if it meets data quality objectives. The submitted work plan shall include, but not be limited to the following items:

A. PROJECT MANAGEMENT

The Updated Methane Investigation Work Plan shall include a proposed schedule for submittals and implementation of all proposed activities and phases pertaining to this SOW. This schedule will include submittal dates for the final and draft Methane Investigation Risk Assessment and Feasibility Study report. It shall also include a description of the personnel (including subcontractors, if known) involved in the project, and their respective roles in the project; and a discussion of how variations from the approved work plan will be managed, if needed.

B. SITE DESCRIPTION

The Updated Methane Investigation Work Plan shall include a discussion of the current understanding of the physical setting of the site and surrounding area; the site history; hazardous substance and waste management history; and current site conditions.

C. SITE CHARACTERIZATION

The Updated Methane Investigation Work Plan shall include a Site Characterization Plan consistent with DEQ guidance and the requirements specified in OAR 340-122-0080, including but not be limited to, characterization of the hazardous substances, characterization of the facility, identification of potential receptors and the collection and evaluation of information relevant to the identification of hot spots of contamination. The Site Characterization Plan shall address the following:

1. Soil

Objective: To identify and characterize methane and other landfill gasses in subsurface soils.

Scope: The updated work plan shall supplement previous sampling at the facility. The plan shall address all areas which could potentially possess

methane gas from the decomposition of buried organic debris.

Procedures: The updated work plan shall be designed and conducted to determine the extent of methane gas, characterize landfill thickness and site geology, to determine the physical and chemical characteristics relevant to the Methane Investigation and FS, evaluate the potential for methane migration and gather information necessary to identify hot spots of contamination. The plan shall include methodology for characterizing methane and other landfill gases as outlined in the previous work plan. Monitoring points and other holes must be drilled, constructed and decommissioned in accordance with OAR Chapter 690, Division 240 and DEQ Ground Water Monitoring Well, Drilling, Construction and Decommissioning guidelines (1992).

2. **Groundwater**

Objective: To identify and characterize groundwater conditions at the site.

Scope: The updated work plan shall supplement previous investigations at the facility and characterize groundwater (i.e., depths, gradient, etc.) to the extent possible.

Procedures: The updated work plan shall be designed and conducted to determine the site hydrogeology, determine the physical water bearing zone characteristics relevant to the Methane Investigation and FS. The updated work plan shall include the proposed methodology for characterizing groundwater. Monitoring wells and other holes must be drilled, constructed and decommissioned in accordance with OAR Chapter 690, Division 240 and DEQ Ground Water Monitoring Well, Drilling, Construction and Decommissioning guidelines (1992).

3. **Air**

Objective: To identify and characterize the release of methane to the air from the subsurface.

Scope: The updated work plan shall supplement previous investigations at the facility and shall identify and characterize current and potential releases of methane gas to indoor and outdoor air, including crawlspaces, and other confined spaces.

Procedures: The updated work plan shall include the proposed methodology for evaluating air emissions and vapor intrusion using appropriate emission calculations and/or a field sampling program. The updated plan shall be designed to delineate the nature and extent of methane present, characterize the site climatology, determine the physical and chemical air characteristics relevant to the Methane Investigation and FS, evaluate the potential for

migration and gather the information necessary to identify hot spots of contamination.

4. **Identification of Current and Reasonably Likely Future Land and Water Use**

Objective: To identify current and reasonably likely future land and water uses in the locality of the facility.

Scope: The plan shall be designed to identify current and reasonably likely future land and water uses for the purposes of identifying hot spots of methane gas and conducting baseline human health and ecological risk assessments in accordance with OAR 340-122-0080 and DEQ Guidance.

Procedures: The plan shall include the proposed methodology for identifying current and reasonably likely future land and water uses in the locality of the facility.

D. SAMPLING AND ANALYSIS PLAN (SAP)

Objective: To adequately document all sampling and analysis procedures.

Scope: In preparation of the SAP, the following guidance documents shall be utilized: Data Quality Objectives Process for Superfund, EPA 540-R-93-071, September, 1993; Test Methods for Evaluating Solid Waste, SW-846; and A Compendium of Superfund Field Operations Methods, EPA/540/P-87/001 (OSWER Directive 9355.0-14), December, 1987. The SAP shall address all topics listed in Land Quality Division Policy #760.000, Quality Assurance Policy.

Procedures: The work plan shall include a Sampling and Analysis Plan (SAP). The SAP shall include quality assurance and quality control (QA/QC) procedures for both field and lab procedures. The SAP shall be sufficiently detailed to function as a manual for field staff.

E. HEALTH AND SAFETY PLAN (HASP)

Objective: To establish policies and procedures to protect workers and the public from the potential hazards posed by the hazardous materials and physical activities to be conducted at the site.

Scope: The HASP portion of the work plan shall comply with 29 CFR 1910.120 and OAR Chapter 437, Division 2.

Procedures: The HASP shall include a description of risks related to Methane Investigation activities, protective clothing and equipment, training, monitoring procedures, decontamination procedures and emergency response actions required

to safely conduct the work.

F. MAPS

The work plan shall include a map or maps of the facility, which clearly shows site topography, on-site structures, waste disposal areas and proposed sampling locations, locations of hydrogeologic cross-sections, and the drawing date, orientation, and scale.

IV. REPORTS

A. WEEKLY MONITORING REPORTS

A monitoring report shall be submitted to DEQ within 48-hours (excluding weekends and recognized state or federal holidays) following weekly methane testing. The reports shall be submitted by email and summarize the activities performed, data results collected and problems encountered and/or resolved. The report will also include an updated data table and site location map.

B. METHANE INVESTIGATION REPORT

The Methane Investigation Report shall follow the outline in Table 3-13 (page 3-30 - 3-31) in the CERCLA RI/FS guidance, as applicable, and address the items listed below:

1. **Executive Summary.**
2. **Introduction.**
3. **Site Background.** A discussion and supporting maps of facility operations, site description, site setting, and current and reasonably likely future land and water uses.
4. **Study Area Investigation.** A discussion of the investigative procedures and results for soil, groundwater, and air.
5. **Summary and Conclusions.** A discussion of the nature, extent, distribution and environmental fate and transport of methane in soil, groundwater, and air.
6. **Appendices.** Detailed information supporting the results of the Methane Investigation shall be submitted in the Appendices of the report.

C. RISK ASSESSMENT REPORT

1. **Human Health Risk Assessment Report**

The results of the human health risk assessment should follow the outline suggested by the Risk Assessment Guidance for Superfund - Human Health Evaluation Manual Part A, United States Environmental Protection Agency (EPA), Interim Final, July 1989, (RAGS-HHEM). The suggested outline is given in Exhibit 9-1 of the RAGS-HHEM. Justification for not following the outline shall be provided in the work plan.

The main sections of the Human Health Risk Assessment Report shall include the following:

- i. Introduction
- ii. Chemicals of Concern
- iii. Exposure Assessment
- iv. Toxicity Assessment
- v. Risk Characterization
- vi. Uncertainty analysis

D. FEASIBILITY STUDY REPORT

The results of the Feasibility Study (FS) shall be submitted to DEQ in a report, which at a minimum includes a full evaluation of remedial action alternatives. The FS shall provide a workable number of alternatives, which achieve the remedial action objectives and are protective of public health, safety and welfare, and the environment.

The results of the FS shall comply with OAR Chapter 340, Division 122, DEQ Guidance, and, as appropriate, Guidance for Conducting Remedial Investigations and Feasibility Studies Under CERCLA OSWER Directive 9355.3-01, 1988. The results of the feasibility shall follow the outline suggested in Table 6-5 (Page 6-15) of the CERCLA RI/FS guidance.

The main sections of the FS Report shall include the following:

1. **Introduction**
2. **Identification of Hot Spots of Contamination**
3. **Identification of Areas or Volumes of Media which Require Remedial Action.** Identify areas or volumes of media which exceed the acceptable risk level, and areas or volumes of media which have been identified as hot spots of contamination.
4. **Development of Remedial Action Objectives.** Develop and discuss the remedial action objectives (RAOs) that meet the standards in OAR 340-122-0040.

5. **Identification and Screening of Remedial Technologies.** Identify potential containment, treatment, and removal technologies and eliminate (screen) those technologies that cannot be implemented at the site.
6. **Development and Screening of Preliminary Remedial Action Alternatives.** Develop a range of preliminary remedial action alternatives acceptable to DEQ that are protective of public health, safety and welfare, and the environment. Retain the “No Action” alternative for comparison.
7. **Detailed Analysis of Remedial Action Alternatives.** Analyze remedial action alternatives in detail in accordance with OAR 340-122-0085 and 0090.
8. **Comparative Analysis of Remedial Action Alternatives.** Compare and rank the remedial action alternatives based on the analysis in #7 above.
9. **Recommended Remedial Action Alternative.** Recommend a remedial action alternative based on the comparative analysis of remedial action alternatives. Perform a residual risk assessment on the recommended alternative in accordance with OAR 340-122-0084(4). Include the information required by OAR 340-122-0085(8).

E. REPORT DISTRIBUTION

1. One electronic copy and one unbound hard copy of all reports will be submitted to DEQ.
2. DEQ requests that all copies be duplex printed on recycled paper.
3. Electronic copies of work plans and reports, including all data and figures, if requested, shall be submitted in Microsoft Office or ArcView compatible format. All photographs must be submitted in both hard copy and electronic file formats.