

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

Onni John Street (Land) LLC

AGREED ORDER

No. DE 20468

TO: Onni John Street (Land) LLC  
c/o Jeffrey D. Laveson  
Carney Badley Spellman  
701 Fifth Avenue, Suite 3600  
Seattle, WA 98101

**TABLE OF CONTENTS**

I.	INTRODUCTION .....	2
II.	JURISDICTION .....	2
III.	PARTIES BOUND .....	2
IV.	DEFINITIONS .....	2
V.	FINDINGS OF FACT .....	3
VI.	ECOLOGY DETERMINATIONS.....	4
VII.	WORK TO BE PERFORMED .....	5
VIII.	TERMS AND CONDITIONS.....	8
	A. Payment of Remedial Action Costs .....	8
	B. Designated Project Coordinators .....	8
	C. Performance .....	9
	D. Access .....	10
	E. Sampling, Data Submittal, and Availability .....	10
	F. Public Participation.....	11
	G. Retention of Records.....	12
	H. Resolution of Disputes .....	13
	I. Extension of Schedule.....	14
	J. Amendment of Order .....	15
	K. Endangerment .....	16
	L. Reservation of Rights.....	17
	M. Transfer of Interest in Property .....	17
	N. Compliance with Applicable Laws .....	18
	O. Indemnification .....	19
IX.	SATISFACTION OF ORDER.....	20
X.	ENFORCEMENT .....	20
	EXHIBIT A                      Location Diagram	
	EXHIBIT B                      Scope of Work and Schedule	

## **I. INTRODUCTION**

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Onni John Street (Land) LLC (Onni) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires Onni to conduct a Remedial Investigation and Feasibility Study per WAC 173-340-350 and develop a draft Cleanup Action Plan per WAC 173-340-350 through 173-340-380 addressing contamination at the Site. This Order also allows Onni to perform an interim remedial action at a facility where there has been a release or threatened release of hazardous substances. Ecology believes the actions required by this Order are in the public interest.

## **II. JURISDICTION**

This Agreed Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70A.305.050(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 this Order. Onni agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Onni's responsibility under this Order. Onni 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 RCW 70A.305 and WAC 173-340 shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as the Seattle Times Site. The Site constitutes a facility under RCW 70A.305.020(8). The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise

come to be located. Based upon factors currently known to Ecology, the Site is generally located in the area of 1120 John Street, Seattle, Washington as shown in the Location Diagram (Exhibit A).

B. Parties: Refers to the State of Washington, Department of Ecology and Onni John Street (Land) LLC.

C. Potentially Liable Persons (PLP(s)): Refers to Onni John Street (Land) LLC and the Seattle Times Company.

D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order.

## V. FINDINGS OF FACT

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

A. Based upon factors currently known to Ecology, the Site is generally located in the area of 1120 John Street, Seattle, Washington as shown in the Location Diagram (Exhibit A). The Ecology Facility Site ID No. for the Site is 4377754 and the Cleanup Site ID No. is 14495.

B. Seattle Times first began operations at the facility located at 1120 John Street, Seattle, in 1931. The facility expanded over time, and over time included at least 11 underground storage tanks (USTs), which contained a range of compounds including waste oils and liquids, heating oil, diesel fuel, gasoline, and non-solvent-based inks.

C. Seattle Times ceased operations at its 1120 John Street facility in 2011.

D. In 2012 and 2013, Environmental Partners, Inc. (EPI), on behalf of the Onni Group, performed a limited subsurface investigation at the Seattle Times property. The results of those investigations are summarized in the Limited Subsurface Investigation Report dated August 16, 2013 by EPI. Sampling results from EPI's subsurface investigation showed concentrations of petroleum hydrocarbons and polychlorinated biphenyls (PCBs) in the soil above the MTCA level at various locations at the Site. The sampling results also showed tetrachloroethene (PCE), trichloroethene (TCE), vinyl chloride (VC), and petroleum hydrocarbons in the groundwater at concentrations above MTCA cleanup levels.

E. In 2013, Onni John Street (Land) LLC (Onni) purchased the former Seattle Times facility from Seattle Times.

F. In 2018, EPI collected additional data to assess the vertical and horizontal limits of contamination previously identified in 2012 and 2013. In 2020, Onni submitted a Remedial Investigation Report dated January 21, 2020 to Ecology. Ecology reviewed and provided comments on that Report in a letter dated July 14, 2020.

G. In November 2020, TRC Environmental Corporation (as successor to EPI) performed additional assessment to supplement the Remedial Investigation based on Ecology's prior comments.

## **VI. ECOLOGY DETERMINATIONS**

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by Onni.

A. Onni is a current "owner or operator" as defined in RCW 70A.305.020(22) of a "facility" as defined in RCW 70A.305.020(8).

B. Seattle Times is a former "owner or operator" as defined in RCW 70A.305.020(22) of a "facility" as defined in RCW 70A.305.020(8).

C. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70A.305.020(32) and (13), respectively, has occurred at the Site.

D. Based upon credible evidence, Ecology issued a PLP status letter to Onni on December 18, 2019, pursuant to RCW 70A.305.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that Onni is a PLP under RCW 70A.305.040 and notified Onni of this determination by letter dated July 9, 2020.

E. Pursuant to RCW 70A.305.030(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.

F. 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 plan. The Site will undergo redevelopment that includes construction of underground parking to an average depth of about 50 feet below grade. The excavation for that construction will result in the potential exposure of workers and passersby to contaminants of concern and requires the appropriate handling, management and disposal of contaminated soil. This excavation will also result in the removal of all contaminated soil and groundwater present within the bounds of the property to an average depth of about 50 feet below grade. Based on these circumstances, Ecology has determined that an interim action is warranted under WAC 173-340-430. Either party may propose an additional interim action under this Order. If the Parties are in agreement concerning the additional interim action, the Parties will follow the process in Section VII.D. If the Parties are not in agreement, Ecology reserves its authority to require additional interim action(s) under a separate order or other enforcement action under RCW 70A.305, or to undertake the interim action(s) itself.

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

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that Onni take the following remedial actions at the Site. These remedial actions must be conducted in accordance with WAC 173-340:

A. Onni shall perform the following remedial actions in accordance with the schedule and terms of the Scope Work and Schedule, Exhibit B, and all other requirements of this Order:

1. Prepare a Revised Remedial Investigation (RI) Report for the Site which includes the most recent data. Ecology may require additional data be collected after reviewing the revised RI report.
2. Prepare a draft Interim Action Work Plan;
3. Upon Ecology's approval of the Interim Action Work Plan and after public notice and comment of the Work Plan , perform the Interim Action;
4. Upon completion of interim action, submit an interim action report, the Revised RI and Feasibility Study (FS) report; and
5. Develop a draft cleanup action plan (dCAP) for the Site.

The following naming conventions shall be used for documents: Agency Review Draft (designation for the first time Ecology receives a document); Public Review Draft (designates a document ready for public comment); Final (designation for a document after public comment and Ecology approval); and the preliminary dCAP.

B. If Onni learns of a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in media, e.g.: soil, groundwater, and/or air, Onni shall, within seven (7) days of learning of the change in condition, notify Ecology in writing of said change and provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.

C. Onni shall submit to Ecology written quarterly Progress Reports that describe the actions taken during the previous quarter to implement the requirements of this Order. All Progress Reports shall be submitted by the tenth (10th) day of the month in which they are due after the effective date of this Order. Unless otherwise specified by Ecology, Progress Reports and any other documents submitted pursuant to this Order shall be sent by electronic mail to Ecology's project coordinator. The Progress Reports shall include the following:

1. A list of on-site activities that have taken place during the quarter.
2. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests.

3. Description of all deviations from the Scope of Work and Schedule (Exhibit B) during the current quarter and any planned deviations in the upcoming quarter.
4. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.
5. A list of deliverables for the upcoming quarter if different from the schedule.

D. All plans or other deliverables submitted by Onni for Ecology's review and approval under the Scope of Work and Schedule (Exhibit B) shall, upon Ecology's approval, become integral and enforceable parts of this Order.

E. If the Parties agree on an interim action under Section VI.E, Onni shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined in the project schedule. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). Onni shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and Onni is required to conduct the interim action in accordance with the approved Interim Action Work Plan.

F. If Ecology determines that Onni has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to Onni, perform any or all portions of the remedial action or at Ecology's discretion allow Onni opportunity to correct. In an emergency, Ecology is not required to provide notice to Onni or an opportunity for dispute resolution. Onni shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

G. Except where necessary to abate an emergency situation or where required by law, Onni shall not perform any remedial actions at the Site outside those remedial actions required by this Order to address the contamination that is the subject of this Order, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section VIII.J. (Amendment of

Order). In the event of an emergency, or where actions are taken as required by law, Onni must notify Ecology via electronic mail of the event and remedial action(s) planned or taken as soon as reasonably possible but no later than within seventy-two (72) hours of the discovery of the event.

## **VIII. TERMS AND CONDITIONS**

### **A. Payment of Remedial Action Costs**

Onni 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 RCW 70A.305, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Ecology has accumulated \$46,441.10 in remedial action costs related to this Site as of August 6, 2021. For all Ecology costs incurred, Onni shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70A.305.060, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

### **B. Designated Project Coordinators**

The project coordinator for Ecology is:

Sunny Becker  
Department of Ecology  
PO Box 330316  
Shoreline, WA 98133-9716  
206-594-0107



sunny.becker@ecy.wa.gov

The project coordinator for Onni is:

Thomas C. Morin, L.G., Principal  
TRC Environmental Corporation  
1180 NW Maple Street, Suite 310  
Issaquah, Washington 98027  
206-954-6957 (cell)  
425-395-0030 (direct)  
[tmorin@trccompanies.com](mailto:tmorin@trccompanies.com)

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and Onni, 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 coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

### **C. Performance**

All geologic and hydro geologic work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct supervision of an engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43 and 18.220.

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

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

Any documents submitted containing geologic, hydro geologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

Onni shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

**D. Access**

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that Onni either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing Onni's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by Onni. Onni shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by Onni 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 Onni unless an emergency prevents such notice. All persons who access the Site pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

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

With respect to the implementation of this Order, Onni shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, Onni shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by Onni pursuant to implementation of this Order. Onni shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow Onni and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.E (Access), Ecology shall notify Onni prior to any sample collection activity unless an emergency prevents such notice.

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

**F. Public Participation**

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

1. If agreed to by Ecology, develop appropriate mailing lists and prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.
2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. Likewise, Ecology shall notify Onni prior to the issuance of all press releases and fact sheets related to the Site, and before meetings related to the Site with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by Onni that do not receive prior Ecology approval, Onni shall clearly indicate to its audience

that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

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

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. Seattle Public Library  
Central District  
1000 4<sup>th</sup> Avenue  
Seattle, WA 98104
- b. Ecology's Northwest Regional Office  
Washington Department of Ecology  
15700 Dayton Ave N  
Shoreline, WA 98133

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Site shall be maintained in the repository at Ecology's Northwest Regional Office in Bellevue, Washington.

**G. Retention of Records**

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, Onni 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, Onni shall make all records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right Onni may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If Onni withholds any requested records based on an assertion of privilege, Onni shall provide Ecology with a privilege log specifying the records withheld and the

applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

#### **H. Resolution of Disputes**

1. In the event that Onni elects to invoke dispute resolution Onni must utilize the procedure set forth below.

a. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), Onni has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).

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

c. Onni may then request regional management review of the dispute. Onni must submit this request (Formal Dispute Notice) in writing to the Northwest Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; Onni's position with respect to the dispute; and the information relied upon to support its position.

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

4. In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section VII.E (Work to be Performed) or initiating enforcement under Section X (Enforcement).

#### **I. Extension of Schedule**

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

- a. The deadline that is sought to be extended.
- b. The length of the extension sought.
- c. The reason(s) for the extension.
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on Onni 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 may include, but may not be limited to:

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

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

c. Endangerment as described in Section VIII.K (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of Onni.

3. Ecology shall act upon any Onni's written request for extension in a timely fashion. Ecology shall give Onni's written notification of any extensions granted pursuant to this 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.J (Amendment of Order) when a schedule extension is granted.

4. At Onni's request, 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 one of the following:

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.

c. Endangerment as described in Section VIII.K (Endangerment).

#### **J. Amendment of Order**

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.L (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and Onni. Ecology will provide its written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

When requesting a change to the Order, Onni shall submit a written request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request is received. If Ecology determines that the change is substantial, then the Order must be formally amended. Reasons for the disapproval of a proposed change to this Order shall be stated in writing. If Ecology does not agree to a proposed change, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.H (Resolution of Disputes).

**K. Endangerment**

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

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

If Ecology concurs with or orders a work stoppage pursuant to this section, Onni obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.I (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.



**L. Reservation of Rights**

This Order is not a settlement under RCW 70A.305. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against Onni to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against Onni regarding remedial actions required by this Order, provided Onni complies with this Order.

Ecology nevertheless reserves its rights under RCW 70A.305, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health or 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.

By entering into this Order, Onni does not admit to any liability for the Site. Although Onni is committing to conducting the work required by this Order under the terms of this Order, Onni expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

**M. 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 Onni 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 Onni's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, Onni shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, Onni shall notify Ecology of said transfer. Upon transfer of any interest, Onni shall

notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

**N. Compliance with Applicable Laws**

1. *Applicable Laws.* All actions carried out by Onni pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits or approvals, except as provided in RCW 70A.305.090. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order. Onni has a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or Onni, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and Onni must implement those requirements.

2. *Relevant and Appropriate Requirements.* All actions carried out by Onni pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. At this time, no relevant and appropriate requirements have been identified as being applicable to the actions required by this Order. If additional relevant and appropriate requirements are identified by Ecology or Onni, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and Onni must implement those requirements.

3. Pursuant to RCW 70A.305.090(1), Onni may be exempt from the procedural requirements of RCW 70A.15, 70A.205, 70A.300, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, Onni shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70A.305.090(1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Order to enforce those local government permits and/or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

4. Onni has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or Onni determines that additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or Onni shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Onni 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 Onni and on how Onni must meet those requirements. Ecology shall inform Onni in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Onni shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Pursuant to RCW 70A.305.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70A.305.090(1) would result in the loss of approval from a federal agency that is necessary for the state to administer any federal law, the exemption shall not apply and Onni shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70A.305.090(1), including any requirements to obtain permits or approvals.

**O. Indemnification**

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

or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

**IX. SATISFACTION OF ORDER**

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

**X. ENFORCEMENT**

Pursuant to RCW 70A.305.050, this Order may be enforced as follows:

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

C. A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:

1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply.

2. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70A.305.070.

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

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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Robert W. Warren  
Regional Manager  
Toxics Cleanup Program  
Northwest Regional Office  
425-649-7054

ONNI JOHN STREET (LAND) LLC



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Brian Brodeur  
Vice President of Development  
1411 4th Avenue, Suite 1501  
Seattle, WA 98101  
312-477-2305