

Paul Melone
INVESTCO DOCK ST
FS 1359

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Interim)
Remedial Action by:) ENFORCEMENT ORDER
) NO. DE 96TC-S119
)
Dock Street Development, Inc.)
P. O. Box 66098)
Seattle, WA 98166)

To: Mr Bill Looney, President

I.

JURISDICTION

This Order is issued pursuant to the authority of RCW 70.105D.050(1).

II.

STATEMENT OF FACTS

1. The facility is a vacant property located at 1147 Dock Street in Tacoma, Washington. It is listed on Ecology's Site Information System database as the "Pacific Trustee, Ltd." property. Pacific Trustee, Ltd. is the name of the former property owner. The site is located on the south half of lot 12, all of lots 13 and 14, and the north half of lot 15, block 62 map of Tacoma tide lands as surveyed and platted by the Board of Tide Land Appraisers for Pierce County, according to plat filed September 14, 1895, in Pierce County, Washington.

2. Dock Street Development, Inc. purchased the property at a Pierce County tax foreclosure auction on December 7, 1995.

3. The Site is located within the boundaries of the Commencement Bay Nearshore/Tideflats (CBN/T) Superfund site. The Department of Ecology (Ecology) and the U.S. Environmental Protection Agency (EPA) have completed the CBN/T remedial investigation (August 1985) and the feasibility study (February 1989). The remedial actions for contaminated sediments and upland source control within the CBN/T site are documented in a Record of Decision, which was signed on September 30, 1989 (CBN/T ROD). The 1147 Dock Street site is located within the drainage basin of, and is adjacent to, the Head of Thea Foss Waterway Problem Area in the CBN/T site. The Record of Decision designated certain "problem chemicals" for the Head of Thea Foss Problem Area (see Exhibit A). These are chemicals which were found to be present in the sediments at toxic concentrations.

4. The "problem chemicals" mercury, lead and zinc have been detected at the site, in contact with the Thea Foss Waterway, at concentrations above the CBN/T sediment quality objectives.

5. In 1993, Ecology discovered a non-soil fill material located along the bank of the site in contact with Thea Foss Waterway underneath a collapsed dock structure between the north property line and the concrete dock which is located approximately 60 feet south of the north property line. Ecology has observed that the fill is present intermittently on the south side of the concrete dock, extending southward about 45 feet from the concrete dock to a small peninsula (see sketch in exhibit D). This material is a gray substance which contains small pieces of black, charred material. Also present with the gray substance in parts of the fill is a white granular substance. Between 1993 and 1995 Ecology obtained five samples of the fill. Sample locations are shown on Exhibit B. Samples were obtained by gathering spoonfuls of sediments from the top 0-2 inches over an area of 1-3 square feet for each sample (composite samples). Four of the samples exceeded the CBN/T sediment quality objective for mercury of .59 mg/kg. The fifth sample, sample SPB3, was obtained from intertidal sediments below the fill material and also exceeded the CBN/T sediment quality objective for mercury. This sample contained intertidal sediments that were mixed with small pieces of the white and gray material from the fill. This indicates that mercury contamination from the fill material is reaching the intertidal sediments and causing sediment contamination in the Thea Foss Waterway. In addition to the mercury exceedences, one sample exceeded the sediment quality objective for lead, and one sample exceeded the sediment quality objective for zinc. The depth and extent of the fill material have not been determined. The sample results are shown below:

DATE	12/7/93	12/7/93	4/28/94	3/2/95	3/2/95	Commencement Bay Sediment Quality Objective
Sample #	508044	50845	188007	95098130	95098131	
Sample Name	SPB1	SPB2	SPB3	INV B1	INV-B2	
Cadmium mg/kg	1U	2U	96P	0.39P	46P	5.1
Copper mg/kg	203	181	163	321N	178N	390
Lead mg/kg	13	111J	125	764N	95.7N	450
Mercury mg/kg	0.136	4.76	2.21	38.3	2.22	.59
Zinc mg/kg	116	202	242	550N	459N	410

bold = exceeds Commencement Bay Sediment Quality Objective

P = Analyte was detected above the instrument detection limit but below the established minimum quantitation limit.

- N = The spike recover sample for quality assurance is not within control limits.
J = The analyte was identified. The numerical result is an estimate.

III.

ECOLOGY DETERMINATIONS

1. Dock Street Development, Inc. is an "owner" as defined at RCW 70.105D.020(11) of a "facility" as defined at RCW 70.105D.020(4).

2. The substances found at the facility as described above are "hazardous substances" as defined in RCW 70.105D.020(7).

3. Based on the presence of these hazardous substances at the facility and all factors known to Ecology, there is a release or threatened release of hazardous substances from the facility, as defined at RCW 70.105D.020(19). The release of hazardous substances is contributing to sediment contamination of the Thea Foss Waterway, which is part of the Commencement Bay Nearshore/Tideflats Federal Superfund site. The release is also causing exceedences of the State of Washington Sediment Management Standards.

4. By letter dated February 15, 1996, Ecology notified Dock Street Development, Inc. of its status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.

5. Pursuant to RCW 70.105D.030(1) and 70.105D.050, Ecology may require potentially liable persons to investigate or conduct other remedial actions with respect to the release or threatened release of hazardous substances, whenever it believes such actions to be in the public interest.

6. Pursuant to WAC 173-340-430, Interim Remedial Actions may occur prior to the selection and completion of a cleanup action, if the interim action 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 at a facility.

7. It is necessary to remove the contaminated fill material from contact with the surface waters of the Thea Foss Waterway, in order to prevent further contamination of the sediments of the Thea Foss Waterway.

8. Based on the foregoing facts, Ecology believes an interim remedial action is necessary to control pollution to sediments of the Thea Foss Waterway, and that the actions required by this Order are in the public interest.

IV.

WORK TO BE PERFORMED

Based on the foregoing Facts and Determinations, it is hereby ordered that Dock Street Development, Inc. remove contaminated fill material at the 1147 Dock Street site. All work shall be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein. All work shall also meet the substantive requirements of relevant local and state permits as described in Exhibit C and within this section.

Dock Street Development, Inc. shall observe the shoreline of the entire site to determine the areal distribution of potentially contaminated fill material. The purpose of this is to better plan for removal and disposal of the fill, and to ensure that all contaminated materials along the shoreline are identified and removed. Ecology has observed and sampled contaminated fill material underneath a collapsed dock structure along the site bank between the north property line and the concrete dock which is located approximately sixty feet south of the north property line. Ecology has also observed that the fill is present intermittently on the south side of the concrete dock, extending southward about 45 feet from the concrete dock to a small peninsula (See sketch in Exhibit D). The depth or thickness of the fill is not known. Before proceeding with removing the fill, further observations of the shoreline are needed in order to determine the extent of the intermittent fill and to determine if additional contaminated fill is present on the south end of the site or underneath the concrete dock.

1. The bank reconnaissance shall meet the following conditions.

- A. Observations shall be made while an Ecology employee is present.
- B. Observations may be primarily visual. However, hand augers, test pits, or other methods may be useful to better determine the thickness of the material.
- C. Observations shall be made for grey, ash-like material, white granular material, or any other unusual substances. Small areas of the surface of the bank soils every 2-4 feet shall be scraped to remove the surface scum layer which can disguise unusual fill material.
- D. The reconnaissance shall be conducted at a low tide of 0 feet or below.
- E. If the surface of the bank is covered with bricks or other debris, the debris shall be removed to expose the underlying soils for observation.
- F. Particular attention shall be paid to the southerly 100 feet of shoreline at the site and underneath the concrete dock (areas where Ecology has not already investigated bank conditions).
- G. Results of the bank reconnaissance shall be summarized and reported to Ecology within 30 days of conducting the reconnaissance.

2. Sampling requirements.

A. Dock Street Development shall sample areas of the bank where no unusual fill material was observed. This sampling is required to ensure that other less obvious contaminants are not present in areas of the bank not slated for excavation. A composite sediment sample shall be obtained from each thirty foot lineal section of bank which is not slated for excavation. The composite shall consist of at least six sub-samples gathered from the first 0-2 inches of sediment from equal intervals across vertical and horizontal face of the bank in that thirty foot section. Samples shall be submitted to an Ecology-accredited laboratory for analysis of total copper, cadmium, lead, zinc, and mercury; polynuclear aromatic hydrocarbons (PAH); and total petroleum hydrocarbons (TPH). Total copper, cadmium, lead, and zinc shall be analyzed by Method 6010. Total (dry weight) mercury shall be analyzed by Method 245.1 or 245.5. PAH shall be analyzed by Method 8270 (base-neutral extractables). TPH shall be analyzed by Method 418.1. All methods referenced per SW846 protocols. Results for metals, PAH, and TPH shall be reported in milligrams per kilogram on a **dry weight** basis.

B. A sample of any non-soil fill material which is discovered on the bank, but is not similar to the grey ash-like fill or white granular fill, shall also be submitted to an Ecology-accredited laboratory for analysis as described above.

C. Sampling shall be conducted and results reported to Ecology within 30 days of the bank reconnaissance.

3. Removal of Contaminated Materials.

A. All contaminated material identified in the bank reconnaissance shall be removed from contact with Thea Foss Waterway.

B. Materials which exceed the Commencement Bay Nearshore/Tideflats Sediment Quality Objectives (CBN/T ROD, EPA, 1989) shall be removed vertically down to the zero foot tidal level, and horizontally until clean soils are reached.

C. Dock Street Development shall notify Ecology at least fifteen working days before excavation or preparatory work begins.

D. All excavation shall take place at low tide, such that no excavation or soil disturbance shall take place in the intertidal zone when the tide is covering the bank. Excavation shall occur such that discrete sections can be completely excavated during one low tide cycle, so that the advancing tide shall not cover disturbed contaminated sediments.

E. Work below the ordinary high water mark (OHW) shall not occur from March 15 through June 15 of any years for the protection of migrating juvenile salmonids.

F. Excavation will be performed in a manner that prevents discharge of turbid waters or contaminated sediments to the Thea Foss waterway. Use of heavy equipment in the intertidal area shall be minimized to the extent practicable.

G. Silt fences, straw bales, coffer dam, or other appropriate methods shall be utilized in the intertidal zone as necessary to capture soils which become loosened during excavation. Soils collected behind the silt fences or straw bales shall be removed when excavation is complete.

H. A spill control boom shall be deployed in the Thea Foss Waterway around the excavation area, in the event that free petroleum products are unearthed during excavation.

I. If additional, unexpected contamination is discovered during this interim remedial action, immediate measures shall be taken to prevent discharge to the environment. Otherwise, all work shall cease until Ecology is notified.

J. Reconfiguration of the bank face as a result of the excavation shall be designed to minimize erosion. This means that the bank should be sloped to at most 2:1. The slope between the ordinary high water mark and the top of the bank shall be vegetated to prevent erosion. The slope below the ordinary high water mark shall be stabilized in a manner approved of by the Washington Department of Fish and Wildlife. The newly exposed bank surface shall be sampled before adding rip-rap or other stabilizing materials (see number 5 on page 7 for details on confirmation sampling). Plans for reconfiguring the bank should recognize that future developments will need to provide continuous public access along the shoreline to fit with the City of Tacoma Shoreline Master Program for Thea Foss Waterway. Any development or reconfiguration of the bank face not related to the cleanup shall require a Shoreline Substantial Development Permit.

4. Requirements For Handling And Disposing Of Excavated Material.

A. If contaminated material is to be stockpiled on site prior to disposal, the waterway edge of stockpile area shall be 20 feet from the Thea Foss Waterway, shall be surrounded by straw bales or other method to prevent movement of the material, and shall contain a liner to prevent contamination of underlying soils. Stockpiles shall be covered to prevent contact with rainwater or interference by passers-by. Stockpiled material should be removed from the site as soon as is practicable.

B. Provisions shall be made for storing and properly disposing of any water which becomes contaminated from site activities. This includes water generated from washing/decontaminating equipment, or excess water from fill which is excavated from the lower bank.

C. Excavating equipment shall be washed off before leaving the site.

D. Contaminated material shall be disposed of at a facility which is in compliance with all local, state, and federal regulations, subject to approval by Ecology. The contaminated material shall be designated, managed, and disposed of in compliance with state and federal hazardous waste regulations.

E. Measures shall be taken during loading and transporting of material to prevent contaminated soils from spilling or from being spread around the site or off the site by vehicles.

F. Measures shall be taken to secure the site against landward access, to prevent safety and health impacts to citizens from the excavation or site contaminants.

5 Confirmation Sampling.

Bank soils in excavated areas shall be sampled to ensure all contaminated materials exceeding Commencement Bay sediment cleanup objectives have been removed.

A. Two composite samples shall be gathered from each 10 foot lineal section of bank where contaminated materials were removed. The first (upper) composite shall be gathered between the top of the bank and the approximate halfway point to the zero foot tide level. The second (lower) composite sample shall be obtained between the approximate halfway point and the zero foot tide level.

B. Composites shall consist of at least four subsamples to be gathered from the top 0-2 inches of sediment and evenly spaced across the vertical and horizontal face of that section of bank.

C. Confirmation samples shall be submitted to an Ecology-accredited laboratory for analysis of total copper, cadmium, lead, zinc, and mercury; polynuclear aromatic hydrocarbons (PAH), and total petroleum hydrocarbons (TPH). Total copper, cadmium, lead, and zinc shall be analyzed by Method 6010. Total (dry weight) shall be analyzed by Method 245.1 or 245.5. PAH shall be analyzed by Method 8270 (base-neutral extractables). TPH shall be analyzed by Method 418.1. All methods referenced per SW846 protocols. Results for metals, PAH, and TPH shall be reported in milligrams per kilogram on a **dry weight** basis. Laboratory processing time for the confirmation samples shall be expedited so as to minimize the amount of time the bank is unprotected.

D. Confirmation sample results shall be provided to Ecology as soon as they are available. If confirmation samples show that the bank exceeds the Commencement Bay Sediment Quality Objectives, Dock Street Development, Inc. and Ecology shall meet as soon as is practicable to determine further remedial actions.

6 Worker Health and Safety Plan.

Dock Street Development, Inc. shall develop a Worker Health and Safety Plan for these interim actions per WAC 173-340-810. The Worker Health and Safety Plan ensures the

protection of worker safety and health during the site work phases specified in this Order. Although the health and safety plan must be submitted to Ecology for review and comment, Ecology does not have the authority to approve the plan.

7. State Environmental Policy Act.

At least 60 days prior to beginning excavation, Dock Street Development, Inc. shall submit a completed State Environmental Policy Act (SEPA) checklist for the interim action to Ecology.

8. U.S. Army, Corps of Engineers Nationwide Permit #38.

At least 60 days prior to beginning excavation, Dock Street Development, Inc. shall submit a completed application to the U.S. Army Corps of Engineers for Nationwide Permit #38. This Nationwide Permit is in place to provide coverage under the Section 404 permit process for sites where an environmental cleanup is taking place through an order with a state or federal agency

9. Final Report.

Within 60 days of confirmation sampling, Dock Street Development, Inc. shall provide a report to Ecology summarizing the bank reconnaissance and excavation, and describing the locations and results of all sampling performed as a part of the interim remedial action.

10 Deliverables/Schedule.

A. Bank Reconnaissance.

Within thirty (30) days of the effective date of this order, or at the first daytime tide of zero feet or lower, whichever occurs first, report to Ecology describing reconnaissance results.

B. Sampling

Within thirty (30) days of performing the bank reconnaissance, report to Ecology describing the sample results.

C. SEPA Checklist

At least 60 days prior to beginning excavation.

D. Excavation of fill, confirmation sampling, and stabilizing of bank.

Within 180 days of the effective date of this order.

E. Completion Report

Within sixty (60) days of completing confirmation sampling.

V.

TERMS AND CONDITIONS OF ORDER

1. Definitions.

Unless otherwise specified, the definitions set forth in ch 70.105D RCW and ch. 173-340 WAC shall control the meanings of the terms used in this Order.

2. Public Notice.

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

3. Remedial Action Costs.

Dock Street Development, Inc. shall pay to Ecology costs incurred by Ecology pursuant to this Order. These costs shall include work performed by Ecology or its contractors for investigations, remedial actions, and Order preparation, oversight and administration. Ecology costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Dock Street Development, Inc. shall pay the required amount within 90 days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within 90 days of receipt of the itemized statement of costs will result in interest charges.

4. Designated Project Coordinators.

The project coordinator for Ecology is:

Joyce Mercuri
Washington State Department of Ecology
Southwest Regional Office
Post Office Box 47775
Olympia, WA 98504-7775
Telephone (360) 407-6260

The project coordinator for Dock Street Development, Inc. is:

Bill Looney
P O. Box 66098
Seattle, WA 98166
Telephone (206) 646-6006

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Dock Street Development, Inc., and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the project coordinator(s). Should Ecology or Dock Street Development, Inc.

change project coordinator(s), written notification shall be provided to Ecology or Dock Street Development, Inc. at least ten (10) calendar days prior to the change.

5. Performance.

All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or similar expert, with appropriate training, experience and expertise in hazardous waste site investigation and cleanup. Dock Street Development, Inc. shall notify Ecology as to the identity of such engineer(s) or hydrogeologist(s), and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the site. Dock Street Development, Inc. 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 will be in compliance with this Order.

Except when necessary to abate an emergency situation, Dock Street Development, Inc. shall not perform any remedial actions at the Site outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

WAC 173-340-400(7)(b)(i) requires that "construction" performed on the site must be under the supervision of a professional engineer registered in Washington.

6. Access.

Ecology or any Ecology authorized representative shall have the authority to enter and freely move about all property at the site 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 the progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator 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 Dock Street Development, Inc. When entering the site under Ch. 70 105D RCW, Ecology shall provide reasonable notice prior to entering the site unless an emergency prevents notice. Ecology shall allow split or replicate samples to be taken by Dock Street Development, Inc. during an inspection unless doing so would interfere with Ecology's sampling. Dock Street Development, Inc. shall allow split or replicate samples to be taken by Ecology and shall provide Ecology seven (7) days notice before any sampling activity.

7. Public Participation.

Dock Street Development, Inc. shall prepare and/or update a public participation plan for the site. Ecology shall maintain the responsibility for public participation at the site. Dock Street Development, Inc. shall help coordinate and implement public participation for the site.

8. Retention of Records.

Dock Street Development, Inc. shall preserve in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of completion of the work performed pursuant to this Order, all records, reports, documents, and underlying data in its possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of Dock Street Development, Inc., a record retention requirement meeting the terms of this paragraph shall be required of such contractors and/or agents.

9. Dispute Resolution.

Dock Street Development, Inc. may request Ecology to resolve factual or technical disputes which may arise during the implementation of this Order. Such request shall be in writing and directed to the signatory, or his/her successor(s), of this Order. Ecology resolution of the dispute shall be binding and final. Dock Street Development, Inc. is not relieved of any requirement of this Order during the pendency of the dispute and remains responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.

10. Reservation of Rights.

Ecology reserves all rights to issue additional orders or take any action authorized by law in the event or upon the discovery of a release or threatened release of hazardous substances not addressed by this Order, upon discovery of any facts not known at the time of issuance of this Order, in order to abate an emergency, or under any other circumstances deemed appropriate by Ecology.

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 from the 1147 Dock Street site.

In the event Ecology determines that conditions at the site are creating or have the potential to create a danger to the health or welfare of the people on the site or in the surrounding area or to the environment, Ecology may Order Dock Street Development, Inc. to stop further implementation of this Order for such period of time as needed to abate the danger.

11. Transference of Property.

No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the site shall be consummated by Dock Street Development, Inc. 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 transfer of any legal or equitable interest Dock Street Development, Inc. may have in the site or any portions thereof, Dock Street Development, Inc. shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least

thirty (30) days prior to finalization of any transfer, Dock Street Development, Inc. shall notify Ecology of the contemplated transfer.

12 Compliance With Applicable Laws.

A. All actions carried out by Dock Street Development, Inc. pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in paragraph B of this section.

B. Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial action under this Order that are known to be applicable at the time of issuance of the Order have been included in Exhibit C and are binding and enforceable requirements of the Order.

Dock Street Development, Inc. has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event Dock Street Development, Inc. determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify Ecology of this determination.

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

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

C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the state to administer any federal law, the exemption shall not apply and Dock Street

Development, Inc. shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

VI.

SATISFACTION OF THIS ORDER

The provisions of this Order shall be deemed satisfied upon Pacific Trustee, Limited's receipt of written notification from Ecology that Dock Street Development, Inc. has completed the remedial activity required by this Order, as amended by any modifications, and that all other provisions of this Order have been complied with.

VII.

ENFORCEMENT

1 Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

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

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

C. In the event Dock Street Development, Inc. refuses, without sufficient cause, to comply with any term of this Order, Dock Street Development, Inc. will be liable for:

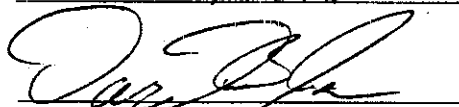
(1) up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and

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

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

Effective date of this Order:

5/20/1996



David B. Jansen, P.E.
Section Manager
Toxics Cleanup Program
Southwest Regional Office

TABLE 8. PROBLEM CHEMICALS IN HEAD OF
THEA FOSS (CITY) WATERWAY

Priority ^a	Chemical
Priority 1	Total organic carbon
	Zinc
	Lead
	Mercury
Priority 2	Oil and grease
	LPAH
	HPAH
	Cadmium
	Nickel
	2-Methylphenol
	4-Methylphenol ^b
	Bis[2-ethylhexyl]phthalate ^c
	Butyl benzyl phthalate ^c
	Copper
Priority 3	1,4-Dichlorobenzene
	N-nitrosodiphenylamine
	Aniline ^b
	Benzyl alcohol
	Phenol ^d

Note: The Head of Thea Foss (City) Problem Area is comprised of Segment 1 as described in Tetra Tech (1985) (see Figure 12 of the Record of Decision).

^a Priority 1 problem chemical—Detected at concentrations exceeding apparent effects thresholds, and the spatial distribution of this chemical corresponds to gradients of observed toxicity or benthic effects.

Priority 2 problem chemical—Detected at concentrations exceeding apparent effects thresholds at more than one station, but shows no particular spatial relationship with gradients of observed toxicity or benthic effects.

Priority 3 problem chemical—Detected at concentrations exceeding apparent effects thresholds at only one station in a problem area or is the highest recorded concentration of that chemical in the Puget Sound database.

^b The Record of Decision does not include a CB/NT cleanup objective for this constituent.

^c Bis[2-ethylhexyl]phthalate and butyl benzyl phthalate are the only two phthalate esters identified as Priority 2 chemicals.

^d Although phenol was not identified as a Priority chemical in Tetra Tech (1985) (p. 6.34) and was identified as a Priority 2 chemical in Tetra Tech (1986b) (p. 159), information presented in Tetra Tech (1985) (p. 4.11, 4.18) suggests that phenol should have been listed in Table 6.14 as a Priority 3 problem chemical. The SEDQUAL database retrieval confirmed this designation.

EXHIBIT B

Foss WATERWAY

North

SPW (water)

SP3 (sediment)

Flow

CITY STEAM PLANT

SPB3

PRUNES

SPB2

SPB1

SPB1

Clipped concrete brick structure over fill

concrete deck

Wharf

Inv B3 comprised from 01 + 02 for TRCP

Invested / CENTRAL HEATING PLANT

Property Boundary

rioles out

(cont) F

DESCRIPTIONS VII

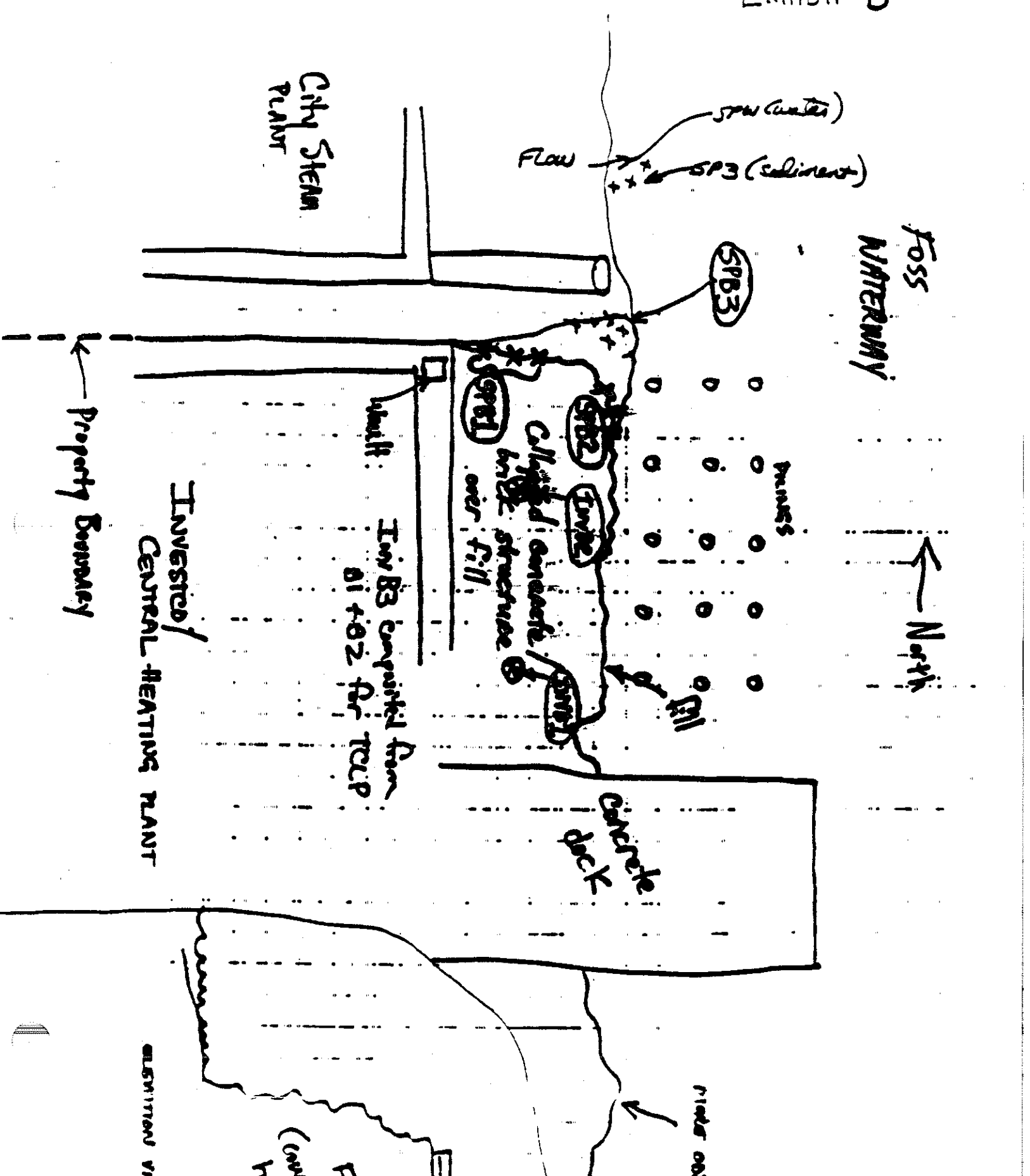


EXHIBIT C

Substantive Requirements For Complying With State And Local Permits

Permits pertinent to this action:

1. Tacoma Shoreline Regulations
2. Tacoma Grading and Excavation Regulations
3. State Hydraulic Project Approval
4. State Water Pollution Control Act
5. State Hazardous Waste Management Act
6. Puget Sound Air Pollution Control Agency
7. Local health Department - Solid Waste Regulations

Substantive requirements for state and local permits that have been identified as pertinent to this project and that shall be complied with in the process of completing the interim remedial action are described below:

1. City of Tacoma, Chapter 13.10, Shoreline Regulations

- Construction design shall include measures to minimize erosion during and after excavation and construction and for the replanting of any vegetated portion of the site which is disturbed from the remedial action.
- The construction of bulkheads shall be permitted only when they are necessary for protection to upland areas or facilities. Bulkheads shall not be permitted for the indirect purpose of creating land by filling behind the bulkhead.
- Bulkheads shall be constructed of concrete, wood, rock, riprap, or other suitable materials. The design and construction of such bulkheads shall, to the maximum extent feasible, preserve the natural characteristics of the shoreline, including beaches, and shall take into account habitat protection and aesthetics.
- Returned water from any dredge material disposed of on land shall meet all applicable water quality standards in accordance with applicable water quality regulations.
- Landfills shall be considered only where such construction can be integrated with the shoreline.
- Construction design for landfills shall address methods which will be used to minimize negative impacts to shellfish, fish, and wildlife habitat, feeding, reproduction, or migration areas.
- Construction design for landfills shall address methods which will be used to minimize physical damage such as alteration of local current, wave damage, water surface reduction,

navigation restriction, impediment to water flow and circulation, reduction of water quality, loss of public access, elimination of accretional beaches, erosion, and aesthetics.

- Site development shall include the capability to contain and clean up spills, discharges, or pollutants.

2. City of Tacoma, Chapter 70, Excavation and Grading

- Any grading, excavation, or filling to take place between October 1st and March 31st shall be performed according to a plan prepared by a licensed Civil or Geotechnical Engineer which specifically addresses the winter rain season and associated erosion problems.

3. Hydraulic Project Approval, Washington State Department of Fish and Wildlife, Chapter 220-110 WAC.

- Work below the ordinary high water mark (OHW) shall not occur from March 15 through June 14 of any years for the protection of migrating juvenile salmonids.

- Project activities below OHW shall not occur when the project area is inundated by tidal waters.

- Excavated materials shall not be stockpiled on the beach.

- All trenches, depressions, or holes created in the intertidal area shall be backfilled prior to inundation by tidal waters.

- All manmade debris on the beach at the project site shall be removed and disposed of upland such that it does not enter waters of the state.

- Use of equipment on the beach shall be prevented to the maximum extent practicable.

- Bed material waterward of the excavation area (approximately Mean Higher High Water, +11.8 ft) shall not be utilized for project construction or fill.

- Project activities shall be conducted to minimize siltation of beach areas and bed materials.

- If a fish kill occurs or fish are observed in distress, the project activity shall immediately cease and WDFW Habitat Program shall be notified immediately.

- Debris or deleterious material resulting from construction shall be removed from the beach area and project site and shall not be allowed to enter waters of the state. Water quality is not to be degraded to the detriment of fish life as a result of this project.

4. State of Washington, Chapter 90.48 RCW, Water Pollution Control

- Construction design and implementation shall include measures to prevent discharge into any of the waters of the state of any organic or inorganic matter that shall cause or tend to cause pollution of such waters according to the determination of Ecology.

5. State of Washington, Chapter 70.105 RCW, Hazardous Waste Management

- The remedial action shall provide for management or disposal of dangerous wastes or hazardous wastes in a manner in compliance with regulations under Chapter 173-303 WAC. Wastes shall be designated and managed in compliance with the site Work Plans. Hazardous waste manifests shall be used to track the transfer and disposal of hazardous wastes.

6. Puget Sound Air Pollution Control Agency

- Remedial action shall be conducted such that toxic air contaminant emissions will not result in the exceedence of acceptable source impact levels listed in Appendix A of the Puget Sound Air Pollution Control Authority, Regulation III.

- Remedial action shall be performed so as to not allow the emission of any air contaminants in violation of the visual standard established by Section 9.03 of Regulation I.

- Remedial action shall be performed so as to not allow the emission of particulate matter in violation of Section 9.04 or 9.09 of Regulation I.

- Remedial action shall be performed so as to not allow the emission of air contaminants in violation of Section 9.11 of Regulation I.

- Remedial action shall be performed so as to not allow the emission of fugitive dust in violation of Section 9.15 of Regulation I.

- Equipment utilized on-site for the remedial action shall be maintained in a manner so as not to be in violation of Section 9.20(b) of Regulation I.

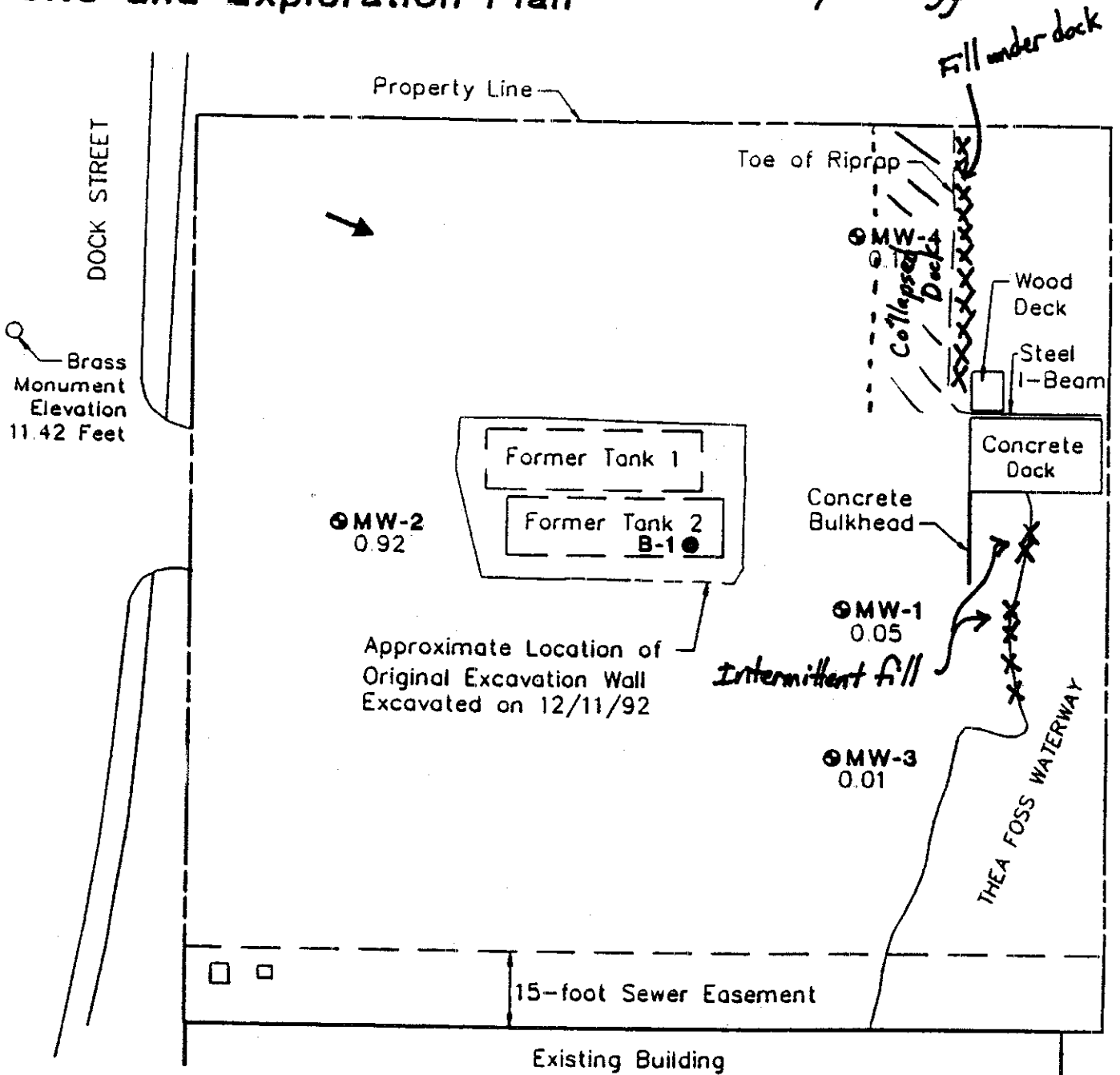
7. Local Health Department - Solid Waste Disposal Authorization

- Comply with Local Health Department provisions for acceptance of any soils to be disposed of at a landfill in the state of Washington, according to criteria developed for the specific facility.

Exhibit D

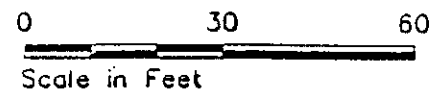
Areas of ash-like fill
identified by Ecology

Site and Exploration Plan



- B-1 Boring Location and Number
- ⊙ MW-1 Monitoring Well Location and Number
- 0.05 Groundwater Elevation in Feet
- ➔ Groundwater Flow Direction

Note: Water level measurements collected September 15, 1994.



HARTCROWSER

J-3641-05 11/94

Figure 2