

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:       )  
                                                          )  
                                                          )  
                                                          )       AGREED ORDER  
                                                          )       ORDER NO. DE 01TCPSR-3229

To:     Tracy Maloney  
          35704 Kinsman Road East  
          Roy, Washington 98580

I.

JURISDICTION

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

II.

STATEMENT OF FACT

The Department of Ecology (Ecology) makes the following Findings of Fact:

1.     The Dorman Tire Yard Site (the Site) is located on property being purchased under contract by Tracy Maloney. This property, which includes the Site, is described as 35704 Kinsman Road East, Roy, Washington 98580, and parcel number for this property is 031726-2-0121147 Pierce County, Washington.
2.     The Site is currently the residence of the Maloney's. The Site currently has their residence and a well house building. Tracy Maloney is purchasing the Site from Jerry and Suellen Mayfield.
3.     The Dorman Site is 11.08 acres, which is bordered by Kinsman Road along the eastern boundary and a Weyerhaeuser tree farm along the western boundary. Undeveloped private property and a few homes are located east of Kinsman Road less than 0.25 miles southeast of the Dorman Site. The southern border is shared with a privately owned, undeveloped property. Along the southern border, an intermittent wetland emerges from beneath Kinsman Road and continues to the Weyerhaeuser property.

Horn Creek is located approximately 600 feet north of the property and there is a gravel pit located about 300 feet west of the Site.

4. Jerry and Suellen Mayfield purchased the Site from Edward and Dorothy Dorman on August 31, 1995.

5. The Dormans began storing tires on the Site as early as 1978. A portion of the wetland and the neighboring properties were covered with piles of used tires. Tires were also stored on the properties that bordered the Site to the west and south. An additional 36 separate piles of tires were observed west and south of the property. In addition to the tires, auto parts, and other miscellaneous materials (e.g., transformer and scrap wood) were also stored on the Site.

6. In 1976 and 1982, fires occurred on this Site. Limited information is available regarding the 1976 fire, and it is not known if the fire involved tires. However, the 1982 fire was of major concern due to the number of tires that burned and the effort required to extinguish the blaze. An estimated three to four million tires burned over a period of five (5) months and approximately 2000 burned tires remain in berms and ash piles around the Dorman Site. The Pierce County Fire Marshal concluded that the fire was a result of arson.

7. In February 1989, Ecology conducted an investigation of the Site to determine whether it was contaminated as a result of the 1982 tire fire. VOCs and SVs were detected at significant concentrations in on-Site surface soil and sediment samples.

8. Ecology completed its sponsorship of the tire cleanup at the Dorman Site on December 31, 1995. The purpose of the cleanup was to alleviate risks to human health and the environment posed by a potential fire, similar to that, which occurred in 1982.

9. The Dorman Tire Yard Site remains on the Hazardous Waste Sites List until Site contamination has been properly remediated.

III.

ECOLOGY DETERMINATIONS

1. Tracy Maloney is an "owner and operator" as defined in RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4).
2. The Site is located at 35704 Kinsman Road East, Roy, Washington 98580, and parcel number for this property is 031726-2-0121147 Pierce County, Washington.
3. The substances found at the facility as described above are "hazardous substances" as defined in RCW 70.105D.020(7).
4. Based on the presence of these hazardous substances at the Site, and all factors known to Ecology, there has been a release of hazardous substances at the facility, as defined in RCW 70.105D.020(20).
5. By a letter date **September 7, 2001**, Ecology notified Tracy Maloney of her status as a "potential liable person" under RCW 70.105D.040, after notice and opportunity for comment.
6. 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 action to be in the public interest.
7. Based on the foregoing facts, Ecology believes the activities 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 Terry Maloney remove and properly dispose of any remaining tires that are found on-site and repay Ecology for the expense it occurred for the remediation of the Site according to the requirements of this Order. **NOW,**

**THEREFORE**, in consideration of the payment of remedial action costs accrued by Ecology and mutual undertakings set forth below, the parties agree as follows:

1. The objective of this Cost Recovery Agreement is to provide for reimbursement to Ecology for costs incurred by Ecology in remediating a release or threatened release of hazardous substances at 35704 Kinsman Road East, Roy, Washington 98580, and parcel number for this property is 031726-2-0121147 Pierce County, Washington.
2. Ecology is responsible for the implementation of the Model Toxics Control Act (chapter 70.105D RCW, hereinafter referred to as "MTCA") and its implementing regulations (Chapter 173-340 WAC).
3. Tracy Maloney is the owner of property located at 35704 Kinsman Road, Roy, Washington 98580, and parcel number for this property is 031726-2-0121147 Pierce County, Washington, that contains hazardous substances at levels, which may pose a threat to human health or the environment.
4. Tracy Maloney was notified by a letter dated September 7, 2001, of its status as a "potentially liable person" under MTCA.
5. Ecology has determined an interim action is necessary to protect human health and the environment and intends to act in the public interest by removing the hazardous materials from the Site.
6. Ecology has incurred expenses and will continue to incur expenses until completion of removal of hazardous materials from the property owned by Tracy Maloney.
7. RCW 70.105D.050 authorizes the Attorney General to recover the amount spent by Ecology for investigative and remedial actions and orders. Recognizing that the costs associated with litigation may be substantial, Ecology and Tracy Maloney agree that it is in their mutual best interest to enter into this Cost Recovery Agreement for repayment of Ecology's Remedial Action Costs.

8. Using the profits from the sale of the Site (real estate), Tracy Maloney agrees to reimburse Ecology for the costs it incurs in remediating the release of hazardous substances at the Site. This shall include all costs Ecology has incurred for Site activities between August 1, 2001, and the date the cleanup is completed. Ecology costs include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2).
9. Tracy Maloney also agrees to reimburse Ecology for all remedial action expenses accrued from August 1, 2001, until the sale of the property. Accrued expenses shall be summarized each month by Ecology and attached to this Cost Recovery Agreement as attachments B1, B2, B3, etc.
10. Tracy Maloney intends to reimburse Ecology out of the profits resulting from the sale of this Site
11. If Tracy Maloney has insufficient profits from the sale of the Site to fully reimburse Ecology, Tracy Maloney shall not remain liable to Ecology for the full amount of Ecology's remedial action costs incurred at the Site. Tracy Maloney will only be responsible to reimburse Ecology for its expenses up to and not to exceed the total profit from the sale of the said Site (real estate).
12. In any event, Tracy Maloney shall reimburse Ecology within thirty (30) days of the sale of the Site (real estate). Tracy Maloney shall be fully responsible to document the cost of all Site improvements and purchasing amount. Undocumented Site improvement cost or other expenses shall not be considered in determining the profit of the sale of the Site (real estate).
14. The interim action Ecology intends to conduct on the Site is to remove Site contaminants. Other clean up actions, investigations, or Site improvements needed to render the property salable shall be the responsibility of Tracy Maloney.
15. Ecology or its authorized representatives shall have the authority to enter and freely move about the Site at all reasonable times for the purposes of performing remedial action at the Site. Ecology or its authorized representatives shall have the authority to restrict Site access for safety purposes.

16. This Cost Recovery Agreement shall be effective on the date it is executed by the parties and shall remain in effect until Tracy Maloney has fully reimbursed Ecology for its expenses related to remediation of the Site.

17. Tracy Maloney shall defend, protect, and hold harmless Ecology or its authorized representatives from and against all claims, suits, or actions arising from any intentional or negligent act or omission of its employees, agents, and/or authorized subcontractor(s) while performing under the terms of this Cost Recovery Agreement.

18. Ecology and Tracy Maloney may mutually amend this Agreement. Such amendments shall not be binding unless they are in writing and signed by authorized representatives of both parties.

V.

TERMS AND CONDITIONS OF ORDER

1. Definitions:

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

2. Public Notices:

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

3. Remedial Action Costs:

Tracy Maloney 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, cleanup 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).

4. Designated Project Coordinators:

The project coordinator for Ecology is:

Name: Robert Warren  
Address: Department of Ecology  
Southwest Regional Office  
P.O. Box 47775  
Olympia, Washington 98504-7775  
Telephone: (360) 407-6361  
FAX: (360) 407-6305  
E-Mail: [rwar461@ecy.wa.gov](mailto:rwar461@ecy.wa.gov)

The project coordinator for this Site is:

Name: Tracy Maloney  
Address: 35704 Kinsman Road East  
Roy, WA 98580  
Telephone: 253- 832-8472

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Tracy Maloney 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). If Ecology or Tracy Maloney should change project coordinator(s), written notification shall be provided to the other party 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. Tracy Maloney shall notify Ecology about 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. Tracy Maloney 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 where necessary to abate an emergency situation, Tracy Maloney shall not perform any remedial actions at Tracy Maloney beyond 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. Tracy Maloney shall provide seven days notice to Ecology's Site manager prior to conducting work activities.

6. Access:

Ecology or any Ecology-authorized representative shall have the authority to enter and freely move about 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 Tracy Maloney. When entering the Site under Chapter 70.105D, Ecology shall provide reasonable notice prior to entering this Site unless an emergency prevents such notice. Ecology shall allow split or replicate samples to be taken by Tracy Maloney during an inspection unless doing so interferes with Ecology's sampling. Tracy Maloney shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before conducting any activity relative to this Order.

7. Public Participation:

Tracy Maloney shall help prepare and/or update a public participation plan for the Site. Ecology shall maintain the responsibility for public participation at the Site. Tracy Maloney shall help coordinate and implement public participation for the Site.



8. Retention of Records:

Tracy Maloney shall preserve in a readily retrievable fashion, during the pendency of this Order and until the sale of the Site (real estate), all records, reports, documents, and underlying data in its possession relevant to this Order. If any portion of the work performed hereunder is undertaken by contractors or agents of Tracy Maloney, then Tracy Maloney agrees to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.

9. Dispute Resolution:

Tracy Maloney may request Ecology to resolve 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), to this Order. Ecology resolution of the dispute shall be binding and final. Tracy Maloney 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 factors 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 releases or threatened releases of hazardous substances from Tracy Maloney at 35704 Kinsman Road East, Roy, Washington 98580, and parcel number for this property is 031726-2-0121147 Pierce County, Washington.

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 Tracy Maloney 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 Tracy Maloney 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 Tracy Maloney may have in the Site or any portions thereof, Tracy Maloney 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, Tracy Maloney shall notify Ecology of the contemplated transfer.

12. Compliance With Applicable Laws:

A. All actions carried out by Tracy Maloney 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 are binding and enforceable requirements of the Order.

Tracy Maloney 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 Tracy Maloney 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 Tracy Maloney shall

be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Tracy Maloney 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 Tracy Maloney and on how Tracy Maloney must meet those requirements. Ecology shall inform Tracy Maloney in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Tracy Maloney 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 Tracy Maloney 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 Tracy Maloney receipt of written notification from Ecology that Tracy Maloney has completed the remedial activity required by this Order, as amended by any modifications, and that all other provisions of this Order has 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.

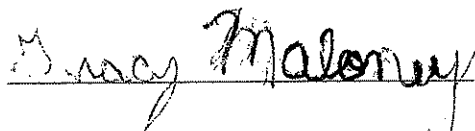
C. In the event Tracy Maloney refuses, without sufficient cause, to comply with any term of this Order, Tracy Maloney will be liable for:

(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

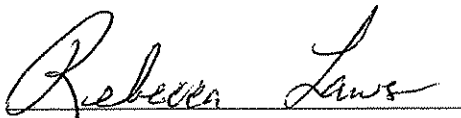
(2) civil penalties of up to \$25,000 per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under Section 6 of Chapter 70.105D RCW.

Effective date of this Order: 2-18-02



Tracy Maloney, Owner



Rebecca Lawson, P.E.  
Regional Section Manager  
Toxics Cleanup Program