

DEFERRAL AGREEMENT
Rayonier Mill Site

I. PURPOSE

The Environmental Protection Agency (“EPA”), Region 10, has assessed contamination at the Rayonier Mill Site (“the Site”) and determined that it qualifies for ranking on the National Priorities List (“NPL”). The Washington State Department of Ecology (hereinafter referred to as “Ecology” or “the State”) has suggested that EPA defer NPL listing in favor of a cleanup under Washington’s Model Toxics Control Act (“MTCA”). Because the Site involves interests in land or other resources under the jurisdiction of the Lower Elwha Klallam Tribe (“the Tribe”), the Tribe is a party to this three-party Deferral Agreement, and deferral of the Site requires concurrence by the Tribe. The Tribe has already entered into a Memorandum of Understanding (“MOU”) with EPA providing for mutual assistance with respect to cleanup of the Site, a Preliminary Agreement with Ecology providing for the Tribe’s participation in a State-lead cleanup, and a Cooperative Agreement with Rayonier Inc. providing for funding of that participation. All three of these agreements are attached to this Deferral Agreement and incorporated by this reference.

This Deferral Agreement describes actions Ecology will take to ensure adequate response actions at the Site. NPL listing activities will be deferred while Ecology oversees MTCA actions conducted and funded by the responsible parties. When the necessary response actions at the Site are successfully completed, EPA will have no further interest in considering the Site for listing, unless there is a release or potential release that poses a significant threat to human health or the environment. When all necessary response actions are completed, the Site will also be removed from CERCLIS.¹

II. IMPLEMENTATION

A. State Program - Ecology has adequate state authority in MTCA to ensure that response actions at the Site are carried out and that these actions are protective of human health and the environment.

The State confirms through this Deferral Agreement that it has sufficient capabilities, resources, expertise, and authorities to ensure that a CERCLA-protective remedial

¹ The Comprehensive Environmental Response, Compensation, and Liability Information System (“CERCLIS”) ID number for the Site is WAD00049019.

process will be conducted, including coordination with EPA, the Tribe, other interested agencies, and the public on different phases of implementation, as set forth herein.²

B. Tribal Capacity - The Tribe has sufficient capabilities, expertise, and jurisdiction to manage its fisheries and cultural resources, and to protect the health of its members.

C. Site Eligibility - The State has requested that NPL listing of the Site be deferred while the State conducts a cleanup pursuant to MTCA and its implementing regulations, guidance, and policy. Any action taken by the State with respect to the Site, including studies, investigations, and clean up actions, must meet or exceed CERCLA and National Contingency Plan (“NCP”) requirements. It is the expectation of the parties that actions taken under MTCA will meet this requirement.

The Site is included in the CERCLIS inventory and has been assessed and scored for listing on the NPL. Development of a site-specific Hazard Ranking System (“HRS”) package has not been initiated for formal listing as a matter of federal rule making, pending cleanup of the Site under State deferral. The State will not request or utilize Federal funds to implement any portion of the actions required by this Deferral Agreement.

D. State-Tribe Coordination - The State will adhere to the provisions of the Preliminary Agreement between the Lower Elwha Klallam Tribe and the Washington State Department of Ecology, and compliance with that agreement is made a condition of deferral of the Site to the State. Ecology will not move forward with a proposed cleanup decision without the Tribe’s concurrence.

E. Community Acceptance - The State and EPA have taken appropriate steps to inform the affected community and other affected parties of this deferral. EPA and the State have documented their interactions with the community, have attempted to respond to objections raised by community members, and have determined that sufficient community acceptance exists to support a decision to defer the Site.

F. Clean-Up Levels - The State will pursue a protective clean-up of the Site, which is equivalent to, or more protective than, a remediation required under CERCLA, and fully complies with MTCA and its implementing regulations. The cleanup action shall be protective of human health and the environment, as generally defined by a 10^{-4} to 10^{-6} risk range for carcinogens and hazard index of 1 or less for non-carcinogens. The State shall also use

² The definition of “CERCLA-protective” set forth in OSWER Directive 9375.6-11 (“Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions”) is incorporated by this reference.

permanent solutions to the maximum extent practicable. The State will ensure that any remedy selected at the Site will comply with all applicable Federal and State requirements. The State shall select a remedy which provides a level of protectiveness consistent with applicable, relevant and appropriate Federal and State requirements for the Site. In addition, the State will consult with the Tribe and obtain the Tribe's concurrence in the selection of cleanup levels and actions protective of the Tribe's interests in burials, traditional cultural properties, archaeological resources, human health, and fisheries when making cleanup decisions at the Site.

G. Natural Resource Trustees - The State agrees to promptly notify the appropriate State, Federal, and Tribal trustees for natural resources of discharges and releases from the Site that are injuring or may injure natural resources and include the trustees, as appropriate, in activities at the Site.

III. PROCEDURAL REQUIREMENTS

A. Roles and Responsibilities - The State has the responsibility, with minimal EPA involvement, to provide for a timely CERCLA-protective cleanup under MTCA, to consult with the Tribe, and to support the public's right of participation in the decision-making process. The State will take prompt action to address violation of any orders or agreements the State has reached with a Potentially Liable Party ("PLP") at the Site.

The Tribe has interests in protecting its treaty fisheries, its cultural resources, and the health of its members from releases originating at the Site and in providing recommendations, consistent with State and EPA procedures, concerning risk assessment procedures that take into account the Tribe's dependence on affected fisheries and exposure scenarios for tribal receptors.

EPA's role will generally be limited to review of State annual reports, described in Section D below, and consultation on the proposed remedy, described in Section E below. At the Tribe's request, EPA will consult with the Tribe on matters relating to the investigation and clean up of the Site in order to ensure meaningful participation by the Tribe in the activities at the Site. EPA will not provide financial assistance to the State or the community. EPA may request other reports, data, or documentation, as it deems appropriate, under this deferral.

B. Schedule for Performance - A proposed schedule of events for the Rayonier clean-up is given in Table 1. The Parties recognize that the extent of public comment and involvement may require additional time and other factors which cannot be anticipated may occur. The dates in Table 1 are, therefore, subject to change.

Table 1: Proposed Schedule of Events

Task	Proposed Completion Date
Workplan for Remedial Investigation Agreed Order to conduct Remedial Investigation	July 2001
Remedial Investigation Report	June 2002
Workplan for Feasibility Study Agreed Order to Conduct Feasibility Study	January 2003
Feasibility Study Report	October 2003
Cleanup Action Plan Consent Decree to Implement Cleanup Action Plan	July 2004
Implementation of Cleanup Action Plan	Per Schedule in Cleanup Action Plan

C. Documentation Submissions to EPA - The State will make available all data, reports, and other documentation to EPA upon request.

D. State Reporting to EPA - The State will report to EPA at least annually on whether the conditions agreed upon in this Deferral Agreement are being met, including the status of the process and any anticipated delays in meeting the schedule set forth in Table 1, and the reasons therefore. The State's annual report will include proposed revisions to any of the completion dates in Table 1. EPA will provide written documentation to the State and the Tribe of any discussions and conclusions reached by the three parties during the annual meeting.

E. Proposed Remedial Action - The State will brief EPA on the proposed cleanup action before and after soliciting public comment.

IV. COMMUNITY PARTICIPATION

The State will ensure public involvement in full compliance with MTCA. The State will ensure the following actions are undertaken:

- A. Site files will be maintained at the Ecology project manager's office.
- B. Site-related documents will be available at a location near the Site.

- C. Citizens will have access to Site-related information which is publicly releasable pursuant to applicable law.
- D. As described in an Ecology-implemented Public Participation Plan, the affected community will be able to apply for technical assistance grants to aid in interpreting information with regard to the nature of the hazard, investigations and studies conducted, and implementation decisions at the Site.

V. NATURAL RESOURCE TRUSTEES

The State shall, consistent with CERCLA and the NCP, seek to coordinate necessary assessments, evaluations, investigations, and planning with State, Tribal, and Federal trustees of natural resources affected by the contamination at or from the Site. In December, 1999, the Federal trustees of natural resources and Rayonier, Inc. entered into a statute of limitations tolling agreement for natural resource damages.

VI. COMPLETION OF STATE RESPONSE ACTION

Certification and Confirmation - Once the State considers the cleanup action at the Site to be complete, it will certify to EPA, the Tribe, and the affected community that it has successfully completed its MTCA Cleanup Action Plan and achieved its intended clean-up levels. As part of the certification, the State will submit response action completion documentation substantially similar to that described in the June 1992 OSWER Directive "Remedial Action Report: Documentation for Operable Unit Completion" (OSWER Directive 9355.0-39FS) to EPA.

EPA will review the certification and supporting information and, in consultation with the Tribe, may choose to initiate a deferral completion inquiry to confirm the certification. EPA will work with the State to address any data deficiencies hindering the confirmation and agree to a time frame for completion of the inquiry. If the response at the Site is confirmed as complete, the Site will not be further evaluated for NPL listing unless EPA receives information of a release or potential release at the Site which poses a significant threat to human health or the environment. Upon completion of response actions and confirmation by EPA, the Site will be removed from CERCLIS.

VII. AGREEMENT TERMINATION AND MODIFICATION

If, at any time during or upon completion of a response action, EPA determines that the response is not CERCLA-protective, is unreasonably delayed, or does not adequately address the Tribe's or the affected community's concerns, EPA may terminate this Deferral Agreement, after 30 days notice to the State. EPA agrees to meet with the State to discuss termination within this 30-day period. In addition, EPA may terminate the deferral and implement an emergency or

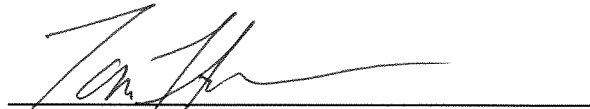
time-critical response action without 30 days notice to the State if such actions are determined necessary. EPA may terminate this Deferral Agreement if Rayonier breaches its agreement with the State, and the State is unable to enforce compliance or provide other sources of funding to complete the response action. EPA may also terminate this Deferral Agreement if Rayonier breaches its Cooperative Agreement with the Tribe, or if the State breaches its Preliminary Agreement with the Tribe. The State may choose at any time, after 30 days notice, to terminate this Deferral Agreement for any reason. Upon State termination, responsibility for remedial activity will revert to EPA.

Upon termination of this Deferral Agreement, EPA will consider taking any necessary response actions and initiate the federal rule-making process for formal listing of the Site on the NPL. EPA and the State will coordinate efforts to notify the Tribe, community, and Rayonier of the termination of this Deferral Agreement. These actions will assure the public that EPA will continue to respond at a Site where response actions have begun. At EPA's request, the State will provide all information in its possession regarding the Site to EPA. At the Tribe's request, the State will provide the Tribe all information in its possession regarding the Site; provided that the State will not be required to provide information to the Tribe which the State is prohibited from releasing pursuant to applicable law.

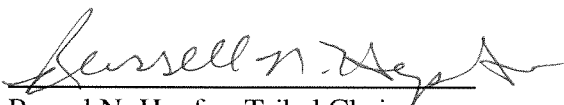
This Deferral Agreement adheres to EPA's "Guidance on Deferral of NPL Listing Determinations While States Oversee Response Actions" dated May 3, 1995. This Deferral Agreement may be modified at any time upon agreement of the parties.

Notwithstanding any provision of this Deferral Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

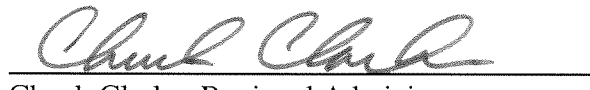
VIII. AGREEMENT APPROVALS



Tom Fitzsimmons, Director
Washington State Department of Ecology



Russel N. Hepfer, Tribal Chair
Lower Elwha Klallam Tribe



Chuck Clarke, Regional Administrator
U.S. Environmental Protection Agency, Region 10