

DEPARTMENT OF ECOLOGY
FISCAL YEAR

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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action)	
by:)	
Leichner Brothers Land)	No. 93TC-S151
Reclamation Company, Inc.)	
)	AGREED ORDER
Potentially Liable Person)	

I. JURISDICTION

This Agreed Order (Order) is issued pursuant to RCW 70.105D.050(1).

II. FINDINGS OF FACT

The Washington State Department of Ecology (Ecology) makes the following Findings of Fact without admission of any such facts by Leichner Brothers Land Reclamation Co. (Leichner).

A. Leichner owns the Leichner Landfill, a solid waste landfill located in Clark County, Washington, about five miles northeast of the City of Vancouver in Section 4, Township 2N, Range 2E and Section 33, Township 3N, Range 2E of the Willamette Meridian. The location is shown on Figure 1.

B. The landfill has accepted municipal solid waste from residential and commercial customers located within the city limits of Vancouver and unincorporated Clark County for approximately fifty years. In the late 1980s, groundwater contamination was discovered at the Site. Leichner investigated the contamination and studied possible remedial actions at the

Site pursuant to the terms of a series of agreed and unilateral orders.

The landfill has been closed since the end of 1991. A composite final cover was installed at the landfill. A stormwater control system collects runoff from the landfill cover. The facility also includes a landfill gas control/recovery system.

Following the issuance of a draft Cleanup Action Plan (CAP) by Ecology in early 1992, Leichner and Ecology negotiated a consent decree that described the additional remedial actions to be implemented at the Site by Leichner. A draft of the consent decree was completed and published by Ecology in mid-July 1992. It also required Leichner to provide an estimate of the costs that would be incurred in implementing the decree and financial assurance that Leichner would be able to pay for the remedial action.

During and since the negotiation of the draft consent decree, Leichner has installed additional wells at the points of compliance specified by Ecology and has sampled groundwater in those wells. Leichner will continue to collect samples from those wells quarterly at least until September 1993.

Since publication of the draft consent decree in July 1992, Leichner has endeavored to estimate the cost of the remedial action, and to address the necessary financial assurance to Ecology. A number of issues have arisen with respect to control of the funds necessary for Leichner to assure implementation of the remedial action. Nevertheless, Leichner does not wish to delay implementation of remedial action at the Site. Therefore, Leichner and Ecology wish to execute this interim order requiring

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Leichner to proceed with the scope of work set forth in Section IV and Exhibit A of this Order.

III. ECOLOGY DETERMINATIONS

A. The Leichner Landfill Site is a "facility" as defined in RCW 70.105D.020(3).

B. Leichner is an "owner or operator" of the Site as defined in RCW 70.105D.020(5).

C. "Hazardous substances" as defined in RCW 70.105D.020(5) are present at the Site.

D. The presence of elevated levels of volatile organic compounds as well as several inorganic compounds in the alluvial aquifer at the Site constitutes a "release" as that term is defined in RCW 70.105D.020(10).

E. Ecology has given notice to Leichner, as provided in RCW 70.105D.020(8), of Ecology's determination that Leichner is a potentially liable person with respect to the Site and that there has been a release or threatened release at the Site.

F. Pursuant to RCW 70.105D.030(1) and .050, Ecology may require potentially liable parties to investigate or conduct remedial actions with respect to the release or threatened release of hazardous substances.

Based on the foregoing facts, Ecology has determined and Leichner agrees, that Leichner must take the remedial actions described below, on the Site. Ecology has determined that the remedial actions will be in the public interest.

IV. WORK TO BE PERFORMED

Based on the preceding Findings and Determinations, it is hereby ordered and agreed that Leichner perform the remedial action set forth in the work plan and schedule attached to this Order as Exhibit A. Exhibit A is incorporated by this reference and is an integral and enforceable part of this Agreed Order.

V. TERMS AND CONDITIONS OF ORDER

A. 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. The term "Site" when used in this Order means the Leichner Brothers Land Reclamation Corporation landfill located near Vancouver, Washington, and surrounding areas where hazardous substances have come to be located.

B. Public Notice. RCW 70.105D.030(2)(a) requires that, at a minimum, public notice be given concurrent with the issuance of this Agreed Order. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comments disclose facts or considerations that indicate to Ecology that the Order is inadequate or improper in any respect. Leichner reserves the right to revoke its agreement should Ecology modify or withdraw any provision of this order.

C. Oversight Costs. Leichner agrees to pay costs incurred by Ecology pursuant to this Agreed Order. These costs shall include costs incurred by Ecology or its contractors for Order preparation, negotiations, oversight, and administration. Ecology costs shall include costs of direct activities, e.g., employee

salary, laboratory costs, contractor fees, employee benefit packages, and indirect costs attributable to oversight. Leichner agrees to pay the required amount within ninety (90) days of receipt of an itemized statement from Ecology that includes a summary of costs incurred, a general statement of work performed, an identification of involved staff, and the amount of time spent by Ecology staff members on the project. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within 90 days of receipt of an itemized statement of costs may result in the imposition of interest charges at the rate of twelve (12) percent per annum.

D. Designated Project Coordinators.

The project coordinator for Ecology is:

Rebecca Lawson, P.E.
Department of Ecology
Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775

The project coordinator for Leichner is:

Kevin Lakey
EMCON Northwest
18912 North Creek Parkway
Suite 100
Bothell, WA 98011

The project coordinators shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Leichner, 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. Should Ecology or Leichner change project coordinators, written

notification shall be provided to the other party at least ten (10) days prior to the change.

E 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. In advance of their involvement at the Site, Leichner shall notify Ecology which engineers, hydrogeologists, contractors, and subcontractors will be used to carry out this Order. Such notice shall include a summary of the qualifications of each engineer, hydrogeologist, contractor, and subcontractor. Leichner has already complied with this requirement of the Order with respect to EMCON Northwest. Leichner 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, Leichner 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.

F. Access. Within twenty-four (24) hours of receiving a request for access, Leichner shall provide Ecology, or any Ecology-authorized representative, entry and access to all property at the Site at all reasonable times for the purposes of, among other things: inspecting non-privileged records, operation logs, contracts, plans, specifications, engineering designs, files, photographs, documents, and other writings, including all

sampling and monitoring data, related to remedial action being performed pursuant to this Order; conducting tests or collecting 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 Leichner. Leichner shall permit any Ecology-authorized representative to copy all non-privileged records, files, photographs, documents, and other writings related to remedial action performed pursuant to this Order, whether located at the Site or elsewhere. All parties with access to property at the Site pursuant to this paragraph shall comply with approved safety and health plans. Should Leichner fail at any time to provide Ecology access under the terms set forth above, then Leichner shall immediately provide to Ecology keys allowing access to the Site, including locked well covers at the Site. Provided, however, that except in an emergency, Ecology shall still be required to provide Leichner twenty-four (24) hours notice prior to entry onto the Site.

G. Sampling, Data Reporting and Availability.

1. Leichner shall make the quality assured results of all sampling, laboratory results, and test results generated by it or on its behalf pursuant to this Order available to Ecology.

2. Leichner shall allow Ecology or any Ecology-authorized representative to take splits or duplicates of any samples collected by Leichner pursuant to this Order. Except in cases of emergency, Leichner shall notify Ecology five (5) working days in advance of any sample collection at the Site not scheduled in Exhibit A, Scope of Work. In cases of emergency, Leichner

shall notify Ecology as soon as possible (and prior to sampling, if practical) of the nature of the emergency and of the type of samples collected. Ecology shall, upon request, allow Leichner or its authorized representatives to take splits or duplicates of any samples collected by Ecology pursuant to this Order. All sampling shall be conducted in accordance with the approved sampling and analysis plans. To the extent practicable, and without limitation on Ecology's rights under Section V.E., Ecology shall endeavor to notify Leichner five (5) days prior to any planned sample collection activity.

H. Retention of Records. During the pendency of this Order, and for ten (10) years from the date of completion of the work required by this Order, Leichner shall preserve, in a readily retrievable fashion, 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 Leichner, then Leichner agrees to include in its contract with such contractors or agents a record retention requirement consistent with the terms of this paragraph.

I. Dispute Resolution. Leichner may request Ecology to resolve disputes that may arise during the implementation of this Order. Such request shall be in writing and directed to the signatory, or his/her successor, of this Order. Ecology resolution of the dispute shall be binding and final. Leichner 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.

J. Reservation of Rights/No Settlement. This Agreed Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against Leichner to recover remedial action costs paid to and received by Ecology under this Agreed Order. In addition, Ecology will not take additional enforcement actions against Leichner to require those remedial actions required by this Agreed Order, provided Leichner complies with this Agreed Order. Ecology reserves the right, however, to require additional remedial actions at the Site should it deem such actions necessary. 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 the 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 at the Site or in the surrounding area or to the condition of the environment, Ecology may order Leichner to stop further implementation of this Order for such period of time as may be needed to abate the danger.

K. Compliance with Other Applicable Laws. All actions taken by Leichner pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements.

L. Modification. Ecology and Leichner may modify this Order by mutual written agreement.

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

N. Public Participation. Leichner shall update a public participation plan for the Site. Ecology shall maintain the responsibility for public participation at the Site. Leichner shall help coordinate and implement public participation for the Site.

VI. SATISFACTION OF THIS ORDER

The provisions of this Order shall be deemed satisfied upon Leichner's receipt of written notice from Ecology that Leichner has completed the remedial action required by this Order, as modified, and that Leichner has complied with all other provisions of this Agreed Order, or when superseded by a Consent Decree.

VII. ENFORCEMENT

In the event Leichner refuses, without sufficient cause, to comply with any term of this Order, this Order may be enforced as follows:

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

B. In any such action, Leichner may be liable for up to three times the amount of any costs incurred by the State of Washington as a result of Leichner's refusal to comply.

C. In addition, in any such action, Leichner may be liable for civil penalties of up to \$25,000 per day for each day Leichner refuses to comply.

D. Should Ecology conduct or provide for conducting the remedial action, the Attorney General will bring an action to recover all costs incurred by the state for such action.

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

Effective date of this Order: May 6, 1993

LEICHNER BROTHERS LAND
RECLAMATION CORPORATION

By: *John Tubman*
Its *President*

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By: *Megan White*

EXHIBIT A

SCOPE OF WORK AND SCHEDULE

Task 1 - Draft Domestic Well Canvass Work Plan

Although many residences in the landfill vicinity are now supplied water by the City of Vancouver, the number of nearby residences still using domestic supply wells completed in the Alluvial or Troutdale aquifers is not known. The lateral and vertical extent of the leachate contaminant plume emanating from the landfill has not been fully defined. Low concentrations of VOCs have been detected in ground water samples collected from four currently used domestic supply wells that are located downgradient of Leichner Landfill.

To ensure the protection of public health and the environment, Leichner will ensure that a survey is performed to determine the number and location of Alluvial and Troutdale domestic supply wells within a reasonable distance downgradient of the landfill. Leichner plans to conduct this study under the auspices of, and in coordination with, the Southwest Washington Health District. Provisions for replacing domestic wells affected by the landfill that exceed drinking water standards with water supplied by the City of Vancouver or other alternate water supplies will also be included. It is acknowledged that the owners of property outside of the city limits of the City of Vancouver may choose not to allow replacement of their water supplied with City or other alternate water supplies, a decision which is beyond the control of Leichner or Ecology. The results of the Domestic Well Canvass shall be presented in a summary report for Ecology approval. A work plan outlining the details of the domestic well canvass shall be submitted to Ecology for comment. The work plan shall include a schedule for implementing the domestic well canvass.

Schedule: The draft work plan will be submitted within 30 days after the effective date of this Agreed Order.

Task 2 - Final Domestic Well Canvass Work Plan

Submit a final Domestic Well Canvass Work Plan, for Ecology approval, addressing Ecology's comments on the draft work plan.

Schedule: Within 30 days after Ecology provides comments on the draft Domestic Well Canvass Work Plan.

Task 3 - Implement the Approved Domestic Well Canvass

Schedule: In accordance with the schedule in the approved Domestic Well Canvass Work Plan.

Task 4 - Ground Water Monitoring

The following wells will be added to the quarterly ground water monitoring performed at Leichner Landfill: LB-2S, LB-7S, LB-8S, LB-18C, LB-26I, LB-26D, LB-27I, and LB-27D. Ground water samples from these wells will be analyzed for the following quarterly ground water monitoring parameters: field parameters, volatile organics, dissolved metals, lab pH and conductivity, ammonia, nitrate, dissolved solids, and suspended solids.

Schedule: Two quarters beginning with the First Quarter (March) 1993 sampling event.

Task 5 - Draft Closure Plan Amendment

An amendment to the February 1989 *Leichner Brothers Landfill Master Operations Plan* shall be prepared and submitted to Ecology and the Southwest Washington Health District (SWHD) for comment. The amendment shall update the February 1989 plan to accurately reflect all of the closure activities that occurred as part of final closure of the landfill. The closure plan and amendment shall meet all applicable requirements specified in the Minimum Functional Standards for Solid Waste Handling (MFS), Chapter 173-304 WAC.

Schedule: Within 45 days of the effective date of this Agreed Order.

Task 6 - Final Closure Plan Amendment

Submit a final Closure Plan Amendment for Ecology and SWHD approval. The final plan shall address Ecology's and SWHD's comments on the draft amendment.

Schedule: Within 30 days after receiving comments on the draft plan from Ecology and SWHD.

Task 7 - General Closure and Post-Closure Requirements

The landfill closure and post-closure shall meet all applicable requirements set forth in Chapter 173-304 WAC and WAC 173-340-360(8). A draft post-closure plan meeting MFS and MTCA requirements shall be prepared and submitted to Ecology and the Southwest Washington Health District for comment.

Schedule: As determined by both the Southwest Washington Health District and Ecology.

Task 8 - Final Post-Closure Plan

Submit a final Post-Closure Plan for approval by Ecology and the SWHD. The final plan shall address Ecology's and SWHD's comments on the draft plan.

Schedule: Within 30 days after receiving comments on the draft plan from Ecology and SWHD.

Task 9 - Implement the Post-Closure Plan

Schedule: In accordance with the schedule in the approved final Post-Closure Plan.