

Hauser

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:)
)
 Allan R. Wolter, and Doris A. Wolter, and)
 Allan R. Wolter and Doris A. Wolter)
 dba J.J. Development Company)
)
 and)
)
 Fred Collett and Martha Collett, and)
 Fred Collett and Martha Collett dba Collett)
 Construction Company)
)
 and)
)
 Michael E. (Mike) Davis, and)
 Michael E. (Mike) Davis dba G.D.W. Limited)
 Partnership, and Michael E. (Mike) Davis)
 dba Davis Construction Company)
)
 and)
)
 Andrew W. Hauser, and)
 Andrew Hauser dba Real Estate Investments)
)

**ENFORCEMENT
ORDER**

No DE 97TC-N136

To:

Allan R. Wolter and Doris A. Wolter
P O. Box 98035
Seattle, WA 98198

Fred and Martha Collett
Fred and Martha Collett dba Collett Construction Co.
P O Box 2363
Silverdale, WA 98383

Michael E. Davis
P O Box 951
Sumner, WA 98390

Andrew Hauser
32625 - 50th Place S W
Federal Way, WA 98023

I.

Jurisdiction

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

II.

Findings of Fact

Ecology makes the following Findings of Fact, without admission of such facts by Allan R. Wolter and/or Doris A. Wolter, and Allan R. Wolter dba J.J. Development; and Fred Collett and/or Martha Collett, and Fred Collett and Martha Collett dba Collett Construction; and Michael E. (Mike) Davis, and Michael E. Davis dba G.D.W. Limited Partnership, and/or Davis Construction Company; and Andrew W. Hauser and Andrew Hauser dba Real Estate Investments

1. The property known as the Hauser Property, ERTS #N8194, consists of lots 36-40 inclusive, Block 16, Interurban Heights, Fourth Section, as described in Volume 17, page 86 of the Book of Plats of King County, Washington, located at the southeast corner of the intersection of S. 244th St. and 26th Place S and extending to the south and east from that intersection, in the City of Des Moines, King County, Washington, hereinafter "the Site", is the subject of this Order. See Exhibit A

2. From the early 1930s to 1935, Leo Veder owned and operated an oil recycling facility. The location has been described to Ecology as being in the NE corner of the current intersection of S. 244th St. and 26th Pl. S.

3 In 1935 Jense Peterson purchased ½ interest in the property and oil recycling business. In 1937, Sam Peterson, Jense's father, bought out Leo Veder's remaining ½ interest, and father and son operated the oil recycling business and a service station at the south side of S. 244th St. on the west side of SR 99. In about 1955, Jense Peterson ceased operation of the oil recycling facility and service station. The waste pile was described to Ecology as being about 100-feet long by 25 to 35 feet wide and about 3 to 4 feet high, and looked a lot like tar, only it got soft when it was very warm outside. Sam Peterson is believed to have died prior to 1955. Jense Peterson is believed to have died in 1969.

4 Aerial photographs from 1961 and 1988 show that the former oil recycling facility and waste pile were partially located on what is now the Hauser Property Site described in Finding of Fact 1., above. See Exhibits B-1 and B-2.

5 Fred and Martha Collett, dba Collett Construction Company, are prior owners of the Site and were owners or operators at the time of release of hazardous substances. They purchased lots 38-40 of the Site on or about December 16, 1981 as evidenced by a Warranty Deed (King County Doc #8112170035). See Exhibit C-1. On or about November 25, 1985, J&G Construction, Inc. conveyed Lots 36 and 37, Block 16, Interurban Heights Fourth Section (a portion of the Site) to Allen R. Wolter and Doris A. Wolter and Fred Collett and Martha Collett as evidenced by a Statutory Warranty Deed (King Co. Doc #8512030346) See Exhibit C-2.

6 Allan R. Wolter, dba J.J. Development Company, and Doris A. Wolter are prior owners of Lots 36 and 37 of the Site and were owners or operators at the time of release of

hazardous substances. Allan R. Wolter and Doris A. Wolter jointly purchased Lots 36 and 37 of the Site on or about November 25, 1985 with Fred Collett and Martha Collett. See Finding of Fact 5 and Exhibit C-2.

7 In March 1984, Allan R. Wolter and Fred Collett planned to develop the Site and exercised control over the Site when they participated in a joint rezone request for the Site with City of Des Moines. On or about July 11, 1984, Allan R. Wolter began regularly receiving correspondence on behalf of Wolter, Collett and Ed and Luella Johnson regarding a rezone, LID/street and correspondence from the City of Des Moines, apparently acting as agent for development to City of Des Moines, Washington Federal Savings and Loan and other parties. On July 26, 1984, the City of Des Moines Ordinance No. 595 rezoned Lots "38 through 40 inclusive, Block 16, Interurban Heights, 4th Section, King County, Volume 17, Page 86 Record of Plats" on petition of Mr. and Mrs. E. (Edwin) W. Johnson and "[a]lso by Allan Wolter and Fred Collett . . .", King County Property Records #8607071030. See Exhibit D.

8. In 1985-86, Fred Collett graded the area he and Allan Wolter planned to develop and moved some of the contaminated material from its original location on the Hauser Property Site and possibly other adjacent properties. Part of the contaminated material was placed on Lots 5-9, Block 15, Interurban Heights, Fourth Section, which was then owned by Allan Wolter. The street address for this property is 24515 - 26th Place South, Des Moines, WA 98188, now known as Victorian Place II Apartments. That property was subsequently sold to G.D.W. Group Limited Partnership as evidenced by Statutory Warranty Deed (King Co Document # 8808150647). See Exhibit E. Ecology has not been provided any records to

indicate that Michael Davis and/or GDW Limited Partnership conducted all appropriate inquiry (due diligence) into the contamination on the property

9. Michael E. Davis was the president of Davis Construction Company aka Davis Brothers Construction and general partner of the G.D.W. Group Limited Partnership. G.D.W. Group Limited Partnership was the owner of Lots 5-9, Block 15, Interurban Heights, Fourth Section, also known as the Davis Construction Company Site, 24515 - 26th Place South, Des Moines, WA 98188. The site was listed on Ecology's Site Management Information System (SMIS) list as #N17-5017-000 based on the presence of confirmed petroleum contamination. See Exhibit F

10. When heavy metal contaminated soil was discovered on the Davis Construction Company Site, Brian Lawler, attorney for Davis, contacted Allan and Doris Wolter by letter dated January 4, 1989 regarding the nondisclosure and removal of the contaminated soil. See Exhibits G-1 and G-2.

11. Davis Construction Company, also known as Davis Brothers Construction, hired Site Analysts as consultants for a Phase II Environmental Audit of the Davis Construction Company Site. On October 12, 1988 the Department of Ecology received a letter from Site Analysts, representing Davis Brothers Construction Company, reporting lead (Pb) at the Davis Brothers Construction Site at a level of 15,000 ppm. See Exhibit H. Site Analysts indicated that they advised Davis Brothers Construction that the soils would be classified as Extremely Hazardous Waste (EHW). Ecology employee Gail Colburn notified Davis by letter dated

November 3, 1988 of these results, indicating the potential scenarios for addressing the Davis Construction Company site now that lead contamination had been discovered. See Exhibit G-2.

12 On February 28, 1989 Allan R. Wolter dba J.J. Development Company and Doris Ann Wolter, his wife, executed a Quit Claim Deed to Fred Collett dba Collett Construction Company and Martha A. Collett, his wife, to Lots 36 and 37, Block 16, Interurban Heights, Fourth Section. (King County Property Records #9104111484). See Exhibit H.

13 In an April 14, 1989 letter from Brian Lawler, Davis' attorney to Fred Collett, CB Excavating, and Allan Wolter, Mr. Lawler suggested that Fred Collett and Allan Wolter voluntarily return the contaminated soil (materials), which Mr. Lawler states are hazardous waste, to the site from which they came, or other property of Mr. Collett, or his client would "spare no expense to pass the liability on to [Collett and Wolter] for all damages, if their lender or Ecology initiated formal proceedings." See Exhibit I

14 Fred Collett, dba Collett Construction, and Allan Wolter agreed to move the contaminated soil (materials) and hired CB Excavating to move the contaminated soils from the Davis Construction site back to the Hauser Property Site prior to May 12, 1989 (See Exhibit J), which at the time was owned by Fred Collett, Fred Collett dba Collett Construction and Martha Collett. The Colletts owned and operated the Hauser Property Site at the time of the re-disposal (release) of hazardous substances at the Site. Allan Wolter and Fred Collett and/or Fred Collett dba Collett Construction arranged for re-disposal (release) of hazardous substances at the Hauser Property Site.

15 Mike Davis hired Roy F Weston, Inc to test and characterize soils at the Davis Construction Company Site. On July 26, 1989, Mike Davis received, at and for Davis and Rollins, Inc, a report from Roy F. Weston, Inc relating to the removal of petroleum contaminated soils at 24515 - 26th Place S in Des Moines, WA. The report indicates that samples were collected on May 23, 1989, June 7, 15, and 23, 1989 "as subsequent lifts of soil were removed." Michael Davis and Davis and Rollins are listed as the client on various documents in the report. (See Roy F Weston Report #WO 5519-01-01.) See Exhibit K.

16 Michael Davis is a person who arranged for disposal of hazardous substances at the Hauser Property Site. Michael Davis was aware of the contaminated nature of the soils (waste) from the Davis Construction site at the time of disposal of contaminated soils at the Hauser Property Site. See Exhibits F, G-1, H,I, J and K.

17 On August 19, 1990, Fred Collett completed a pre-sale checklist (Puget Sound Multiple Listing Association Form No. 17A, p 1 of 2) for Lots 36-40, Block 16, Interurban Heights, Fourth Section (the Hauser Site) indicating knowledge of the presence of contamination at the Site.

18 Andrew W Hauser purchased the Site on or about May 21, 1991 from Fred Collett, dba Collett Construction Company, and Martha Collett. Hauser is listed pursuant to a Statutory Warranty Deed (King County Property Record #9105240915) as the current owner of the Site. See Exhibit M. The Site contained hazardous substances at the time of Hauser's purchase, and Hauser had reason to know of the contamination because Fred Collett checked the block on the Real Estate Disclosure Form completed pursuant to the sale indicating the

presence of hazardous substance contamination at the property Ecology has not been provided any records to indicate that Andrew W Hauser conducted all appropriate inquiry (due diligence) into the contamination at the Site. The purchase was financed by way of a Deed of Trust (King County Property Records #91025240916) See Exhibit N.

19. The Hauser Property Site currently consists of vacant residential lots with several piles of soil and waste placed on the property above the natural grade. A visual examination of these piles showed that some of the piles contained dark colored chunks and dark colored areas that appear to be an oily, sludge-like material.

20. The Department of Ecology collected samples of soils, including the oily, sludge-like materials at the Site on March 24, 1992 (Lab Sample numbers 138046-138049). Early in the investigation the Hauser Property Site was known as the Davis 2 Site. Sample analysis results showed arsenic (As), cadmium (Cd), and lead (Pb) in excess of cleanup criteria established in WAC 173-340-740(2)(a)(i), the Model Toxics Control Act Regulations, in all materials. Additional analysis by the Toxic Characteristics Leachate Procedure (TCLP) showed that lead (Pb) levels established by that method exceed those which characterize waste soils and sludge-like materials at the Site as Dangerous Waste (DW) under WAC 173-303-090(8)(c), Dangerous Waste Criteria, an applicable state and federal law as defined in WAC 173-340-200. See Exhibit O for analytical results reported on April 27, 1992.

21. Sample results submitted to Andrew W Hauser by Hazcon, Inc., an environmental consulting firm, show the sludge-like material contains up to 36,000 mg/kg

(ppm) Total Petroleum Hydrocarbons (TPH). Total Lead was found at 3100 mg/kg (ppm), with the report cautioning that the soils may be dangerous waste. See Exhibit P.

22 Petroleum is defined as a hazardous substance by statute in RCW 70.105D.020(7)(d), and has an established cleanup standard found in WAC 173-340-740(2)(a)(i) of 200 mg/kg (ppm) Total Petroleum Hydrocarbons (TPH, other). Lead is a hazardous substance as defined in RCW 70.105D.020(7), and has an established cleanup standard found in WAC 173-340-740(2)(a)(i) of 250 mg/kg (ppm)

23 Soils and sludge-like materials placed at the Site were exposed to rain, wind, and were accessible in whole or in part to the public at the time interim actions were ordered by the Department of Ecology in 1992. Evidence at the Site (i.e., bicycle tracks, plastic toy soldiers, makeshift "forts") and observations by Department of Ecology staff established that children played at the Site. Children are more susceptible to lead (Pb) exposures than are adults.

24 In 1992, following failure of the PLP Group to comply with the conditions and requirements of Order DE 92TC-N174, hereinafter the "Emergency Order," the Department of Ecology, hereinafter "Ecology," performed the interim remedial actions required by the Order, including placement of an impermeable cover over soil piles at the Site. The impermeable cover had, at the time of installation, a maximum expected engineered life of six (6) to seven (7) years.

25 The impermeable cover (above) is showing signs of deterioration due in part to damage from fire caused by fireworks sustained in 1994 and in part due to exposure to sun and weather and is in danger of losing its integrity and therefore its ability to protect residents from exposure to dangerous wastes contained in the soil piles at the facility.

III.

Ecology Determinations

1. Allan R. Wolter and Doris A. Wolter, and Allan R. Wolter, dba J.J. Development, are "owner[s] or operator[s]" as defined at RCW 70.105D.020(11) at a "facility" as defined in RCW 70.105D.020(4). Allan R. Wolter, dba J.J. Development Company, is also an "arranger[s]/generator[s]" as defined in RCW 70.105D.040(1) at a "facility" as defined in RCW 70.105D.020(4).
2. Fred Collett and Martha Collett, and Fred Collett, dba Collett Construction, are "owner[s] or operator[s]" as defined at RCW 70.105D.020(11) of a "facility" as defined in RCW 70.105D.020(4). Fred Collett, dba Collett Construction Company, is an "arranger[s]/generator[s]" as defined in RCW 70.105D.040(1) of a "facility" as defined in RCW 70.105D.020(4).
3. Michael E. (Mike) Davis, and Michael E. Davis, dba G.D.W. Limited Partnership and/or Davis Construction Company, aka Davis Brothers Construction, are "arranger[s] and/or generator[s]" as defined in RCW 70.105D.040(1) of a "hazardous substance" as defined in RCW 70.105D.020(7).

4. Andrew W. Hauser, and/or Andrew W. Hauser dba Real Estate Investments, are "owner[s] or operator[s]" as defined in RCW 70.105D 020(11) of a "facility" as defined in RCW 70.105D 020(4).

5. The facility is known as the Hauser Property Site ("the Site") and is located at Lots 36-40 inclusive, Block 16, Interurban Heights, Fourth Section as recorded in Volume 17, page 86 of the Book of Plats of King County, Washington, located at the southeast corner of the intersection of S 244th Street and 26th Place S., in the City of Des Moines, King County, Washington 98198.

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

7. Based on the presence of these hazardous substances at the facility and all factors known to the Department, there is a release or threatened release of hazardous substances from the facility, as defined at RCW 70.105D 020(19).

8. The condition of the impermeable cover poses an imminent threat of release of a hazardous substance and therefore a threat to human health and the environment at the facility.

9. By letters dated April 21, 1993, Ecology notified each PLP of its status as a "potentially liable person" under RCW 70.105D 040 after notice and opportunity for comment.

10. Pursuant to RCW 70.105D 030(1) and RCW 70.105D 050 the Department 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.

11. Based on the foregoing facts, Ecology believes the remedial action required by this Order is in the public interest.

IV

Work to be Performed

Based on the foregoing Facts and Determinations, Allan R. Wolter and/or Doris A. Wolter, and Allan R. Wolter, dba J.J. Development; and Fred Collett and/or Martha Collett, and Fred Collett and Martha Collett, dba Collett Construction; and Michael E. (Mike) Davis, and Michael E. Davis, dba G D W Limited Partnership, and/or Davis Construction Company; and Andrew W. Hauser and/or Andrew W. Hauser, dba Real Estate Investments, shall take the following remedial actions which will be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein

1. All persons determined to be Potentially Liable Persons as set forth in Determinations 1 through 5 of this Order, hereinafter known as the "PLP Group", shall select and empower a single person who shall represent and be the primary contact for the PLP Group (the PLP Group Site Coordinator specified in Section V., 4 with the Department of Ecology in the matter of compliance with this Order by the PLP Group. That person shall be selected by May 27, 1997, and communicated immediately to the Department verbally, to be followed by FAX and in writing on the same day. That person is the project coordinator for the PLP Group. Any reference to the PLP Group shall include all PLPs, individually and collectively.

2. On or before June 3, 1997, the PLP Group shall submit to Ecology proof of financial ability to complete remedial action required by this Order and fully executed contracts

signed by the PLPs and contractors for completion of work plans for removal of contaminated soil piles, removal of contaminated soil piles and disposal of all wastes including contaminated soil piles at the facility.

3. On or before June 20, 1997 the PLP Group shall submit to Ecology a final Work Plan which has been approved by Ecology for removal and treatment and/or disposal of contaminated soil piles at the facility.

4. On or before June 30, 1997, but in no event before Ecology approval of the Work Plan required in 3, above, the PLP Group shall begin removal of contaminated soil piles at the facility

5. On or before July 10, 1997 the PLP Group shall complete removal of contaminated soil piles from the facility and provide Ecology with documentation of characterization and disposal of the soil at the location(s) specified in the Work Plan required in 3, above

6. The PLP Group shall provide to the Department, within 15 (fifteen) working days of completion of site work required as a condition of this Order, a written report, including but not limited to, as-built drawings and specification of all structures, accessories and modifications, results of post-removal confirmational sampling, disposition of all wastes removed from the facility and all work conducted at the Site, prepared by or under the supervision of, and bearing the seal of a Professional Engineer (P.E.) licensed to practice in the State of Washington, and a written report of actions at the Site. Those documents shall be completed to the satisfaction of the Department.

In addition, the PLP Group shall submit to Ecology Weekly Work Plans not later than Friday of each week when work required by this Order is being done, describing the work to be performed the following week, and shall also provide a Weekly Report describing work completed during the previous week. Any site work to be performed, any documents which are required by the Order or which require Ecology or Attorney General's Office review, any sampling or analysis work to be performed and any waste to be removed from the Site shall be included in the Weekly Work Plan submitted on or before the Friday of the week prior to that in which the work will be performed. The Weekly Work Plan shall specifically include completed Uniform Hazardous Waste Manifests or bills of lading and attached Waste Profile Sheets and supporting analytical reports for all waste to be shipped off-site in the following week. All activities which are required by this Order or any work plan, sampling plan or any other plan required by the Order shall be included in the Weekly Report submitted to Ecology not later than the end of the week following that in which the work is performed. A copy of the Uniform Hazardous Waste Manifest or bill of lading signed by the receiving facility representative shall be specifically included for all waste transported off-site during the previous week.

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 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.

The PLP Group 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). The PLP Group 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:

Name: Norm Peck
Address: Department of Ecology
Toxics Cleanup Program
Northwest Regional Office
3190-160th Ave NE
Bellevue, WA 98008-5452

The project coordinator for the PLP Group is to be determined in the manner set forth in Section IV(1.)

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and the PLP Group, 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 the PLP Group change project coordinator(s), written notification shall be provided to Ecology or the PLP Group 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. The PLP Group 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. The PLP Group 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, the PLP Group 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 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 the PLP Group. This Order constitutes reasonable notice of access, and allows access to the Site at all reasonable times for purposes of overseeing work performed under or required by this Order. Ecology shall allow split or replicate samples to be taken by the PLP Group during an inspection unless doing so interferes with Ecology's sampling. The PLP Group shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before any sampling activity

7. Public Participation.

The PLP Group shall prepare and/or update a public participation plan for the Site. Ecology shall maintain the responsibility for public participation at the Site.

The PLP Group shall help coordinate and implement public participation for the Site.

8. Retention of Records.

The PLP Group 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 the PLP Group, then the PLP Group agrees to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.

9. Dispute Resolution.

The PLP Group 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. The PLP Group 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/No Settlement.

This Order is not a settlement under ch. 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 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 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 on the Site or in the surrounding area or to the environment, Ecology may order the PLP Group 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 the PLP Group 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 the PLP Group may have in the site or any portions thereof, the PLP Group 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, the PLP Group shall notify Ecology of the contemplated transfer.

12. Compliance with Other Applicable Laws

A. All actions carried out by the PLP Group 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 Q, and are binding and enforceable requirements of the Order.

The PLP Group 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 the PLP Group 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 the PLP Group shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the PLP Group 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 the PLP Group and on how the PLP Group must meet those requirements. Ecology shall inform the PLP Group in writing of these requirements. Once

established by Ecology, the additional requirements shall be enforceable requirements of this Order. The PLP Group 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 the PLP Group 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 the PLP Group's receipt of written notification from Ecology that the PLP Group 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

I 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 the PLP Group refuses, without sufficient cause, to comply with any term of this Order, the PLP Group 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 ch. 70.105D RCW

Effective date of this Order: 20th May, 1997

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By Michael J. Gallagher
Michael J. Gallagher
NWRO TCP Section Manager