

Norseland
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FS2027

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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|--------------------------------------|---|-------------------------|
| In the Matter of: |) | Norseland Mobile |
| |) | Estates RI/FS |
| Norseland Mobile Estates |) | |
| 8651 State Highway 3 Southwest |) | AGREED ORDER |
| Port Orchard, Washington |) | |
| |) | No. DE <u>94TC-N197</u> |
| |) | |
| TO: Department of the Navy |) | |
| Engineering Field Activities NW |) | |
| Naval Facilities Engineering Command |) | |
| 3505 NW Anderson Hill Road |) | |
| Silverdale, WA 98383-9130 |) | |

I.

Introduction

A. In entering into this Agreed Order (Order), the mutual objective of the Washington State Department of Ecology (Ecology) and the United States Department of the Navy (Navy) is to provide for a Remedial Investigation/Feasibility Study (RI/FS) at a facility where there has been a release or threatened release of hazardous substances. Pursuant to this Order the Navy agrees, in conjunction with other entities named by the State of Washington as Participating Potentially Liable Persons (PLPs) under the Model Toxics Control Act (MTCOA), to perform a State Remedial Investigation/Feasibility Study (RI/FS) of the Norseland Mobile Estates Site (the Site) pursuant to WAC 173-340-350, insofar as it is not inconsistent with Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

B. Ecology has determined that this action is necessary to protect public health and the environment.

C. The Port of Bremerton, Kitsap County, and the City of Bremerton are also PLPs for the Norseland Site. Ecology is entering into a Consent Decree with the Port of Bremerton and Kitsap County which provides for performance of a State Remedial Investigation/Feasibility Study at the Norseland Mobile Estates Site. The Port of Bremerton, Kitsap County, and the Navy have agreed to jointly perform this RI/FS under a separate agreement among themselves. Exhibit A of this Agreed

Order and of the Consent Decree between Ecology and the Port of Bremerton and Kitsap County regarding the Norseland Site are identical. The Norseland Public Participation Plan referenced in this Order is the same as the Norseland Public Participation Plan referenced in the Consent Decree between Ecology and the Port of Bremerton and Kitsap County.

D. By entering into this Order, the Navy does not intend to discharge nonsettling persons or entities from any liability they may have with respect to the Site. The parties retain the right to seek reimbursement, in whole or in part, from any liable persons for sums expended under this Order or for any other costs, expenses, or losses incurred as a consequence of environmental problems at the Site.

E. By entering into this Order, the Navy does not admit any of the factual or legal statements or determinations made herein. The Navy does agree, however, to be bound by the terms of this Order.

II.

Jurisdiction

1. Ecology is issuing this Agreed Order ("Order") pursuant to its authority under RCW 70.105D.050(1).

2. The Navy enters into this Order pursuant to its potential liability under CERCLA, 42 U.S.C. §§ 9601 to 9675.

III.

Findings of Fact

For purposes of this Order, the following constitute a summary of the facts upon which this Order is based. None of the facts related herein are admissions of liability or responsibility by the Navy nor are they legally binding upon any Party with respect to any unrelated claims of persons not a Party to this Order.

1. The Navy generated, transported, and disposed of waste material in a landfill on the Norseland Site in the 1950's (See Ecology Files, Norseland/SIT8.7).

2. Kitsap County owned the property currently known as Norseland Mobile Estates from 1948 until 1963. From 1951 to 1961 Kitsap County leased the Site, or portions thereof, to Puget Service Company for use as a garbage disposal Site. In 1962 a lease for the Site was entered into by Kitsap County, a municipal corporation, the lessor, and Omar B. and Shirley M. Nesham, the lessees. The lease was signed by the Kitsap County Airport Board on behalf of Kitsap County. (See letter from Ron Franz dated July 16, 1993, with attached copy of lease, in Norseland file SIT1.2). The Neshams developed the first phase of Norseland Mobile Estates.

3. The City of Bremerton contracted Puget Service Company to collect and transport all waste from property owned or operated within the City to the landfill operated by Puget Service Company on the Norseland Site. Hence, the City of Bremerton arranged for waste disposal at the Site. This disposal began in 1951 and continued until 1961, and possibly later. Hazardous substances released at the Site are consistent with substances found in waste streams from municipal property owners.

4. The Port of Bremerton acquired the property from Kitsap County in 1963 and currently owns the Site.

5. The Port of Bremerton, through lease and approved assignment of lease, has leased the Site to a succession of mobile home park operators. The successive mobile home park operators owned/own the mobile home park improvements at the Site, but not the real property.

6. The land surrounding this Site is used primarily for commercial and industrial purposes, and has been since development of the mobile home park began in 1962. The Port of Bremerton operates a wastewater treatment plant less than one-half mile north of the Site. This plant services the Port's Industrial Park,

located northeast of Norseland Mobile Estates, and airport, located across State Highway 3, southeast of Norseland Mobile Estates. The Olympic View Landfill is located within one mile to the northwest of the Site. The City of Bremerton sprays a forested area with wastewater treatment plant sludge within one mile of the Site. Each of these activities represents a potential source of odors in the vicinity of the Site. Exhibit A contains a map showing the location of some of these potential odor sources with respect to the Norseland Site.

7. Olympic View Sanitary Landfill holds a permit from the Bremerton/Kitsap County Health District to receive soil contaminated with up to 3% by weight petroleum hydrocarbons for use as daily and intermediate cover material. Olympic View Sanitary Landfill also accepts sewage sludge under permit from the Bremerton/Kitsap County Health District.

8. In September 1991 Ecology received reports that transitory odors at the mobile home park were detected by residents and that various health effects were attributed to the odors by some mobile home park residents.

9. In February and March 1992 the Washington State Department of Health conducted a health survey of residents at Norseland Mobile Estates. Washington State Department of Health recommended continued investigation and characterization of the Site to attempt to identify compounds which could be causing the reported odors and alleged health effects. (See "Norseland Mobile Estates Health Survey" by Washington State Department of Health dated June 1992 in Ecology file Norseland/SIT2.4)

10. The Port of Bremerton and Kitsap County conducted an independent study to investigate complaints of odors and environmental concerns at Norseland Mobile Estates. Hazardous substances were detected in soil vapors in the subsurface and in ambient air at Norseland. The investigation concluded that ample evidence exists which indicates portions of Norseland Mobile Estates have been used for waste management and disposal activities and that it is likely that both off-site and on-site odor sources exist. (See "Final Report for the Site

Investigation at Norseland Mobile Estates, Port Orchard, Washington", prepared by Science Applications International Corporation (SAIC) for the Port of Bremerton, dated July 1992 in Ecology file Norseland/SIT2.5.)

11. Interviews of residents by Ecology personnel in October 1992 indicated that transitory odor episodes were continuing. Odor levels and frequency were reported to be increasing. Some residents continued to report health effects which they attributed to the odors.

IV.

Washington State Department of Ecology Determinations

For purposes of this Order, the following constitute a summary of the determinations upon which this Order is based. None of the determinations related herein are admissions nor are they legally binding upon any Party with respect to any unrelated claims of persons not a Party to this Order.

1. The Navy is a "generator" as defined at RCW 70.105D.040(1)(c).
2. The City of Bremerton arranged for disposal of hazardous substances as defined at RCW 70.105D.040(1)(c).
3. Kitsap County is a former "owner" as defined by RCW 70.105D.040(1)(b) of a "facility" as defined in RCW105D.020(3).
4. The Port of Bremerton is an "owner" as defined at RCW 70.105D.020(6) and RCW 70.105D.040(1)(a) of a "facility" as defined in RCW 70.105D.020(3).
5. The facility is known as Norseland Mobile Estates and is located at 8651 State Highway 3 Southwest, Port Orchard, Washington 98366.
6. The substances found at the facility as described above are "hazardous substances" as defined at RCW 70.105D.020(5).
7. Based on the presence of these hazardous substances at the facility and all factors known to the Ecology, there is a release or threatened release of hazardous substances from the facility, as defined at RCW 70.105D.020(10).

8. By letters dated August 3, 1992, Ecology notified Kitsap County and the Port of Bremerton of their status as "potentially liable persons" under RCW 70.105D.040 after notice and opportunity for comment. By letters dated January 12, 1993, Ecology notified the Navy and the City of Bremerton of their status as "potentially liable persons" under RCW 70.105D.040 after notice and opportunity for comment.

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

10. Based on the foregoing facts, Ecology believes the RI/FS required by this Order is in the public interest.

V.

Work to be Performed

This Order contains a program designed to protect public health, welfare and the environment from the known release, or threatened release, of hazardous substances or contaminants at, on, or from the Site. The Participating PLPs have done or shall do the following:

1. Conduct a historical records search, conduct interviews of Norseland residents, perform an initial soil gas survey, and perform ambient air sampling in the nature of a preliminary site investigation to evaluate the nature and source of odors reported at the Site.

2. Perform a second soil gas survey using soil gas samplers. The survey shall include five locations potentially associated with past landfill operations.

3. Perform a title search in order to clarify the ownership history of the Site from 1940 to present.

4. Obtain all available aerial photographs in order to assist in ascertaining historical uses of the Site. Provide interpretation of such photographs.

5. Prepare a work plan for a State Remedial Investigation/ Feasibility Study (RI/FS) of the nature and extent of contamination in groundwater, surface water, soil, sediments, and air at Norseland Mobile Estates and determine on-site sources of contaminants. The RI/FS shall be conducted in accordance with the scope and contents specified in WAC 173-340-350(5) and (6), and in a manner not inconsistent with CERCLA and the National Contingency Plan (NCP).

6. The RI/FS shall delineate the nature and extent of landfill material underlying the Site using an appropriate combination of test pits, borings, geophysical surveys, and/or other appropriate methods.

7. The RI/FS shall include air quality investigations sufficient to evaluate the nature and extent of intermittent odors at the Site and to evaluate on-site sources of such odors. The RI/FS shall assess the relative contribution of on-site sources to odors at Norseland Mobile Estates.

8. Delineation of the nature and extent of potential lead contamination in blue clay and of petroleum-contaminated soils identified during the Site hazard assessment are specifically excluded from the RI/FS required under this Order (See "Site Hazard Assessment, Norseland Site, 8651 State Highway 3 Southwest, Port Orchard, Washington", by Washington Department of Ecology, Northwest Regional Office, Toxics Cleanup Program, in Ecology File Norseland/SIT2.3). Areas in which these soils occur shall be investigated if necessary to delineate the nature and extent of underlying landfill material.

9. The RI/FS shall include installation and sampling of monitoring wells to assess groundwater quality.

10. The need for surface water and/or sediment sampling to assess water and sediment quality shall be evaluated during the course of the RI/FS.

11. The RI/FS may be performed in phases, with a separate work plan prepared for each phase. The first work plan submitted shall contain a draft outline for the final RI/FS report, specify the portions of the RI/FS report for which investigations are being conducted, be attached as Exhibit A of this Agreed Order, and be an integral part of this Agreed Order. Subsequent work plans shall be prepared for Ecology approval. Upon approval by Ecology such work plans shall be performed under this Agreed Order. All work plans shall contain a schedule and specify deliverable items. Deliverable items shall include monthly progress reports, data packages containing quality assured data collected during the investigations, and reports describing the results of investigations conducted under the work plan. Draft interim reports shall be prepared at the end of each phase and submitted to Ecology for Ecology approval. A final RI/FS report will be prepared at the completion of the final work plan describing the results of investigations conducted under all work plans and incorporating the findings presented in all interim reports. The final report shall stand alone as a comprehensive report of the RI/FS. The final RI/FS report shall follow the draft outline contained in the work plan as revised during the course of work. Revision of the outline shall require approval of Ecology's project coordinator. Draft interim reports shall follow relevant portions of the draft outline and be prepared in such a manner that they may be readily incorporated into the final report.

12. Draft interim reports shall be made available for public review in accordance with the Norseland Public Participation Plan. Subsequent work plans and the final report shall be subject to public comment and hearings in accordance with the Norseland Public Participation Plan. Modifications to work plans that Ecology determines are not significant will not be subject to public comment.

13. Although a phased approach may be used by the Participating PLPs, Ecology intends the RI/FS investigations to be conducted in a timely and

expeditious manner. Ecology expects the Participating PLPs to exercise good faith in designing a thorough Phase I work plan.

14. The Navy agrees not to perform any actions outside the scope of this Order unless the parties agree to amend the scope of work to cover these actions. All work conducted under this Order shall be done in accordance with ch. 173-340 WAC, insofar as it is not inconsistent with Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

15. Ecology will not take enforcement action against the Navy to require those investigations and studies specified in this Order so long as the Navy complies with the provisions of this Order.

16. Ecology will not take enforcement action against the Navy to require those remedial investigations and studies specified in this Order so long as the Navy complies with the provisions of this Order.

VI.

Terms and Conditions of Order

1. Definitions

Except for as specified herein, all definitions in WAC 173-340-200 apply to the terms in this Order.

A. Site: The Site, referred to variously as Norseland Mobile Estates and as the Norseland Site is located at 8651 State Highway 3 Southwest, Port Orchard, Washington. It is in the south half of Section 11, Township 23 North, Range 1 West, Willamette Baseline and Meridian. The Site is more particularly described in Exhibit A to this Order.

B. Agreed Order or Order: Refers to this Agreed Order and each of the exhibits to the Order. Exhibit A is an integral part of and incorporated into this Order.

C. Potentially Liable Persons (PLPs): For the purposes of this Order, the terms Potentially Liable Persons and PLPs refer to Kitsap County, the Port of Bremerton, the City of Bremerton, and the Navy.

D. Participating Potentially Liable Persons (Participating PLPs): For the purposes of this Order, the term Participating PLPs refers to Kitsap County, the Port of Bremerton, and the Navy.

E. Nonparticipating Potentially Liable Person (Non-participating PLP): For the purposes of this Order, the term Nonparticipating PLP refers to the City of Bremerton

2. Cost Recovery.

The Navy agrees to pay RI/FS costs incurred by Ecology. RI/FS costs are costs reasonably attributable to the Site and may include costs of direct activities, support costs of direct activities, and interest charges for delayed payments. As used in this Decree, costs of direct activities and support costs of direct activities mean the following:

(a) Costs of direct activities are direct staff costs and other direct costs. Direct staff costs are the costs of hours worked directly on a contaminated site, including salaries, retirement plan benefits, Social Security benefits, health care benefits, leave and holiday benefits, and other benefits required by law to be paid to, or on behalf of, employees. Other direct costs are costs incurred as a direct result of Ecology staff working on a contaminated site including, for example, costs of: Travel related to the site, printing and publishing of documents about the site, purchase or rental of equipment used for the site, and contracted work for the site.

(b) Support costs of direct activities are agency support costs and program support costs, each expressed as a multiplier of the direct staff costs and described as follows:

(i) Agency support costs are the costs of facilities, communications, personnel, fiscal, and other state-wide and agency-wide services. The multiplier used shall be the agency indirect rate approved by the agency's federal cognizant agency (which, as of July 1, 1993, was the United States Department of the Interior) for each fiscal year.

(ii) Program support costs are the costs of administrative time spent by site managers and other staff that work directly on sites and the cost of management, clerical, policy, computer, financial, and other support provided by other program staff to site managers and other staff that work directly on sites. The multiplier used shall be calculated by dividing actual support costs by the direct staff costs of all hours charged to site related work. The multiplier shall be revised at least biennially and any changes published in at least two publications of the *Site Register*. The multiplier shall not exceed 1.0 (one).

(c) Request for payment. When Ecology requests payment of remedial action costs it shall provide an itemized statement documenting the costs incurred.

(d) Interest charges. A minimum of twelve percent interest shall accrue on all remedial action costs not paid within ninety days of the billing date, or within another longer time period designated by Ecology. The Navy reserves the right to assert that such interest does not apply against the United States or to assert that the interest rate to be applied is governed by federal law.

The Navy's obligations under this Order will not exceed available appropriations at the time the liability accrues, and nothing in this Order will

be construed as implying that Congress will, at a later date, appropriate the funds to cover any deficiencies. See 31 U.S.C. §1341; 54 Comp. Gen. 824 (1975).

3. Designated Project Coordinators.

The project coordinator for Ecology is:

Name: David L. South
Address: 3190 160th Avenue SE
Bellevue, Washington 98008-5452
Telephone: (206) 649-7200
FAX: (206) 649-7098

The project coordinator for the Navy is:

Name: B. Renee Pahl
Address: Department of the Navy
Engineering Field Activities NW
Naval Facilities Engineering Command
3505 NW Anderson Hill Road
Silverdale, WA 98383-9130
Phone: (206) 396-5983
FAX: (206) 396-5995

The project coordinators shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and the Navy, 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 or their designees. Should Ecology or the Navy change project coordinators, written notification shall be provided to Ecology or the Navy at least ten (10) calendar days prior to the change.

4. Performance.

Any work performed by the Navy or Navy contractors 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

Participating PLPs 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 Participating PLPs 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 Navy shall not perform any action at the Norseland Site outside that required by this Order unless Ecology concurs, in writing, with such additional action.

5. 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 Participating PLPs. The Navy agrees to take no action which would hinder Ecology's access to the Site. Ecology shall allow split or replicate samples to be taken by the Participating PLPs during an inspection unless doing so interferes with Ecology's sampling. The Participating PLPs shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before any sampling activity.

6. Public Participation

Public Participation will be accomplished by implementing the Norseland Public Participation Plan. Ecology shall maintain the responsibility for

implementing the Public Participation Plan in accordance with WAC 173-340-600(8)(g).

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 after consulting with the Participating PLPs should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect. Should Ecology modify the Order or Decree as a result of public participation, the Navy reserves the right to withdraw from the Order.

7. Retention of Records.

The Navy 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, or the electronic equivalent, in its possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of the Navy, then the Navy agrees to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.

8. Dispute Resolution.

The Navy 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 project coordinator. The project coordinator will make best efforts to respond to the Navy's request for dispute resolution within fourteen (14) days. If the Navy is not satisfied with the project coordinator's response, the Navy may submit its dispute to the Program Manager. The Program Manager or his/her delegatee will make best efforts to issue Ecology's final decision on the disputed issues within twenty-one days. Ecology resolution of the dispute shall be binding and final. However, nothing in this section shall preclude the Navy or Ecology from exercising rights reserved in Section VI, Paragraph 9. The Navy

shall not be 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.

9. Reservation of Rights/No Settlement.

This Agreed Order is not a settlement under ch. 70.105D RCW. Neither Ecology's nor Navy's signature on this Order in any way constitutes a covenant not to sue or a compromise of any of the Parties' rights or authority. However, the Parties shall be bound to exhaust dispute resolution procedures prior to exercising judicial remedies. Ecology will not bring an action against the Navy to recover costs paid to and received by Ecology under this Agreed Order. In addition, Ecology will not take additional enforcement actions against the Navy to require those actions required by this Agreed Order, provided the Navy complies with this Agreed Order.

Ecology reserves the right, however, to reasonably require additional remedial investigations at the Site within the scope of the RI/FS Work Plan (Exhibit A) 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 at or from the Norseland 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 Navy to stop further implementation of this Order for such period of time as needed to abate the danger.

10. Compliance with Other Applicable Laws.

All actions carried out by the Navy pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements.

VII.

Satisfaction of this Order

The provisions of this Order shall be deemed satisfied upon the Navy's receipt of written notification from Ecology that the Navy has completed the RI/FS required by this Order, as amended by any modifications, and that all other provisions of this Agreed Order have been complied with.

This Order may only be amended by a written stipulation among the parties to this Order. Agreement to amend shall not be unreasonably withheld by any party to the Order.

The Navy shall submit any request for an amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in a timely manner after the request for amendment is received. If the amendment to the Order is substantial, Ecology will provide public notice and opportunity for comment. Reasons for the disapproval shall be stated in writing. If Ecology does not agree to any proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section XV of this Order.

Amendments proposed by Ecology are subject to this same procedure.

VIII.

Enforcement

1. Ecology reserves its authority, pursuant to RCW 70.105D.050, to enforce 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 Navy refuses, without sufficient cause, to comply with any term of this Order, the Navy may 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.


E. The Navy reserves the right to raise any and all defenses to an enforcement action, including but not limited to jurisdictional defenses.

Effective date of this Order: March 28, 1994

UNITED STATES
DEPARTMENT OF THE NAVY

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By 
W. P. OSTAG, CDR, CEC, USN
Acting Commanding Officer

By 
Michael J. Gallagher,
Section Manager, Toxics
Cleanup Program, Northwest
Regional Office

Date 2 NOV 93

Date March 28, 1994