

FS 3378735

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF REMEDIAL ACTION BY:)
Tacoma Silver Cloud Inn LLC) AGREED ORDER
No. DE 99TCPSR-25

To: Tacoma Silver Cloud Inn LLC

I. JURISDICTION

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

II. FINDINGS OF FACT

Ecology makes the following Findings of Fact, without admission of such facts by PLP.

1. Based on initial site investigations, a release of petroleum hydrocarbons from previously used underground storage tanks ("USTs") has been documented at property owned by Tacoma Silver Cloud Inn LLC, hereinafter referred to as "Silver Cloud Inns." Data developed thus far documents the contamination of soils and groundwater at the Site as a result of leakage from the USTs.

III. ECOLOGY DETERMINATIONS

1. The Silver Cloud Inns is an "owner or operator" as defined at RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4).

2. The facility is known as Tacoma Silver Cloud Inn and is located at 2317 Ruston Way, Tacoma, Pierce County, WA 98402.

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

4. Based on the presence of these hazardous substances at the facility and all factors known to the Department of Ecology ("Ecology"), there is a release or threatened release of hazardous substances from the facility, as defined at RCW 70.105D.020(20).

5 By a letter dated August 11, 1999, Silver Cloud Inns voluntarily waived its rights to notice and comment and accepted Ecology's determination that Silver Cloud Inns is a "potentially liable person" under RCW 70.105D.040.

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

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

IV. WORK TO BE PERFORMED

Based on the foregoing Facts and Determinations, it is hereby ordered that Silver Cloud Inns take the following remedial actions and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein.

1. **File an Underground Storage Tank 30 Notice for Permanent Tank Closure with the Southwest Regional Office of Ecology, Toxics Cleanup Program.**
2. **Obtain a tank closure and site assessment permit from Tacoma Pierce County Health Department and file notice of tank closure with the Tacoma Fire Department.**
3. **Develop a draft work plan for the closure and removal of the USTs and for investigation and remediation of contamination resulting from past leakage. Ecology will provide review and comments of the draft work plan and approve a final work plan for the work to be performed. The work plan shall include a list of the substantive requirements for state and local permits that are exempted under MTCA.**
4. **The work plan shall include contingency planning for sediment sampling that may be required if the upland tank closure and soils remediation indicate that contaminants are likely to have migrated from the upland portion of the property into the intertidal shorelands of the site.**
5. **Perform closure and removal of the USTs and perform a remedial investigation (RI) to determine the extent of contamination present in soil and groundwater resulting from the tanks' leakage. Remediate site contamination as indicated by the remedial investigation and as approved by Ecology.**

6. **Issue a draft report of the findings of the remedial investigation and the results of the subsequent remedial action (RA) for Ecology review and comment.**
7. **Issue a final report of the RI and RA, incorporating comments from Ecology.**

The schedules for the required tasks are included in the Work to be Performed/Attachment A, appended hereto.

V. TERMS AND CONDITIONS OF ORDER

1. Definitions.

Unless otherwise specified, the definitions set forth in Chapter 70 105D RCW and Chapter 173-340 WAC shall control the meanings of the terms used in this Order.

2. Public Notices.

WAC 173-340-600(10)(c) requires a 30-day public comment period before this Order on a state RI/FS becomes effective. 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.

Silver Cloud Inns 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). Silver Cloud Inns 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:

Marv Coleman, Site Manager/Inspector

Southwest Regional Office, Toxics Cleanup Program

P.O. Box 47775

Olympia, WA 98504-7775

The project coordinator for Silver Cloud Inns is:

Mark Johnson

62 Garden Club Road

Nordland, WA 98353

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Silver Cloud Inns, 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 Silver Cloud Inns change project coordinator(s), written notification shall be provided to Ecology or Silver Cloud Inns 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. Silver Cloud Inns 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. Silver Cloud Inns 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, Silver Cloud Inns shall not perform any remedial actions at the Tacoma Silver Cloud Inn 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 Silver Cloud Inns. By signing this Order, Silver Cloud Inns agrees that this Order constitutes reasonable notice of access, and agrees to allow access to the site at all reasonable times for purposes of overseeing work performed under this Order. Ecology shall allow split or replicate samples to be taken by Silver Cloud Inns during an inspection unless doing so interferes with Ecology's sampling. Silver Cloud Inns 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

Silver Cloud Inns shall prepare and/or update a public participation plan for the site. Ecology shall maintain the responsibility for public participation at the site.

Silver Cloud Inns shall help coordinate and implement public participation for the site.

8. Retention of Records.

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

9 Dispute Resolution.

Silver Cloud Inns 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. Silver Cloud Inns 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 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 Silver Cloud Inns to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against Silver Cloud Inns to require those remedial actions required by this Order, provided Silver Cloud Inns complies with this 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 Tacoma Silver Cloud Inn 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 Silver Cloud Inns 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 Silver Cloud Inns 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 Silver Cloud Inns may have in the site or any portions thereof, Silver Cloud Inns 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, Silver Cloud Inns shall notify Ecology of the contemplated transfer.

12. Compliance With Applicable Laws.

A. All actions carried out by Silver Cloud Inns 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 the Work to be Performed/Attachment A, and are binding and enforceable requirements of the Order.

Silver Cloud Inns 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 Silver Cloud Inns 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 Silver Cloud Inns shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Silver Cloud Inns 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 Silver Cloud Inns and on how Silver Cloud Inns must meet those requirements. Ecology shall inform Silver Cloud Inns in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Silver Cloud Inns 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 Silver Cloud Inns 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 Silver Cloud Inns' receipt of written notification from Ecology that Silver Cloud Inns 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

1. Pursuant to RCW 70.105D 050, this Order may be enforced as follows:
 - A. The Attorney General may bring an action to enforce this Order in a state or federal court.
 - B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the site.
 - C. In the event Silver Cloud Inns refuses, without sufficient cause, to comply with any term of this Order, Silver Cloud Inns will be liable for:
 - (1) up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and
 - (2) civil penalties of up to \$25,000 per day for each day it refuses to comply
 - D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under Section 6 of Chapter 70.105D RCW.

Effective date of this Order: September 8, 2000

TACOMA SILVER CLOUD
INN LLC

By James L. Weymouth
Mgm member

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By [Signature]

ATTACHMENT A
WORK TO BE PERFORMED

1. **File an Underground Storage Tank 30-Day Notice for Permanent Tank Closure with the Southwest Regional Office of Ecology, Toxics Cleanup Program. Schedule: 30 days prior to intended commencement of work.**
2. **Obtain a tank closure and site assessment permit from Tacoma Pierce County Health Department and file notice of tank closure with the Tacoma Fire Department. Schedule: Prior to commencement of work.**
3. **Develop a draft work plan for the closure and removal of the USTs and for investigation and remediation of contamination resulting from past leakage. Ecology will provide review and comments of the draft work plan and approve a final work plan for the work to be performed. The work plan shall include a list of the substantive requirements for state and local permits that are exempted under MTCA. Schedule: Within 60 days from the date of Ecology's signing the Agreed Order.**
4. **The work plan shall include contingency planning for sediment sampling that may be required if the upland tank closure and soils remediation indicate that contaminants are likely to have migrated from the upland portion of the property into the intertidal shorelands of the site.**
5. **Perform closure and removal of the USTs and perform a remedial investigation (RI) to determine the extent of contamination present in soil and groundwater resulting from the tanks' leakage. Remediate site contamination as indicated by the remedial investigation and as approved by Ecology. Schedule: As provided in the final approved work plan.**
6. **Issue a draft report of the findings of the remedial investigation and the results of the subsequent remedial action (RA) for Ecology review and comment. Schedule: Within 60 days of completion of the remedial actions at the site.**
7. **Issue a final report of the RI and RA, incorporating comments from Ecology. Schedule: Within 30 days of receiving comments from Ecology on the draft report.**

SUBSTANTIVE REQUIREMENTS

Pursuant to RCW 70.105D.090(1), the substantive requirements of any laws requiring or authorizing state or local government permits or approvals for the remedial action under this Order include, at a minimum, the following:

- Chapter 70.94 RCW (Washington Clean Air Act)
- Chapter 70.95 RCW (Solid Waste Management - Reduction and Recycling)
- Chapter 70.105 RCW (Washington State Hazardous Waste Management Act)
- Chapter 75.20 RCW (State Hydraulic Code)
- Chapter 90.48 RCW (State Water Pollution Control Act)
- Chapter 90.70 RCW (Puget Sound Water Quality Act)
- Chapter 173-201A WAC (Water Quality Standards for Surface Water of the State of Washington)
- Chapter 173-14 WAC (Shoreline Management Act)
- Chapter 173-160 WAC (Minimum Standards for Construction and Maintenance of Wells)
- Chapter 43.21C RCW (State Environmental Policy Act)
- Puget Sound Air Pollution Control Agency (Regulations I and III)
- City of Tacoma Municipal Code - Chapter 13.10 (Shoreline Regulations)
- City of Tacoma Municipal Code - Chapter 70 (Uniform Building Code-Excavation and Grading)
- City of Tacoma Municipal Code - Chapter 12.08 (Provisions for Acceptance for Discharges to Sewer System)
- Tacoma Pierce County Health Department (Waste Disposal Authorization)