

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:)

Port of Vancouver)
3103 NW Lower River Road)
Vancouver, WA 98660)

AGREED ORDER

No.

98 TC - 5337

TO: Port of Vancouver

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 the Port of Vancouver ("Port").

1. The Port of Vancouver/Building 2220 Site, also known as the former Swan Manufacturing Site, is located between 2001 and 2501 West Fourth Plain, near the southwest corner of Fourth Plain and Kotobuki Way, in an industrial-zoned area at the Port of Vancouver. The site is currently owned by the Port of Vancouver. The site is bisected by the City of Vancouver's Mill Plain Extension Project right-of-way. The Mill Plain Extension Project is currently under construction. **Figure 1** (attached) shows the site in relation to its surroundings. The site consists of approximately six and a half (6.5) acres of paved area, in three tax lots; tax lot serial numbers 59115040, 59115050, and a portion of number 59115053.

2. The City of Vancouver's Mill Plain Extension Project right-of-way bisects a portion of the site. The City performed an environmental investigation for the Mill Plain Extension Project which included portions of this site. The Site Investigation - Mill Plain Boulevard Extension Project, Vancouver, Washington Report prepared by EMCON for the Washington State Department of Transportation Environmental Affairs Office for the City of Vancouver in July, 1997 described a new area of contamination found at this site.

3. The Port hired Parametrix, Inc. in December 1997 to delineate the extent of impact of the chemicals described in the above report. Parametrix' investigation results through April 12, 1998 are summarized in three letter reports dated January 22, 1998, January 29, 1998, and February 20, 1998 and in a summary document called Preliminary Summary of Investigation Activities at the Former Swan Manufacturing Co. Site. Trichloroethelene (TCE) was found at levels exceeding MTCA cleanup levels.

4. The Port of Vancouver excavated approximately 14,000 cubic yards of TCE-impacted soil as a source control measure, which is stockpiled on site. The contaminated soil is lined and covered.

5. The Port notified Ecology of its site investigation and source control plans, and solicited input and guidance in meetings with Ecology's Vancouver Field Office and Southwest Regional Office staff prior to implementation of such investigations and source control measures. Due to the severity of the contamination present, the site investigation and source control efforts were performed in advance of an Agreed Order, with the understanding that an Agreed Order would be developed as soon as possible.

III.

ECOLOGY DETERMINATIONS

1. The Port of Vancouver 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 the Port of Vancouver/Building 2220 site and is located between 22001 and 2501 West Fourth Plain, in Vancouver, Washington.

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 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 April 14, 1998, Ecology notified the Port of Vancouver of its status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment

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 activities required by this Order are in the public interest.

IV.

WORK TO BE PERFORMED

Based on the foregoing Facts and Determinations, it is hereby ordered that the Port of Vancouver perform the following remedial actions and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein. Ecology approved work plans listed below will be incorporated by reference and will be an integral and enforceable part of this Order.

1. Remedial Investigation and Feasibility Study.

1.A. Remedial Investigation and Feasibility Study Work plan. Within sixty (60) calendar days after the effective date of this Order, the Port of Vancouver shall provide to Ecology for review, a draft work plan for characterization of the extent of soil and groundwater contamination and cleanup action alternatives which complies with WAC 173-340-350. The work plan shall include a sampling and analysis plan (SAP) which complies with WAC 173-340-820 and a site health and safety plan (HASP) which

complies with WAC 173-340-810. The work plan shall include a timeline for completion of work. Ecology shall review the work plan and provide written comments within sixty (60) calendar days of receipt of the work plan.

1.B. Remedial Investigation (RI). The Port has conducted initial phases of a remedial investigation, including dismantling/removal of Building #2220, definition of the extent of TCE-impacted soils in the soil layer above groundwater, excavation and stockpiling of said TCE-impacted soils, investigation of the shallow groundwater TCE plume, and investigation of the deeper groundwater TCE plume. The extent of shallow and deep groundwater contamination has not been completed. The Port shall conduct additional investigation to further evaluate the distribution of contaminants in soil and groundwater at the site.

1.C. Feasibility Study (FS). In compliance with WAC 173-340-350, an evaluation of a range of proven and reliable remedial alternatives that mitigate risks for the TCE-impacted groundwater will be described in the work plan.

1.D. Work Plan Implementation. The Remedial Investigation and Feasibility Study will be conducted in accordance with the approved work plan as outlined in Task 1.A. Following the completion of the final work plan tasks, the Port shall submit to Ecology a draft report of the results of the RI/FS. The draft report shall include, as appropriate, site location maps and physical setting description; soil characterization; surface and subsurface soil sampling results (analytical data as well as field logs); groundwater characterization; description of monitoring well installation; well installation details; boring logs; description of groundwater sampling procedures; groundwater sampling analytical results; hydraulic characterization information; recommendations including estimates of volumes and areas of media requiring remediation (operable units), evaluation of realistic exposure pathways and exposed populations; summary; and conclusions. The draft report shall be submitted to Ecology for review and comment within ninety (90) calendar days of completion of field work and receipt of analytical results. The Port shall complete a final report within thirty (60) calendar days of receipt of Ecology's comments.

Should an additional phase of investigation be necessary to characterize the distribution of contaminants in soil and groundwater at the site, a work plan addendum will be submitted to Ecology for review.

2. Interim Action. Approximately 14,000 cubic yards of TCE-impacted soil exceeding Ecology's MTCA Method A cleanup level of 500 ppb for industrial soils is stockpiled in a containment cell on site. Additional stockpiles on Site contain "clean overburden" soil, and concrete and asphalt. Groundwater generated by well drilling from the Site will be contained in a Baker tank on Site.

2.A. Interim Action Work Plan. Within sixty (60) calendar days of the effective date of this Order, the Port shall submit to Ecology for review a draft Interim Action Work Plan which complies with WAC 173-340-430(6) for selecting an interim remedial action for TCE-impacted stockpiled soil, groundwater generated by well drilling, and appropriate reuse and/or disposal of "clean overburden" soil and potentially impacted asphalt and concrete from the site based on representative sample results. The draft plan shall include, as appropriate, site location maps and physical setting description; soil characterization; recommendations including estimates of volume requiring remediation; and verification sampling. The draft work plan shall also include an analysis of air emissions for on-site treatment alternatives. The draft work plan shall include a schedule for implementation. Ecology will comment on the interim action work plan within thirty (30) calendar days of receipt of the work plan. The Port shall submit a final interim action work plan within thirty (30) calendar days of receipt of Ecology's comments which shall address and incorporate Ecology's comments.

2.B. Final Interim Action Work Plan Implementation. Within thirty (30) calendar days of receiving Ecology's approval of the final Interim Action Plan, the Port of Vancouver shall begin implementation of the final Interim Action Plan.

2.C. Interim Action Report. The Port shall then submit to Ecology a draft of the Interim Action Report describing the work conducted to implement the selected remedial action(s). The draft report shall include, as appropriate, site location maps and physical setting description; description of remediation and disposal actions taken; verification

sampling results; summary; and conclusions. The draft Interim Action Report shall be submitted to Ecology for review and comment within sixty (60) calendar days of receipt of final sample results from the TCE-impacted stockpiled soil. The Port shall complete a final report within thirty (30) calendar days of receipt of Ecology's comments.

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 70.105.D,030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. WAC 173-340-600(10)(c) requires a 30-day public comment period before the state RI/FS required under this Order 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.

Port of Vancouver 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). Port of Vancouver 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: Lin Bernhardt

Address: Department of Ecology Vancouver Field Office, 2108 Grand Blvd., Vancouver, WA 98661-4622

The project coordinator for Port of Vancouver is:

Name: Heidi Rosenberg

Address: PO Box 1180, Vancouver, WA 98666-1180

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Port of Vancouver, 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 Port of Vancouver change project coordinator(s), written notification shall be provided to Ecology or the Port of Vancouver 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 Port of Vancouver 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 Port of Vancouver 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 Port of Vancouver shall not perform any remedial actions at the Port of Vancouver/ Building 2220 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 Port of Vancouver. By signing this Agreed Order, the Port of Vancouver 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 the Port of Vancouver during an inspection unless doing so interferes with Ecology's sampling. The Port of Vancouver 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 Port of Vancouver shall work with Ecology in the development of a public participation plan for the site. Ecology shall maintain overall responsibility for public participation. The Port of Vancouver shall help coordinate and implement public participation for the site.

8. Retention of Records.

The Port of Vancouver 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 Port of Vancouver, the Port

of Vancouver 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 Port of Vancouver 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 Port of Vancouver 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 Agreed 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 will not, however, bring an action against the Port of Vancouver 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 the Port of Vancouver to require those remedial actions required by this Agreed Order, provided the Port of Vancouver 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 Port of Vancouver/Building 2220 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 Port of Vancouver 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 Port of Vancouver

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 Port of Vancouver may have in the site or any portions thereof, the Port of Vancouver 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 Port of Vancouver shall notify Ecology of the contemplated transfer.

12. Compliance with Applicable Laws.

A. All actions carried out by the Port of Vancouver 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 actions under this Order that are known to be applicable at the time of issuance of the Order have been included in **Exhibit A** (attached) and are binding and enforceable requirements of the Order.

The Port of Vancouver has a continuing obligation to determine whether 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 Port of Vancouver 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 Port of Vancouver shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the Port of Vancouver 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 Port of Vancouver and how the Port of Vancouver must meet

those requirements. Ecology shall inform the Port of Vancouver in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The Port of Vancouver 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 Port of Vancouver 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 Port of Vancouver's receipt of written notification from Ecology that the Port of Vancouver has completed the remedial activity required by this Order, as amended by any modifications, and that all other provisions of this Agreed 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 the Port of Vancouver refuses, without sufficient cause, to comply with any term of this Order, the Port of Vancouver 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.

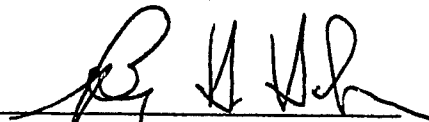
D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under Section 6 of ch. 70.105D RCW.

VIII.

EFFECTIVE DATE

Portions of this Order relating to the Interim Action required by this Order shall become effective immediately. All other portions of this order become effective upon the Port of Vancouver's receipt of a letter from Ecology indicating that the public comment period is over and the order is effective.

PORT OF VANCOUVER

By 
Date 10-28-1998

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

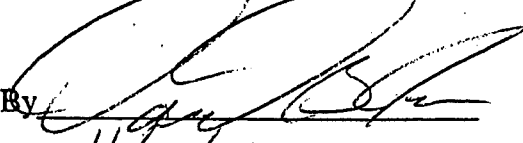
By 
Date 11/4/98

FIGURE 1
Site Location

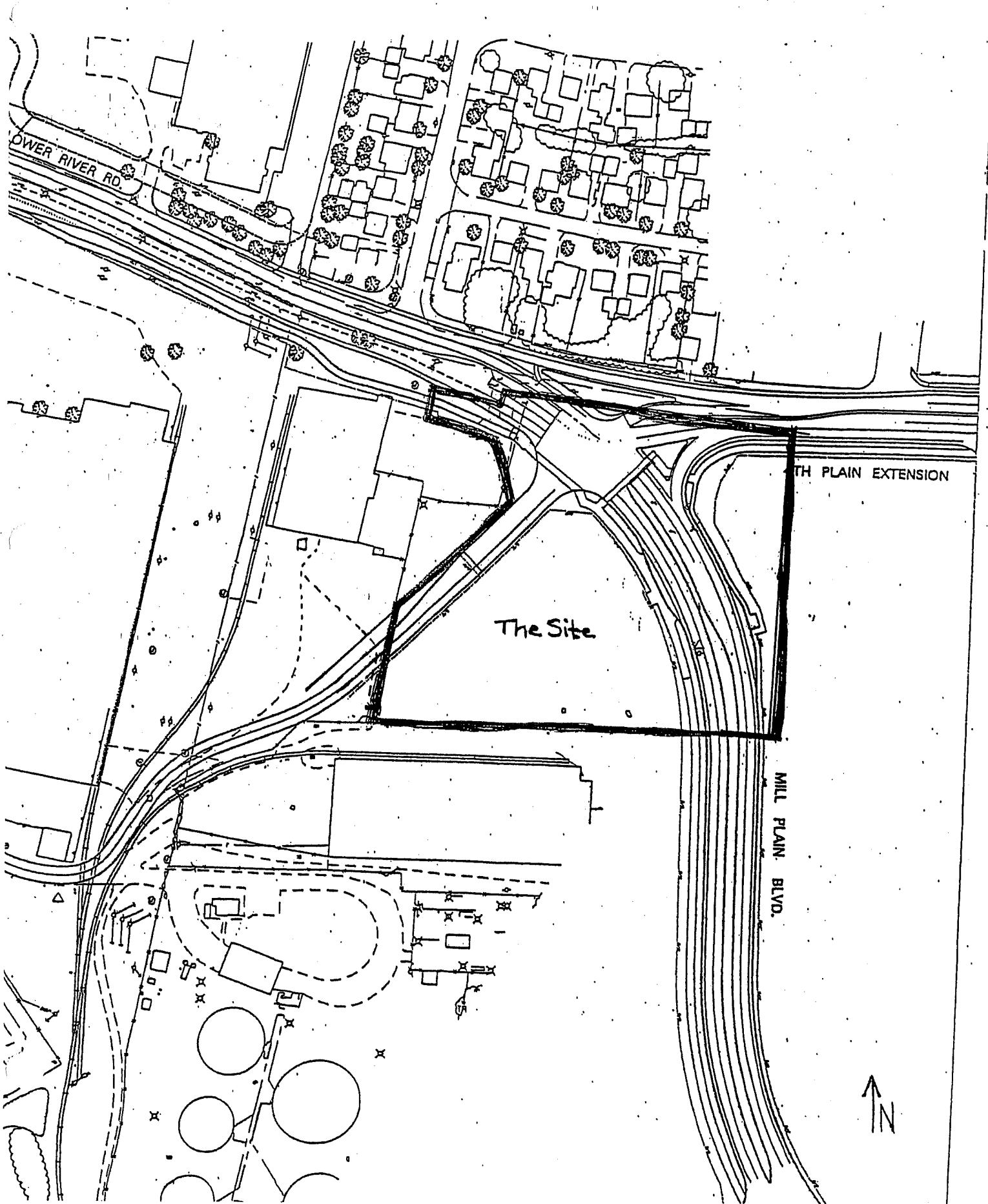


EXHIBIT A

Substantive Requirements for Complying with State and Local Permits Under this Agreed Order

Permits pertinent to this actions:

1. City of Vancouver Special Wastewater Discharge Authorization for discharge of investigation derived groundwater

The following requirements apply:

- The wastewater must be non-hazardous, and supporting information, such as lab analysis and MSDS sheets, must be submitted.
- The name of the generator of wastewater and an authorized representative responsible for the accuracy of information must be submitted.
- The Port must call the Sewer Operations contact supplied by the City prior to discharging, and arrange a time for the discharge. The city will recommend a specific manhole for the discharge.