

FS 81628125
PORT OF VANCOUVER
Former Building 2220
Former SMC
FS No. 1029

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:)
)
Port of Vancouver) **AGREED ORDER**
3103 NW Lower River Road) No 01TCPVA-3257
Vancouver, WA 98660)

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 (SMC) Site, is located between 2001 and 2501 West Fourth Plain at the intersection of West Fourth Plain and Mill Plain Boulevard Extension, in an industrial-zoned area at the Port of Vancouver. The Port of Vancouver currently owns the former SMC site, which is bisected by Mill Plain Boulevard. **Figure 1** (attached) shows the SMC 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 are 59115040, 59115050 and a portion of number 59115053.

2. An environmental investigation, which included portions of this SMC site, was conducted for the City of Vancouver before construction of the Mill Plain Boulevard Extension. Results of the environmental investigation are documented in The Site Investigation - Mill Plain Boulevard

Extension Project, Vancouver, Washington report prepared in July 1997 by EMCON for the Washington State Department of Transportation Environmental Affairs Office and the City of Vancouver. The report documents detections of trichloroethylene (TCE) discovered in site soil and groundwater.

3. The Port hired Parametrix, Inc in December 1997 to delineate the extent of the ICE found at concentrations exceeding Model Toxics Control Act cleanup levels. Results of Parametrix's investigations from 1997 through March 13, 2001, are summarized in the following documents:

- ◆ Letter Report RE: ASI/Mill Plain Property Project from Terry Belunes (Parametrix) to Heidi Rosenberg (Port of Vancouver), January 22, 1998.
- ◆ Letter Report RE: ASI/Mill Plain Property Project from Terry Belunes (Parametrix) to Heidi Rosenberg (Port of Vancouver), January 29, 1998. Draft Interim Action Work Plan for Trichloroethylene Impacted Soil, Former Swan Manufacturing Company Site, February 4, 1998, Parametrix.
- ◆ Preliminary Summary of Investigation Activities, Former Swan Manufacturing Company Site, April 13, 1998, Parametrix.
- ◆ Work Plan of Remedial Investigation and Feasibility Study, Former Building 2220 Site (a.k.a. Swan Manufacturing Company Site), June 14, 1999, Parametrix.
- ◆ Interim Data Report Remedial Investigation and Feasibility Study, Former Building 2220 Site (a.k.a. Swan Manufacturing Company Site), March 6, 2000, Parametrix.
- ◆ Phase II Interim Data Report Remedial Investigation and Feasibility Study, Former Building 2220 Site (a.k.a. Swan Manufacturing Company Site), March 13, 2001, Parametrix.

4. The Port of Vancouver excavated approximately 14,000 cubic yards of ICE-impacted soil as a source control measure. The soil was stockpiled on-site by placing it on and covering it with

plastic sheeting. This soil was treated by injecting heated-air in combination with soil vapor extraction. Treatment was completed May 21, 1999. Ecology concurred that the treatment was completed in a letter to the Port dated July 7, 1999.

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.

6. The Port and Ecology signed the Agreed Order No. 98TC-S337 dated October 27, 1998, pursuant to Ecology's authority under the Model Toxics Control Act, Chapter 70.105D RCW. The purpose of the previous Agreed Order was to perform a Remedial Investigation and Feasibility Study (RI/FS) and conduct an interim action to excavate and treat source area soil. Some tasks from the previous Agreed Order have been completed while other items are ongoing. To the extent that any terms or actions under the earlier Agreed Order (98IC-S337) remain unresolved, this Agreed Order incorporates the incomplete tasks from the earlier Agreed Order

Task completion status from the previous Agreed Order No. 98TC-S337.

Remedial Investigation and Feasibility Study

- ◆ Task 1.A. The RI/FS Work Plan has been completed.
- ◆ Task 1.B. The initial phases of the RI work were completed to evaluate the extent of soil contamination. Three phases of drilling were conducted to evaluate groundwater quality in shallow, intermediate and deep zones of the unconsolidated sedimentary aquifer (USA) beneath the former Swan Manufacturing site and adjacent properties. This includes the installation of approximately 43 monitoring wells, four piezometers and numerous push borings. It is not

known if additional borings will be needed to further evaluate the extent of contamination.

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

- ◆ Task 1 C. The Feasibility Study is not complete.
- ◆ Task 1.D. The RI/FS report has not been completed.

Soil Interim Action:

- ◆ Task 2.A. The Interim Action Work Plan (soil) is complete.
- ◆ Task 2.B. The Interim Action Work Plan Implementation is complete.
- ◆ Task 2.C. The Interim Action Report is complete.

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 2001 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 incomplete tasks from the earlier order and the following remedial actions that are to be conducted in accordance with WAC Chapter 173-340 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.

Groundwater Interim Action.

TCE sources in groundwater at the site are suspected to exist as residual TCE and/or Dense Nonaqueous Phase Liquid (DNAPL) and are confirmed as dissolved TCE. This Interim Action shall be used to mitigate the residual TCE/DNAPL groundwater source area. The Interim Action process outlined below will be conducted consistent with WAC 173-340-430 Interim Actions.

On July 9, 2001, the Port submitted to Ecology an Alternatives Analysis Report that provided an evaluation of the various remedial alternatives available for mitigating the groundwater source area residual TCE/DNAPL. Information presented in the Alternatives Analysis Report was used to select an Interim Action for the groundwater source area. Ecology received and reviewed the Alternatives Analysis Report. Ecology provided verbal comments to the report on July 24, 2001 and written comments on July 26, 2001. The report was prepared in accordance with the requirements of WAC 173-340-360 (Selection of Cleanup Actions). The selected Interim Action is intended to be consistent with

the final site cleanup remedy. The alternative selected by the Port is *in-situ* oxidation with Fenton's Reagent.

1.A. Groundwater Interim Action Work Plan. The Port shall submit to Ecology for review and comment a draft Interim Action Work Plan. The draft Work Plan will include as appropriate: site location maps; pilot-testing procedures results summary report (if pilot testing is done); detailed explanation of treatment chemical process; injection well placement calculations; injection well installation and injection procedures; treatment performance levels and monitoring procedures; and re-treatment procedures. The draft Work Plan shall include a schedule for implementation. Ecology will review the Work Plan and provide comments. The Port shall submit a final Interim Action Work Plan or response letter that shall address and incorporate Ecology's comments.

1.B. Final Work Plan Implementation. The Port can implement the Interim Action immediately upon receiving Ecology's written approval.

1.C. Interim Action Report. The Port shall submit to Ecology a draft Interim Action Report describing the Work Plan implementation. The draft shall include as appropriate: site location maps; description of remediation actions taken; verification sampling and re-treatment (if necessary) results; monitoring plan; summary and conclusions. The draft Interim Action Report shall be submitted to Ecology for review and comment following receipt of the final verification sample results. The Port shall complete a final report after receiving Ecology's comments on the draft Interim Action Report.

V.

TERMS AND CONDITIONS OF AGREED 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:

RCW 70 105.D030(2)(a) requires that at a minimum this Order be subject to concurrent public notice. WAC 173-340-600(11)(c) requires a thirty (30) day public comment period before the this Agreed 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, 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 ninety (90) days of receiving from Ecology an itemized statement of cost 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 ninety (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: Craig Rankine
Address: Department of Ecology
Vancouver Field Office
2108 Grand Blvd
Vancouver, WA 98661-4622

The project coordinator for the Port of Vancouver is:

Name: Patty Boyden
Address: Port of Vancouver
3103 Lower River Road
Vancouver, WA 98660-1027

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and the 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 the 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, 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 the 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(6)(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, among other things: 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 the Order and 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 agent 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 that 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 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. However, Ecology will not 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.

However, Ecology reserves the right 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 requirement of chapters 70.94, 70.95, 70.105, 77.55, 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 opportunities 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. In that case, 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 AGREED 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 investigate 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 terms 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 \$25,000.00 per day for each day they refuse 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.

VIII.

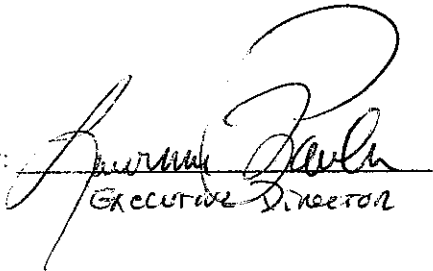
EFFECTIVE DATE

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

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

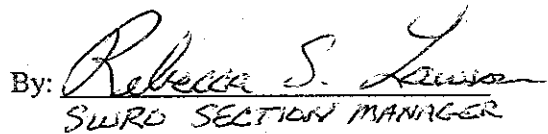
By:


Executive Director

Date:

Sep. 27, 2001

By:


SWRB SECTION MANAGER

Date:

10/15/01

EXHIBIT A

**Legal and Substantive Requirements For Complying With State and Local Laws and Permits
Under This Agreed Order.**

Legal Requirements

State Environmental Policy Act (SEPA). Complete SEPA checklist in accordance with Chapter 197-11 WAC.

Registration with the Department of Ecology Water Resources Underground Injection Control Program for all injection wells.

Permits pertinent to this actions:

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.

FIGURE 1
Site Location

