

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial)
Action at the Kent Highlands)
Landfill, Kent, Washington,)
by:)
)
Ms. Agnes Griffin)
Mr. Frank Jensen)
)

Enforcement Order

No. DE 97TC-N290

To: Ms. Agnes Griffin
Mr. Frank Jensen
c/o Ms. Cynthia L. Vranizan
P.O. Box 877
Seahurst, WA 98062

I.

Jurisdiction

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

II.

Statement of Facts

1. The Kent Highlands Landfill (Landfill) is being cleaned up pursuant to the Model Toxics Control Act, ch. 70.105D RCW, and the Model Toxics Control Act Regulation, ch. 173-340 WAC. The Landfill is located at 23076 Military Road South, Kent, Washington.

2. Cleanup is being performed by the City of Seattle (the City) in accordance with a Consent Order between the City and the

Washington State Department of Ecology (Ecology) dated May 27, 1987, and its subsequent amendments.

3. Remedial actions are specified in the Kent Highlands Landfill Cleanup Action Plan (CAP), dated April 1993, and associated documents. Among the actions required are installation and maintenance of a gas extraction system and gas monitoring. Site documents may be reviewed at Ecology's Northwest Regional Office.

4. The western portion of the landfill is owned by Ms. Agnes Griffin and Mr. Frank Jensen. This portion of the landfill is known as the Jensen/Griffin property. Ms. Griffin and Mr. Jensen leased their land to the City of Seattle for landfilling and received royalties for each ton of waste deposited on their property.

5. The City of Seattle has been and is performing operational, maintenance, and monitoring activities required by the CAP and associated documents since construction of remedial systems required by the CAP was completed in 1995. Activities performed by the City on the Jensen/Griffin property have been done under access agreements between the City of Seattle and Jensen/Griffin

6. By letter dated May 22, 1997, the Seattle City Attorney has notified Ecology that the last access agreement expired on

December 31, 1995, and that Jensen/Griffin has declined to enter into another access agreement. The Seattle City Attorney's letter indicated it is the City's understanding that it can no longer perform maintenance and monitoring on the Jensen/Griffin portion of the property.

7. Gas monitoring to date indicates the Landfill is out of compliance with respect to gas migration. Specifically, gas probe measurements indicate gas concentrations at portions of the Landfill boundary exceed regulatory limits. Portions of the boundary at which gas concentrations exceed regulatory limits are boundaries of the Jensen/Griffin property. Gas extraction system components exist within the Jensen/Griffin portion of the Landfill.

8. The City has been operating gas extraction system components and closely monitoring gas probes on the Jensen/Griffin property until access was refused earlier this year. The results are reported to Ecology, and both the City and Ecology have been continuously evaluating the data to ensure public safety is protected. Lack of access onto the Jensen/Griffin property for appropriate monitoring activities is compromising this assurance of public safety.

9. Ecology considers the potential for cessation of monitoring or for impairment or discontinuing use of gas

extraction system components on the Jensen/Griffin property a threat or potential threat to public health.

10. Access issues similar to those described in this Enforcement Order have arisen twice before, in 1993 and in 1995. Ecology met with representatives of Ms. Agnes Griffin and Mr. Frank Jensen at those times and apprised them of their liability with respect to the Landfill. Ms. Griffin and Mr. Jensen have also been apprised of their liability in 1997 and issued notice of their status as potentially liable persons under RCW 70.105D.040.

III.

Ecology Determinations

1. The Ms. Agnes Griffin and Mr. Frank Jensen are each an "owner or operator" as defined at RCW 70.105D.020(11) of a "facility" as defined in RCW 70.105D.020(4).
2. The facility is known as the Kent Highlands Landfill and is located at 23076 Military Road South, Kent, 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 the Department, there is a

release or threatened release of hazardous substances from the facility, as defined at RCW 70.105D.020(19).

5. By letter dated July 23, 1997, Ecology notified Ms. Agnes Griffin and Mr. Frank Jensen of their status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.

6. Ecology considers the potential for cessation of monitoring or for impairment or discontinuing use of gas extraction system components on the Jensen/Griffin property a threat or potential threat to public health.

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

8. 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 Ms. Griffin and Mr. Jensen 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. Provide for continued operation, maintenance, and monitoring of all remedial system components within the Jensen/Griffin Property portion of the Landfill as required by the CAP and all other associated documents relating to remedial actions at the landfill. Perform all other actions necessary to implement the CAP and all other associated documents on the Jensen/Griffin portion of the Landfill.

2. Ms. Agnes Griffin and Mr. Frank Jensen shall submit a plan for complying with Paragraph 1 of this Section to Ecology for approval within 15 days of receipt of this Order. The plan shall describe specific actions which will be taken to ensure that the activities described in Exhibit A will be carried out for the six month period commencing with the effective date of this order. The plan shall describe actions which will be taken to coordinate activities taken on the Jensen/Griffin property with activities being performed by the City of the Seattle on their portion of the landfill. The plan shall include a schedule for performance.

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 Notice

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect.

3. Remedial Action Costs.

Ms. Agnes Griffin and Mr. Frank Jensen 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). Ms. Agnes Griffin and Mr. Frank Jensen 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	David L. South
Address	Washington State Department of Ecology 3190 160th Avenue SE Bellevue, WA 98008-5452 Phone: (425) 649-7200 FAX: (425) 649-7098 E-mail dsou461@ecy.wa.gov

The project coordinator for Ms. Agnes Griffin and Mr. Frank Jensen shall be provided to Ecology within five (5) days of receipt of this order. The project coordinator's name, address, telephone number, fax number, and e-mail address should be provided, as applicable, as well. The project coordinators shall be responsible for overseeing the implementation of this Order.

To the maximum extent possible, communications between Ecology and Ms. Agnes Griffin and Mr. Frank Jensen, 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. Should Ecology or Ms. Agnes Griffin or Mr. Frank Jensen change project coordinator, written notification shall be provided to Ecology or to Ms. Agnes Griffin and Mr. Frank Jensen 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.

Ms. Agnes Griffin and Mr. Frank Jensen 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. Ms. Agnes Griffin and Mr. Frank Jensen 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 when necessary to abate an emergency situation, Ms. Agnes Griffin and Mr. Frank Jensen shall not perform any remedial actions at the Kent Highlands Landfill 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 all property at 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 Ms. Agnes Griffin and Mr. Frank Jensen. When entering the Site under ch. 70.105D RCW, Ecology shall provide reasonable notice prior to

entering the Site unless an emergency prevents notice. Ecology shall allow split or replicate samples to be taken by Ms. Agnes Griffin and Mr. Frank Jensen during an inspection unless doing so would interfere with Ecology's sampling. Ms. Agnes Griffin and Mr. Frank Jensen shall allow split or replicate samples to be taken by Ecology and shall provide Ecology seven (7) days notice before any sampling activity.

7. Retention of Records

Ms. Agnes Griffin and Mr. Frank Jensen 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 Ms. Agnes Griffin and Mr. Frank Jensen, a record retention requirement meeting the terms of this paragraph shall be required of such contractors and/or agents.

8. Dispute Resolution

Ms. Agnes Griffin and Mr. Frank Jensen may request Ecology to resolve factual or technical 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),

of this Order. Ecology resolution of the dispute shall be binding and final. Ms. Agnes Griffin and Mr. Frank Jensen 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.

9. Reservation of Rights

Ecology reserves all rights to issue additional orders or take any action authorized by law in the event or upon the discovery of a release or threatened release of hazardous substances not addressed by this Order, upon discovery of any factors not known at the time of issuance of this Order, in order to abate an emergency, or under any other circumstances deemed appropriate by Ecology.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances from the Kent Highlands Landfill.

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

Ms. Agnes Griffin and Mr. Frank Jensen to stop further implementation of this Order for such period of time as needed to abate the danger.

10. 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 Ms. Agnes Griffin or Mr. Frank Jensen 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 Ms. Agnes Griffin and Mr. Frank Jensen may have in the Site or any portions thereof, Ms. Agnes Griffin and Mr. Frank Jensen 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, Ms. Agnes Griffin and Mr. Frank Jensen shall notify Ecology of the contemplated transfer.

11. Compliance With Other Applicable Laws

A. All actions carried out by Ms. Agnes Griffin and Mr. Frank Jensen 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 CAP.

Ms. Agnes Griffin and Mr. Frank Jensen have 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 Ms. Griffin or Mr. Jensen determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, Ecology shall be promptly notified of this determination. Ecology shall determine whether Ecology or Ms. Agnes Griffin and Mr. Frank Jensen shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Ms. Agnes Griffin and Mr. Frank Jensen 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 Ms. Agnes Griffin and Mr. Frank Jensen and on how Ms. Agnes Griffin and Mr. Frank Jensen must meet those requirements. Ecology shall inform Ms. Agnes Griffin and Mr. Frank Jensen in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Ms. Agnes Griffin and Mr. Frank Jensen 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 [PLP] 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 Ms. Agnes Griffin's and Mr. Frank Jensen's receipt of written notification from Ecology that Ms. Agnes Griffin and Mr. Frank Jensen have 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 Ms. Agnes Griffin and Mr. Frank Jensen refuses, without sufficient cause, to comply with any term of this Order, Ms. Agnes Griffin and Mr. Frank Jensen will be liable for:

- 3/
- (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.

Effective date of this Order: 20th October, 1997.

Michael J. Gallagher
Ecology Signature

KENT HIGHLANDS LANDFILL SITE LEGAL DESCRIPTION

This land referred to in this description is situated in the county of King, state of Washington, and described as follows:

JENSEN-GRIFFIN PROPERTY:

That portion of the west half of the northeast quarter of the southwest quarter of Section 15, Township 22 North, Range 4, East, W.M. in King County, Washington, lying north of Des Moines-Kent Highway;
EXCEPT that portion conveyed to the State of Washington by Deed recorded April 29, 1959, under King County Recording Number 5025699.

KING COUNTY PROPERTY:

That portion of the west 400 feet of the north 1436 feet of the south 1944 feet of Enos Cooper Donation Claim Number 38 lying north of the Kent-Des Moines pavement and being more particularly described as follows:

Beginning at the intersection of the west line of said Donation Claim with the north boundary of the Kent-Des Moines pavement right of way;
thence northerly along west boundary line of Donation Claim Number 38 a distance of 450 feet;
thence easterly a distant of 400 feet;
thence southerly a distant of 220 feet;
thence south $36^{\circ}00'$ west a distant of 440 feet more or less to a point on the north right of way boundary of the Kent Des Moines pavement;
thence northwesterly along said north right of way boundary to the point of beginning; EXCEPT that portion lying southerly of said northeasterly margin of said SR 516.

CITY OF KENT PROPERTY:

That portion of the Enos Cooper Donation Claim lying within the southeast corner of Section 15, Township 22 North, Range 4 East, W.M., King County Washington, described as follows:

Beginning at a point of intersection with the centerline of Kent-Des Moines Highway and the south line of the north half of said subdivision;
thence southerly along said centerline a distance of 135.48 feet;
thence north $62^{\circ}30'00''$ east 30 feet to the true point of beginning;
thence continuing north $62^{\circ}30'00''$ east 525 feet;
thence northwesterly on a curve to the left and running parallel with the proposed northeasterly margin of SR 516 (as shown on that certain map dated May 8, 1969, Sheet 2 of 11 sheets, Jct. SR 5 to/Jct. SR 167 MP 2.21 to MP 4.83) to the west line of said Donation Claim;
thence south along the west line of said Donation Claim to the Centerline of said Highway;
thence southeasterly to a point which bears south $62^{\circ}30'00''$ west from the True Point of Beginning;
thence north $62^{\circ}30'00''$ east 30 feet to the true point of beginning;
EXCEPT that portion defined as follows: Beginning at a point of intersection of the west line of the Cooper Donation Claim with the north margin of SSH 5A (Kent-Des Moines Hwy) being the true point of beginning of exception herein described;
thence north along said Donation Claim Line 450 feet;
thence east at right angles to said Donation Claim Line 400

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thence south parallel with the west line of said Donation Claim Line 220 feet;
thence south 36° west 440 feet more or less to northerly margin of SSH 5A;
thence northwesterly along the northerly margin of SSH 5A to the True Point of Beginning of exception herein described;
AND ALSO EXCEPT that portion lying southerly of said northeasterly margin of said SR 516.

KENTVIEW PROPERTIES:

Portion of the east one-half of the northeast one-quarter of the southwest one-quarter of Section 15, Township 22 North, Range 4 East, W.M., lying northerly of State Route 516 (Kent-Des Moines Highway;) ALSO

That portion of the Donation Land Claim of the heirs at law of Enos Cooper, deceased, designated as Claim Number 38, in the southeast one-quarter of Section 15, Township 22 North, Range 4 East, W.M., in King County, Washington, lying north of a line 408 feet north of and parallel to the south line of said Claim;

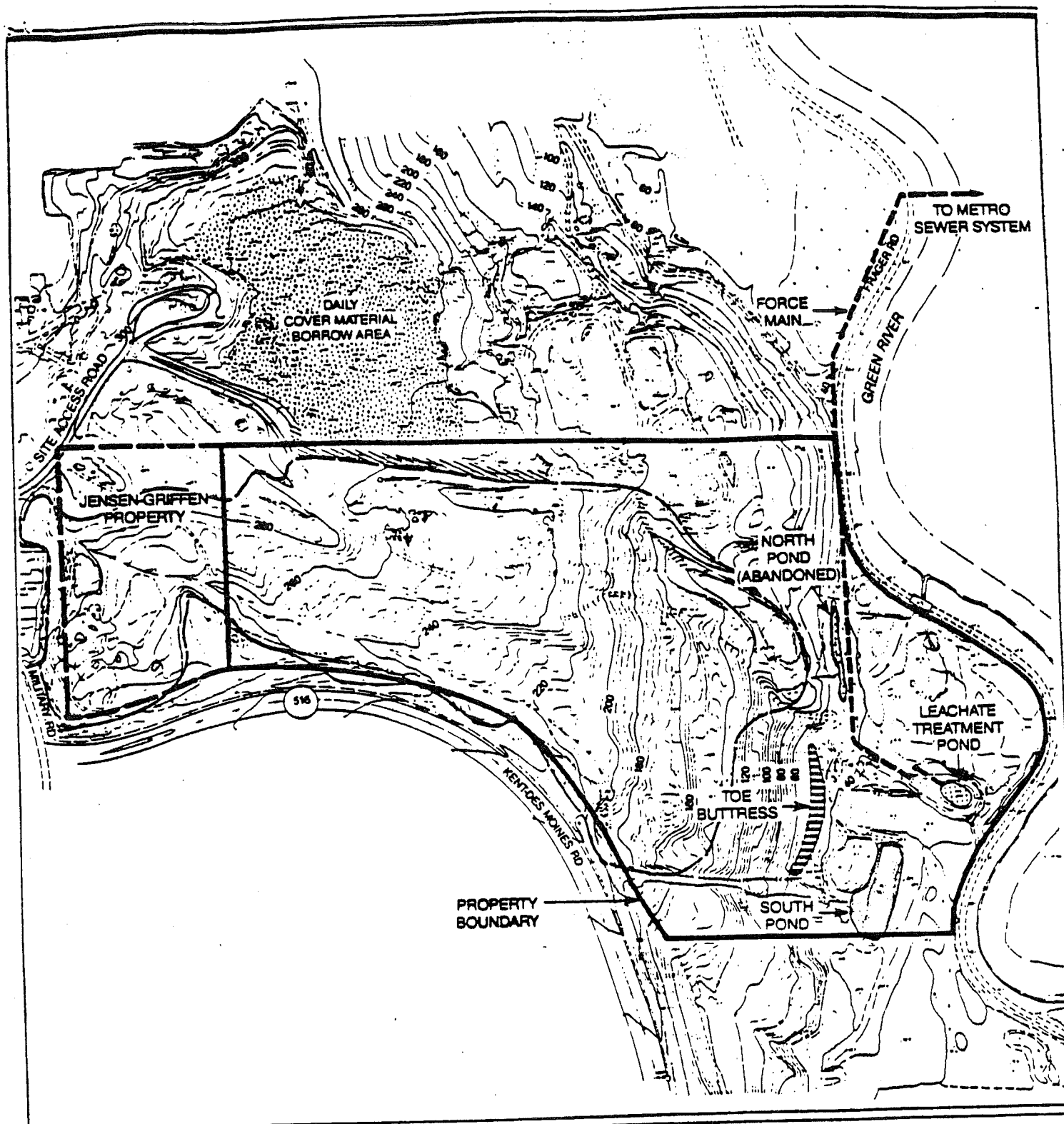
EXCEPT that portion conveyed to King County, by deed dated July 14, 1934, recorded July 30, 1934 in Volume 1591 of Deeds, page 612, under Recording Number 2812324;

EXCEPT portion condemned in Superior Court Cause Number 748518 for SR-516;

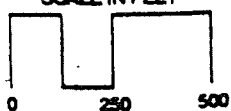
EXCEPT that portion conveyed to the City of Seattle by Deed recorded under Recording Number 7705020771;

AND EXCEPT that portion conveyed to the City of Kent by deed recorded under Recording Number 7105280484. ALSO

Government lot 10, Section 15, Township 22 North, Range 4 East, W.M., in King County, Washington; lying north of SR-516 as condemned in Superior Court Cause Number 748518.



SCALE IN FEET



- Grading Limit
- - - - Existing Contour (1985)
- //// Existing Roads
- Kent Highlands Property Line
- - - - Jensen-Griffen Property Line

Kent Highlands Landfill