

MAY 23 2012

Dept of Ecology  
Toxics Cleanup Program

Troy Laundry Seattle  
FSID 19135499  
SIC JJ378  
Mgr: Russ Olsen

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

AGREED ORDER

Touchstone SLU LLC  
Troy Laundry Site  
Seattle, Washington

No. DE 8996

TO: Touchstone SLU LLC  
2025 First Avenue, Suite 1212  
Seattle, WA 98121

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## I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Touchstone SLU LLC (Touchstone) under this Agreed Order (Order) is to provide for remedial action at the Site (Exhibit A) where there has been a release or threatened release of hazardous substances. This Order requires Touchstone to submit to Ecology a remedial investigation (RI) report, a feasibility study (FS) report and a draft cleanup action plan (CAP) for the Site. Ecology believes the actions required by this Order are in the public interest.

## II. JURISDICTION

This Agreed Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

## III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. Touchstone agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Touchstone's responsibility under this Order. Touchstone 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 complies with this Order.

## IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as the Troy Laundry Site and is generally located at 307 Fairview Avenue North Seattle, Washington. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. The Site constitutes a Facility under RCW 70.105D.020(5).

B. Parties: Refers to the State of Washington, Department of Ecology and Touchstone, currently the only PLP named at the Site.

C. Potentially Liable Person (PLP): Refers to Touchstone, currently the only PLP named at the Site.

D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits to this Order.

## V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by Touchstone:

A. Touchstone is the current owner of the real property located at 307 Fairview Avenue North in Seattle, Washington (hereinafter Property), and intends to redevelop the property.

B. Reportedly the Property is known to have been operated as an industrial dry cleaning facility from 1926 until 1985, during which time dry cleaning solvents, heating oil, and gasoline products were stored at the Property.

C. Reportedly as many as nineteen (19) storage tanks are known to have been used to store products on the Property.

D. Reportedly a release of dry cleaning solvents, both petroleum hydrocarbon- and tetrachloroethene (PCE)-based, to soil and groundwater was confirmed at the Property and extends off-Property.

E. Reported chemicals of concern identified during investigations of the Site (described in paragraphs G and H, below) include gasoline-, diesel-, and oil-range petroleum hydrocarbons; tetrachloroethylene; trichloroethylene; vinyl chloride; and/or cis-1-2-dichloroethene in soil and/or groundwater. Additional chemicals of concern may be identified based upon Ecology's review of the draft Remedial Investigation.

F. Reportedly a soil vapor extraction system was installed and operated at the Property from February 2011 through December 2011. The system was designed to address land-ban and dangerous waste concentrations of tetrachloroethylene in soil within the source area, which is located near the loading dock in the center of the Property. The system was turned off following several consecutive months of data demonstrating that tetrachloroethylene concentrations in soil vapor had dropped to near or below laboratory detection limits.

G. SoundEarth Strategies, Inc (SoundEarth, previously known as Sound Environmental Strategies Corporation [SES]), Seattle, Washington was retained by Touchstone to conduct environmental investigations. These investigations were conducted as independent

remedial actions performed between 2010 and 2011. The results of these investigations are documented in the following technical reports:

1. SoundEarth, 2010. *Phase I Environmental Site Assessment (ESA). For the Troy Laundry Property, Located at 307 Fairview Avenue North, Seattle, Washington.* September 15.

2. SoundEarth, 2010. *Letter Summary of Limited Phase II ESA at the Troy Laundry Property, Located at 307 Fairview Avenue North, Seattle, Washington.* October 28.

3. SoundEarth, 2011. *Letter Summary of Supplemental Subsurface Investigation Activities at the Troy Laundry Property, Located at 307 Fairview Avenue North, Seattle, Washington.* June 6.

I. Touchstone reserves the right to request Ecology to name additional PLPs at the Site, consistent with these Findings of Fact

## **VI. ECOLOGY DETERMINATIONS**

A. Touchstone is an "owner or operator" as defined in RCW 70.105D.020(17) of a "facility" as defined in RCW 70.105D.020(5).

B. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(25) and RCW 70.105D.020(10), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to Touchstone dated December 22, 2011 pursuant to RCW 70.105D.040, -.020(21) and WAC 173-340-500. By comment letter dated January 10, 2012, Touchstone acknowledged ownership of the Property. Touchstone reserved the right to request that Ecology name additional PLPs at the Site.

D. Pursuant to RCW 70.105D.030(1) and -.050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

## **VII. WORK TO BE PERFORMED**

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that Touchstone take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

A. Within thirty (30) days of receipt of all analytical data from investigations conducted at the Site in anticipation of this Order, but no later than 115 days from the effective date of this Order, Touchstone shall prepare and submit a draft RI Report that meets the requirements of WAC 173-340-350. Within ninety (90) calendar days of receipt of Ecology's comments, Touchstone shall incorporate Ecology's comments and submit a revised draft RI report for review. The revised RI report will be considered final after Ecology approval. If additional RI Activities are required based upon Ecology's review, Touchstone will develop and submit a RI work plan for Ecology review and approval within thirty (30) calendar days of Ecology's comments. The revised RI work plan will be considered final after Ecology review and approval. Touchstone will implement the final RI work plan within thirty (30) calendar days of Ecology's review and approval.

B. Touchstone agrees to submit all Quality Assurance/Quality Control (QA/QC) results for all analytical data from the investigations conducted at the Site as part of the RI and any subsequent sampling events.

C. Within thirty (30) days of the effective date of this Order, and pursuant to WAC 173-340-350(7)(c)(iv), Touchstone shall submit a Health and Safety Plan that meets the requirements of WAC 173-340-810 to Ecology for review and comment. Touchstone shall perform the RI and FS in accordance with the Health and Safety Plan.

D. Within thirty (30) days of the effective date of this Order, Touchstone shall identify in writing all applicable federal, state and local requirements (including requirements to obtain necessary permits) and indicate to Ecology how Touchstone has complied with all substantive provisions.

E. Within sixty (60) days of the effective date of this Order, Touchstone shall submit a sampling and analysis plan that meets the requirements of WAC 173-340-820 to Ecology for review and approval. Touchstone shall perform all sample collection, handling and analysis in accordance with the Sampling and Analysis Plan

F. Within one hundred and twenty (120) calendar days of Ecology's approval of the Final RI Touchstone shall prepare and submit a draft Feasibility Study (FS) Report that meets the requirements of WAC 173-340-350. The FS will evaluate and propose a preferred alternative for the cleanup of the Site for Ecology review and approval. Within thirty (30) calendar days of receipt of Ecology's comments, Touchstone shall incorporate Ecology's comments and submit a revised draft FS Report for review. The revised Feasibility Study Report will be considered final

after Ecology review and approval.

G. Within one hundred and eighty days (180) days of Ecology's approval of the FS report, Touchstone shall submit a draft CAP describing the implementation of the preferred alternative in the FS report.

Table 1: Schedule

Health and Safety Plan	Within 30 calendar days of the effective date of this Order
Identify all applicable state, federal and local requirements	Within 30 calendar days of the effective date of this Order
Sampling and Analysis Plan	Within sixty (60) days of the effective date of this Order
draft RI Report	Within 30 days of receipt of all analytical data from investigations, but no later than 115 days from the effective date of this Order
If additional RI Activities are required based upon Ecology's review, Touchstone will develop a RI work plan for Ecology review and approval.	Within thirty (30)-calendar days of the receipt of Ecology's comments on the draft RI.
Touchstone will implement the final RI work plan.	Within thirty (30)-calendar days of Ecology's review and written approval of the final RI work plan.
Revised Draft RI Report for Ecology review and approval.	Within thirty (30) calendar days of the receipt of Ecology's comments on the final draft RI Report.
draft FS Report.	Within one hundred and twenty (120)-calendar days of Ecology's approval of the final draft Remedial Investigation Report.
Touchstone shall incorporate Ecology's comments and submit a draft FS Report for review.	Within thirty (30)-calendar days of receipt of Ecology's comments.
Draft CAP	Within 180 days of Ecology's approval of the FS report

H. Written progress reports shall be completed every month and shall be submitted by the tenth day of the month beginning the month following the effective date of this Order. Progress reports shall include information addressing the RI, FS and Draft CAP. The reports shall address and describe the progress toward completion of the Order including work in progress, past and future problem areas, key activities, deliverables submitted, field work and data generated, if any, subcontracting, analytical services performed, and key staff changes.

I. All work plans and other deliverables identified in Section VII, once approved by Ecology become an integral and enforceable part of this Order.

J. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this Section, Ecology may complete and issue the final deliverable.

### **VIII. TERMS AND CONDITIONS OF ORDER**

#### **A. Public Notice**

RCW 70.105D.030 (2) (a) requires that, at a minimum, this Order be subject to 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 this Order is inadequate or improper in any respect.

#### **B. Remedial Action Costs**

Touchstone shall pay to Ecology those costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Ecology has accumulated \$2,482.35 in remedial action costs related to this facility as of December 31, 2011. Payment for this amount shall be submitted within thirty (30) days of the effective date of this Order. For all Ecology oversight costs incurred subsequent to December 31, 2011, Touchstone shall pay the required amount within thirty (30) 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 statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70.105D.055, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

**C. Implementation of Remedial Action**

If Ecology determines that Touchstone has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to Touchstone, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of Touchstone's failure to comply with its obligations under this Order, Touchstone shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.B (Remedial Action Costs), provided that Touchstone is not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

Except where necessary to abate an emergency situation, Touchstone shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

**D. Designated Project Coordinators**

The project coordinator for Ecology is:

Mr. Russ Olsen  
Toxics Cleanup Program  
3190 160<sup>th</sup> Ave SE  
Bellevue, WA 98008  
(425) 649-7038  
E-mail: [rols461@ecy.wa.gov](mailto:rols461@ecy.wa.gov)

The project coordinator for Touchstone is:

Mr. Shawn Parry  
2025 First Avenue, Suite 1212  
Seattle, Washington 98121  
206-727-2393  
E-mail: [sparry@touchstonecorp.com](mailto:sparry@touchstonecorp.com)

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and Touchstone, 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. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed which is required by this Order.



Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

**E. Performance**

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist licensed in the State of Washington or under the direct supervision of an engineer registered in the State of Washington, except as otherwise provided for by Chapters 18.220 and 18.43 RCW.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrologic or engineering work shall be under the seal of an appropriately licensed professional as required by Chapter 18.220 RCW or RCW 18.43.130.

Touchstone shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

**F. Access**

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that Touchstone either owns, controls, or has access rights to 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 Touchstone's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology 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 Touchstone. Touchstone shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by Touchstone where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site

property owned or controlled by Touchstone unless an emergency prevents such notice. All persons who access the Site pursuant to this Section shall comply with any applicable Health and Safety Plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

**G. Sampling, Data Submittal, and Availability**

With respect to the implementation of this Order, Touchstone shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII. (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, Touchstone shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by Touchstone pursuant to implementation of this Order. Touchstone shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow Touchstone and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.F (Access), Ecology shall notify Touchstone prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

**H. Public Participation**

A Public Participation Plan is required for this Site. Ecology shall develop a Public Participation Plan alone or in conjunction with Touchstone.

Ecology shall maintain the responsibility for public participation at the Site. However, Touchstone shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing list, prepare drafts of public notices and fact sheets at important stages of the remedial actions, such as the submission of work plans, RI/FS Report(s), CAPs, and engineering design reports. As appropriate, Ecology

will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify Touchstone prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by Touchstone that do not receive prior Ecology approval, Touchstone shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

3. When requested by Ecology, participate in public presentations on the progress of the remedial actions at the Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. Seattle Public Library  
1000 4<sup>th</sup> Ave  
Seattle, WA 98104
- b. Ecology's Northwest Regional Office  
3190 160th Ave SE  
Bellevue, Washington 98008

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this site shall be maintained in the repository at Ecology's Northwest Regional Office in Bellevue, Washington.

#### **I. Retention of Records**

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, Touchstone shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, Touchstone shall make all records available to Ecology and allow access for review within a reasonable time.

**J. Resolution of Disputes**

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII.B (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

a. Upon receipt of Ecology's project coordinator's written decision or the itemized billing statement, Touchstone has fourteen (14) days within which to notify Ecology's project coordinator in writing of its objection to the decision or itemized statement.

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

c. Touchstone may then request regional management review of the decision. This request shall be submitted in writing to the Northwest Region Toxics Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's written decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of Touchstone's request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

**K. Extension of Schedule**

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended;
- b. The length of the extension sought;

- c. The reason(s) for the extension; and
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on Touchstone to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

- a. Circumstances beyond the reasonable control and despite the due diligence of Touchstone including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by Touchstone;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII.M (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of Touchstone.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give Touchstone written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.L (Amendment of Order) when a schedule extension is granted.

4. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:

- a. Delays in the issuance of a necessary permit which was applied for in a timely manner;
- b. Other circumstances deemed exceptional or extraordinary by Ecology; or
- c. Endangerment as described in Section VIII.M (Endangerment).

**L. Amendment of Order**

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.N (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and Touchstone. Touchstone shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J (Resolution of Disputes).

**M. Endangerment**

In the event Ecology determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct Touchstone to cease such activities for such period of time as it deems necessary to abate the danger. Touchstone shall immediately comply with such direction.

In the event Touchstone determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, Touchstone may cease such activities. Touchstone shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction Touchstone shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Touchstone's cessation of activities, it may direct Touchstone to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to Section VIII.M (Endangerment), Touchstone's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.K (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

**N. Reservation of Rights**

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 of Ecology's rights or authority. Ecology will not, however, bring an action against Touchstone to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against Touchstone regarding remedial actions required by this Order, provided Touchstone complies with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. 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 at the Site.

**O. Transfer of Interest in Property**

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by Touchstone 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 Touchstone's voluntary transfer of any interest in all or any portion of the Site, and during the effective period of this Order, Touchstone shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, Touchstone shall notify Ecology of said transfer. Upon voluntary transfer of any interest, Touchstone shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

A party acquiring ownership as specified in RCW 70.105D.020(17)(ii), shall not be obligated to implement the requirements of this Order if they meet the criteria identified in RCW 70.105D.020(17)(ii) unless such party provides express written authorization of its intent to be bound by the terms and conditions of this Order.

**P. Compliance with Applicable Laws**

1. All actions carried out by Touchstone 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 RCW 70.105D.090. At this time, no federal,

state or local requirements have been identified as being applicable to the actions required by this Order.

2. Pursuant to RCW 70.105D.090(1), Touchstone is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, Touchstone shall comply with the substantive requirements of such permits or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this Section.

Touchstone 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 actions under this Order. In the event either Ecology or Touchstone 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 the other party of its determination. Ecology shall determine whether Ecology or Touchstone shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Touchstone 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 Touchstone and on how Touchstone must meet those requirements. Ecology shall inform Touchstone in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Touchstone shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

3. 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 that is necessary for the State to administer any federal law, the exemption shall not apply and Touchstone 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.

**Q. Indemnification**

Touchstone agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries



to persons or for loss or damage to property to the extent arising from or on account of acts or omissions of Touchstone, its officers, employees, agents, or contractors in entering into and implementing this Order. However, Touchstone shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

**IX. SATISFACTION OF ORDER**

The provisions of this Order shall be deemed satisfied upon Touchstone's receipt of written notification from Ecology that Touchstone has completed the remedial activity required by this Order, as amended by any modifications, and that Touchstone has complied with all other provisions of this Agreed Order.

**X. ENFORCEMENT**

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 Touchstone refuses, without sufficient cause, to comply with any term of this Order, Touchstone will be liable for:

a. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and

b. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board.

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This Order may be reviewed only as provided under RCW 70.105D.060.

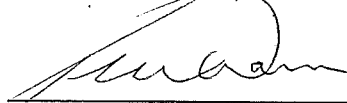
Effective date of this Order: 5/22/12

**TOUCHSTONE SLU LLC**



**James D. O'Haulon**  
**Manager**  
**Seattle, Wa**  
**206-727-2393**

**STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY**



**Robert W. Warren, P.Hg., MBA**  
**Section Manager**  
**Toxics Cleanup Program**  
**Northwest Regional Office**  
**425 649-7054**