

mgr.: Marv Coleman

Sauro's Cleanerama

FSID # 4339824

SIC # JIAT5

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:

The City of Tacoma for
Sauro's Cleanerama
1401, 1407 and 1409 Pacific Avenue
Tacoma, Washington

AGREED ORDER

No. DE 4283

RECEIVED

MAR 19 2009

Washington State
Department of Ecology

TO: The City of Tacoma
Attn: Richard McKinley
Director, Public Works Department
747 Market Street, Room 408 Tacoma, WA 98402

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EXHIBIT A:	Site Diagram
EXHIBIT B:	Legal Description
EXHIBIT C:	Public Participation Plan
EXHIBIT D:	Applicable Permits and Substantive Requirements
EXHIBIT E:	Model Restrictive Covenant

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the City of Tacoma (Tacoma) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order is intended to support the cleanup and redevelopment of the former Sauro's Cleanarama facility in downtown Tacoma. As part of its remedial action obligation under this Order, Tacoma will also be conducting groundwater monitoring at certain parcels impacted by the Sauro's Cleanarama groundwater plume. In the event Ecology requires Tacoma to take additional remedial actions—beyond groundwater monitoring—at such parcels, it is the parties' intent that such remedial actions be undertaken pursuant to this Order, or an amendment to this Order.

This Order requires Tacoma to perform a Remedial Investigation and Feasibility Study, prepare a Draft Cleanup Action Plan, and then undertake remedial actions or interim remedial actions required under a Final Cleanup Action Plan approved by Ecology. 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. Tacoma agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership shall alter Tacoma's responsibility under this Order. Tacoma 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 includes the real property where Sauro's Cleanarama operated historically; generally located at 14th and Pacific Avenue in downtown Tacoma, legally described as Lots 1 and 5, inclusive, Block 1403, Map of New Tacoma, W.T., according to the plat filed for record February 3, 1875, in Pierce County, Washington. The Site is also defined by the extent of contamination caused by the release of hazardous substances at the former location of Sauro's Cleanarama. Based upon factors currently known to Ecology, the Site is more particularly described in the Site Diagram (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(4).

B. Parties: Refers to the State of Washington Department of Ecology and the City of Tacoma.

C. Potentially Liable Person (PLP): Refers to the City of Tacoma.

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.

E. "Days" shall mean calendar days.

V. FINDINGS OF FACT

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

A. The address of the Site is commonly known as 1401, 1407 and 1409 Pacific Avenue, Tacoma Washington. The Site's location is generally depicted in the diagram attached to this Agreed Order as Exhibit A. The Site is listed on the Department of Ecology's Hazardous Sites List as "Sauros Cleanerama Tacoma" with the Facility Site ID #4339824. The Site's hazard ranking is 1.

B. From 1961 to 2000, Pete Sauro operated a dry cleaning business, Sauro's Cleanarama, at the Site. Based on Pierce County Assessor-Treasurer's office records, the property includes Parcel Numbers: 2014030010, 2014030020 and 2014030030. Mr. Sauro died in May of 2002, at which time his appointed personal representative took control of these parcels on behalf of the Estate of Pete Sauro ("the Sauro Estate").

C. During its operation, Sauro's Cleanarama used a wastewater sump that was located in the facility's basement. Over time, dry cleaning solvents leaked from the wastewater sump. These solvents included perchloroethylene which is a chemical used in the dry cleaning process.

D. Various Remedial Investigation projects have been performed at the Site and are documented in the following reports:

1. *Preliminary Environmental Assessment, Sauro's Cleanerama, Tacoma, Washington*, Kennedy / Jenks Consultants, January 1992.
2. *Subsurface Environmental Assessment, Sauro's Cleanarama, 1401 Pacific Avenue, Tacoma, Washington*, GeoEngineers, Inc., October 2000.
3. *Subsurface Environmental Assessment, Sauro's Cleanarama, 1401 Pacific Avenue, Tacoma, Washington*, GeoEngineers, Inc., March 2001.
4. *Supplemental Site Exploration, TRC Building, 1423 Pacific Avenue, Tacoma, Washington, 98402*, Environmental Associates, October 2001.
5. *Draft report, Subsurface Environmental Assessment, Sauro's Cleanarama, 1401 Pacific Avenue, Tacoma, Washington*, GeoEngineers, Inc., November 2003.
6. *Summary of Additional Subsurface Investigation, Former Sauro's Cleanarama, Tacoma, Washington*, Farralon Consulting LLC, August 2005.
7. *Additional Groundwater Characterization, Former Sauro's Cleanarama Site, Tacoma, Washington*, Robinson Noble Saltbush, Inc., July 2006.
8. *Additional Groundwater Characterization, Former Sauro's Cleanarama Site, Tacoma, Washington*, Robinson Noble Saltbush, Inc., August 2006.
9. *Additional Characterization and Pilot Feasibility Testing Former Sauro's Cleanerama Site, Tacoma, Washington*, Farrallon Consulting, January 11, 2008.
10. *Phase 2 Investigation Report, Sauro Property – 1401, 1407, & 1409 Pacific Avenue, Tacoma, Washington*, Landau Associates, June 2008.

In all these studies, perchloroethylene and its chlorinated hydrocarbon degradation products were found in Site soil and groundwater.

E. Perchloroethylene and some of its chlorinated hydrocarbon degradation products are known or suspected carcinogens and can be toxic to both humans and wildlife and their presence at historically observed concentrations pose a threat to human health and the environment.

F. The Sauro Estate previously entered the Site into Ecology's Voluntary Cleanup Program (VCP) to facilitate remedial action at the Site. By letter dated February 16, 2007, Ecology informed the Sauro Estate that the Site had been withdrawn from the VCP program and that Ecology intended to address remediation at the Site under a formal process.

G. On October 21, 2008, Tacoma entered into a Purchase and Sale Agreement with the Sauro Estate for acquisition of the real property on which the Sauro Cleanarama operated. The transaction closed on January 9, 2009, at which time title to the property transferred from the Sauro Estate to Tacoma, and Tacoma became the owner of the property. According to Tacoma, it acquired the property, and thereby voluntarily assumed liability under RCW 70.105D.040, to expedite the cleanup of hazardous substances on the Site, and to encourage re-development of the former Sauro Cleanarama property so it can be returned to productive use.

VI. ECOLOGY DETERMINATIONS

A. Tacoma 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 Tacoma dated January 12, 2009, pursuant to RCW 70.105D.040, -.020(21) and WAC 173-340-500. By letter

dated January 20, 2009, Tacoma voluntarily waived its rights to notice and comment and accepted Ecology's determination that Tacoma is a PLP under RCW 70.105D.040. Ecology simultaneously issued a determination that Tacoma is a PLP under RCW 70.105D.040 and notified Tacoma of this determination by letter dated January 21, 2009.

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 from a facility, 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.

E. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study or design of a cleanup action. Depending upon the outcome of the RI/FS, Ecology may determine that an interim action consistent with WAC 173-340-430 is warranted.

VI. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that Tacoma 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. Remedial Investigation/Feasibility Study (RI/FS)

Based on investigations conducted to date, various parties have generally gathered sufficient data to meet the requirements for a remedial investigation necessary to determine the extent and nature of the chlorinated hydrocarbon contamination identified on the Site, pursuant to WAC 173-340-350(7). Data from these investigations are reported in the documents listed in Section V, Findings of Fact. The information from the various reports of investigations shall be

compiled into one comprehensive RI/FS Report that meets the expectations of WAC 173-340-350(7). Information shall also be provided that discusses the fate and transport of the contamination that has migrated northeasterly from the source area and the contamination that is present in the foundation drain in the DaVita Building. Prior to producing a draft RI/FS report, a work plan detailing the steps needed to gather additional information, as noted, shall be provided to Ecology for review and approval.

1. Scope of Work

a. RI/FS: Based on the results of the site investigations, Tacoma shall prepare a draft RI/FS report in accordance with WAC 173-340-350 that provides information adequately documenting the nature and extent of contamination at the Site. The RI/FS shall report the results of remedial investigations of the Site including vertical and lateral distribution of contaminants in soil and groundwater and concentrations of COCs in both media. Additionally, the report shall include an analysis of potential remedial alternatives and recommendations regarding a preferred remedial action to be implemented. Cost estimates and time frames for completion shall be included in the analysis of alternatives.

b. Schedule: Tacoma shall submit the draft RI/FS report to Ecology for review and approval within one hundred and twenty (120) days of the effective date of this Order. Tacoma shall submit a final RI/FS report to Ecology for review and approval within thirty (30) days of the receipt of Ecology's comments.

B. Draft Cleanup Action Plan (CAP)

Upon Ecology approval of the final RI/FS report, Tacoma shall prepare a Draft CAP in accordance with WAC 173-340-380 that details the proposed cleanup action for addressing the contamination present on the Site, and addresses the requirements for developing a cleanup action in WAC 173-340-350 through 173-340-390, including Ecology's expectations for cleanup alternatives in WAC 173-340-370.

1. Scope of Work

- a. CAP: The Draft CAP shall meet the requirements of WAC 173-340-380, and include a description of the proposed cleanup action, cleanup standards from the RI/FS and a rationale regarding their selection, a proposed schedule for implementation, description of any institutional controls proposed, and a summary of federal, state and local laws that are applicable to the proposed cleanup action. The Draft CAP shall include QA/QC procedures, a Health and Safety Plan, provisions for progress reports, and compliance sampling and monitoring plans. The proposed cleanup action shall meet the requirements of WAC 173-340-360.
- b. Schedule: Tacoma shall submit the Draft CAP to Ecology for review within ninety (90) days of Ecology's review and acceptance of the final RI/FS.

C. Interim Action

If an interim action is deemed necessary to abate an emergency condition that threatens human health or the environment or that will substantially improve the efficacy of the final cleanup, Tacoma shall submit to Ecology a work plan that describes the scope of work expected and expected costs and time frames for completion. Any proposed interim action shall be designed and executed in accordance with WAC 173-340-430 and shall not foreclose reasonable alternatives for the final cleanup action.

1. Scope of Work

- a. Interim Action: The work will consist of activities approved by Ecology as proposed in a work plan submitted to Ecology.
- b. Schedule: Prior to implementing an interim action, Tacoma shall provide to Ecology for review and approval a work plan to implement an interim action. In accordance with Section VIII.P of this Order, the work plan shall also identify any federal, state or local requirements applicable to this action, including any state or local permits or approvals that are procedurally exempt under RCW

70.105D.090. Once approved by Ecology, the interim action shall be performed in accordance with the work plan and schedule provided in the work plan.

D. 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.

VII. TERMS AND CONDITIONS OF ORDER

A. 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 this Order is inadequate or improper in any respect. To the extent possible, Ecology shall attempt to combine public notice of this Order with public notice under the State Environmental Policy Act, Chapter 43.21C RCW, if required.

B. Remedial Action Costs

Tacoma shall pay to Ecology 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). Tacoma shall pay the required amount within ninety (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 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.

Pursuant to RCW 70.105D.055, Ecology has authority to recover unreimbursed remedial action costs by filing a lien against real property subject to the remedial actions.

C. Implementation of Remedial Action

If Ecology determines that Tacoma has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to Tacoma, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of Tacoma's failure to comply with its obligations under this Order, Tacoma shall reimburse Ecology for the costs of doing such work in accordance with Section VIII. B. (Remedial Action Costs), provided that Tacoma 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, Tacoma 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:

Marv Coleman, Site Manager/Inspector
Southwest Regional Office, Department of Ecology
P.O. Box 47775
Olympia, WA 98504
360.407.6259
mcol461@ecy.wa.gov

The project coordinator for Tacoma is:

Calvin Taylor, L.H.G.
City of Tacoma Dept. of Public Works
2201 Portland Ave.
Tacoma, WA 98421
253.593.7711
ctaylor5@cityoftacoma.org

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 Tacoma, 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 required by this Decree.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) 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 or hydrogeologist 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 Chapter 18.43 RCW.

Tacoma shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), hydrogeologist(s), agents and contractor(s) 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 Tacoma 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

Tacoma'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 Tacoma. The phrase "at all reasonable times" shall mean 8:00 AM to 5:00 PM, Monday through Friday, excluding holidays, unless (1) Tacoma is conducting work outside of the times and days stated above, in which case Ecology shall have access at those times and dates as well or (2) if Ecology determines that an emergency condition exists that threatens human health or the environment. Tacoma shall make reasonable efforts to secure access rights for those properties within the Site not owned or controlled by Tacoma 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 Tacoma 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, Tacoma 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, Tacoma shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by Tacoma pursuant to implementation of this Order. Tacoma shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow Tacoma 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 Tacoma 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 review any existing Public Participation Plan to determine its continued appropriateness and whether it requires amendment, or if no plan exists, Ecology shall develop a Public Participation Plan alone or in conjunction with Tacoma.

Ecology shall maintain the responsibility for public participation at the Site. However, Tacoma shall cooperate with Ecology and help coordinate and implement public participation at the Site, and shall:

1. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, in coordination with Tacoma, 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 Tacoma 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 Tacoma that do not receive prior

Ecology approval, Tacoma 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, and subject to Tacoma's availability, participate in public presentations on the progress of the remedial action 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. Citizens for a Healthy Bay
917 Pacific Avenue Suite 100
Tacoma, WA 98402
- b. Tacoma Public Library – Main Branch
Northwest Room
1102 Tacoma Avenue South
Tacoma, WA 98402
- c. Ecology's Southwest Regional Office
300 Desmond Drive
Lacey, WA 98503

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

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, Tacoma 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, Tacoma 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, Tacoma has thirty (30) 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. Tacoma may then request regional management review of the decision. This request shall be submitted in writing to the Southwest Region Toxics Cleanup Section Manager within fourteen (14) 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 Tacoma'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 fifteen (15) 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 Tacoma 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 Tacoma 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 Tacoma;
- 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 Tacoma.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give Tacoma 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 Tacoma. Tacoma 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 Tacoma to cease such activities for such period of time as it deems necessary to abate the danger. Tacoma shall immediately comply with such direction.

In the event Tacoma 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, Tacoma may cease such activities. Tacoma 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 Tacoma shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Tacoma's cessation of activities, it may direct Tacoma to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to Section VIII. M (Endangerment), Tacoma'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 Tacoma to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against Tacoma regarding remedial actions required by this Order, provided Tacoma 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. Tacoma expressly reserves all rights provided by law. Nothing in this Order shall be construed as an admission of liability or fact, or a waiver of any rights on the part of Tacoma provided by law.

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 Tacoma 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 Tacoma's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, Tacoma 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, Tacoma shall notify Ecology of said transfer. Upon transfer of any interest, Tacoma shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

P. Compliance with Applicable Laws

1. All actions carried out by Tacoma 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. The permits or specific federal, state or local requirements that the agency has determined are applicable and that are known at the time of entry of this Order have been identified in Exhibit D.

2. Pursuant to RCW 70.105D.090(1), Tacoma 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, Tacoma shall comply with the substantive requirements of such permits or approvals. The exempt permits or approvals and the applicable substantive requirements of those permits or approvals, as they are known at the time of entry of this Order, have been identified in Exhibit D.

Tacoma has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or Tacoma 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 Tacoma shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Tacoma 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 Tacoma and on how Tacoma must meet those requirements. Ecology shall inform Tacoma in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Unless the parties agree in writing, Tacoma 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 Tacoma 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. Land Use Restrictions

Unless all soil and groundwater are cleaned up to levels that are below MTCA Method A or B standards, Tacoma shall record an Environmental Covenant (Exhibit E) on the property it owns with the office of the Pierce County Auditor within forty-five (45) days after receiving Ecology's written notice that the remedial actions required under this Order have been completed. The Environmental Covenant shall prohibit activities on the Site that may interfere

with the integrity of a remedial action conducted at the Site, or that may result in exposure to, or migration of hazardous substances at the Site. In the event Tacoma conducts remedial actions under this Order on properties it does not own, then Tacoma will, if requested by Ecology, make reasonable efforts to obtain the property owner's consent to record an Environmental Covenant on such property. Tacoma shall provide Ecology with a copy of the recorded Environmental Covenant(s) within thirty (30) days of the recording date.

R. Financial Assurances

Pursuant to WAC 173-340-440(11), Tacoma shall maintain sufficient and adequate financial assurance mechanisms to cover all costs associated with the operation and maintenance of the remedial action at the Site, including institutional controls, compliance monitoring, and corrective measures.

Within sixty (60) days of the effective date of this Order, Tacoma shall submit to Ecology for review and approval an estimate of the costs that it will incur in carrying out the terms of this Order, including operation and maintenance, and compliance monitoring. Within sixty (60) days after Ecology approves the aforementioned cost estimate, Tacoma shall provide proof of financial assurance sufficient to cover all such costs in a form acceptable to Ecology. The form of the financial assurance mechanism shall be in accordance with WAC 173-340-440(11)(a).

Tacoma shall adjust its financial assurance coverage and provide Ecology's project coordinator with documentation of the updated financial assurance for:

1. Inflation, annually, within thirty (30) days of the anniversary date of the entry of this Order; or if applicable, the modified anniversary date established in accordance with this Section, or if applicable, ninety (90) days after the close of Tacoma's fiscal year if the financial test or corporate guarantee is used, and

2. Changes in cost estimates, within thirty (30) days of issuance of Ecology's approval of a modification or revision to the cleanup action plan (CAP) that result in increases to the cost or expected duration of remedial actions. Any adjustments for inflation since the most recent preceding anniversary date shall be made concurrent with adjustments for changes in cost

estimates. The issuance of Ecology's approval of a revised or modified CAP will revise the anniversary date established under this Section to become the date of issuance of such revised or modified CAP.

S. Periodic Review

As remedial action, including groundwater monitoring, continues at the Site, the Parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of monitoring the Site as often as is necessary and appropriate under the circumstances. At least every five (5) years after the initiation of cleanup action at the Site the Parties shall meet to discuss the status of the Site and the need, if any, for further remedial action at the Site. At least ninety (90) days prior to each periodic review, Tacoma shall submit a report to Ecology that documents whether human health and the environment are being protected based on the factors set forth in WAC 173-340-420(4). Ecology reserves the right to require further remedial action at the Site under appropriate circumstances. This provision shall remain in effect for the duration of this Order.

T. Indemnification

Tacoma 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 Tacoma, its officers, employees, agents, or contractors in entering into and implementing this Order. However, Tacoma 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.

VIII. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon Tacoma's receipt of written notification from Ecology that Tacoma has completed the remedial activity required by this

Order, as amended by any modifications, and that Tacoma has complied with all other provisions of this Agreed Order.

IX. 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 Tacoma refuses, without sufficient cause, to comply with any term of this Order, Tacoma 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

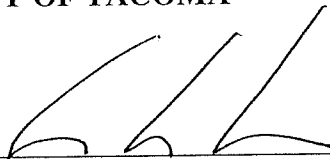
b. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

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

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

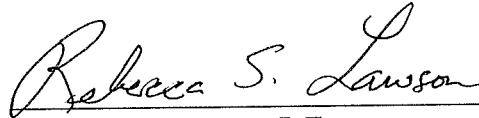
Effective date of this Order: March 30, 2009

CITY OF TACOMA



Eric Anderson
City Manager
747 Market Street
Telephone: 253.591.5130

STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY



Rebecca S. Lawson, P.E.
Section Manager
Toxics Cleanup Program
Southwest Regional Office
Telephone: 360.407.6241



Richard McKinley
Director, Public Works Department

Agreed Order No. DE 4283
Page 25 of 35

Approved Only As To Form:
CITY OF TACOMA

A handwritten signature in cursive script, appearing to read "Doug Mosisch", written over a horizontal line.

Doug Mosisch
Assistant City Attorney
747 Market Street
253.591.5626

EXHIBIT A
SITE DIAGRAM

SITE MAP



Sauro's Cleanerama, 1401 S. Pacific Avenue, Tacoma

EXHIBIT B
LEGAL DESCRIPTION

Parcel 2014030010 (1401 Pacific Ave.): Section 04 Township 20 Range 03 Quarter 33 : NEW
TACOMA L 1 THRU 3 B 1403.

Parcel 2014030020 (1407 Pacific Ave.): Section 04 Township 20 Range 03 Quarter 33 : NEW
TACOMA L 4 B 1403.

Parcel 2014030030 (1409 Pacific Ave.): Section 04 Township 20 Range 03 Quarter 32 : NEW
TACOMA L 5 B 1403.

EXHIBIT C
PUBLIC PARTICIPATION PLAN



PUBLIC PARTICIPATION PLAN

Sauro's Cleanerama

**1401, 1407 and 1409 Pacific Avenue
Tacoma, WASHINGTON**

Prepared by
Washington State Department of Ecology
Southwest Regional Office
Toxics Cleanup Program
300 Desmond Drive
Olympia, Washington 98504-7775

September 2008

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INTRODUCTION

The Washington State Department of Ecology (Ecology) has developed this public participation plan in cooperation with the potentially liable party (PLP), the City of Tacoma, to promote meaningful community involvement during the investigation and cleanup of the Sauro's Cleanerama site. Public involvement is a requirement of the Model Toxics Control Act (MTCA), and an important part of the cleanup process. This plan outlines and describes the tools that Ecology uses to inform the public about site activities and identifies opportunities for the community to become involved.

Ecology and the City of Tacoma have signed a legal agreement called an Agreed Order that describes their working relationship, outlines the scope of work and sets a schedule for choosing a cleanup remedy. The agreed order requires that the PLP completes a remedial investigation (RI) to determine the nature and extent of contamination in this area. It also requires that a feasibility study (FS) be completed to evaluate cleanup alternatives. Additionally, it requires that the PLP then develop a draft Cleanup Action Plan.

More information about the cleanup process and planned public comment periods is provided on page 6.

SITE LOCATION AND SITE BACKGROUND

The Sauro's Cleanerama site is located at 1401 Pacific Avenue in downtown Tacoma (see map on page 5). It includes three vacant lots—1401, 1407, and 1409 Pacific Avenue.

1401 Pacific Avenue - The lot at 1401 Pacific Avenue was first developed during the 1880s. The first structures were boarding houses and a hay and grain store. The site was then a bus terminal from the 1920s until 1957. In 1961, Sauro's Cleanerama began a dry cleaning operation. The building was demolished after they went out of business in 2000.

1407 Pacific Avenue - A hotel and laundry occupied the lot at 1407 Pacific Avenue from the late 1800s until 1971. Sauro's Cleanerama used the vacant hotel building for storage in the 1990s.

1409 Pacific Avenue - The lot at 1409 Pacific Avenue hosted several businesses, from a farm implement and seed store, to a tailor and clothes cleaner.

The entire site has been vacant since 2000.

Several studies, done between 1991 and 2008, show that the site has polluted soil and groundwater. The pollutants that exceed state Model Toxics Control Act (MTCA) cleanup standards are halogenated volatile organic compounds (HVOCs).

These chemicals all pose a threat to human health and the environment. Ecology and the Estate of Pete Sauro, and the City of Tacoma have studied the site to determine where these pollutants are and how much pollution exists. This information will help Ecology plan the cleanup.

Additional study will be conducted to look at how to avoid recontamination after the cleanup work is done.

SITE CLEANUP PROCESS

Toxic sites are cleaned up in stages, described below. Each stage has a related report or plan that the public is welcome to review and comment on.

Remedial Investigation & Feasibility Study (RI/FS)

The RI/FS looks at the extent and type of pollution on the site. It is used to evaluate possible human health and environmental impacts, and to find cleanup alternatives.

Interim Actions

Ecology may sometimes take “interim actions” to partially clean up a site before the final cleanup plan is complete. *If Ecology decides to do interim cleanup, those plans would be made available for public comment.*

Cleanup Action Plan (CAP)

The CAP describes the cleanup methods and how they will meet Ecology’s cleanup standards. *The RI/FS report and a draft CAP for this site will be available for public comment.*

Cleanup

Toxic substances are removed from the site, contained on the site, or treated to make them less toxic. Ecology will make sure that the CAP has been followed and can require that the site be monitored. *Any major changes to the CAP require a public notice before they can be finalized.*

Delisting

Ecology keeps track of toxic cleanup sites on the Hazardous Sites List (HSL). Once the cleanup is complete, the public will have a chance to comment before the site is taken off the HSL.

More information about toxic cleanups is available at http://www.ecy.wa.gov/programs/tcp/cu_support/cu_process_steps_defns.htm.

PUBLIC PARTICIPATION ACTIVITIES AND RESPONSIBILITIES

The purpose of this Public Participation Plan is to promote public understanding and participation in the cleanup of this site. This section of the plan addresses how Ecology will share information and receive public comments and community input on the site activities.

Public Involvement Activities

Ecology uses several activities to increase public participation in the investigation and cleanup of MTCA sites—public comment periods, public meetings or hearings, and communications such as fact sheets and public notices. The following sections describe the public involvement activities that Ecology will use for the Sauro's Cleanerama site cleanup.

Formal Public Comment Periods

Comment periods are the primary method Ecology uses to get feedback from the public on proposed cleanup decisions. Comment periods usually last 30 days and are required at key points during the investigation and cleanup process before final decisions are made.

During a comment period, the public can comment in writing. Verbal comments are taken if a public hearing is held. After formal comment periods, Ecology reviews all comments received and may respond in a document called a Responsiveness Summary.

Ecology will consider the need for changes or revisions based on input from the public. If significant changes are made, then a second comment period may be held. If no significant changes are made, then the draft document(s) will be finalized.

Additional public comment periods will be held for draft remedial investigation/feasibility studies, for any draft cleanup action plans that are developed for the site, and for any future legal agreements regarding this site.

Public Meetings and Hearings

Public meetings may be held at key points during the investigation and cleanup process. Ecology also may offer public meetings for actions expected to be of particular interest to the community, or when 10 or more members of the public request one. These meetings will be held at locations convenient to the community.

Information Repositories

Information repositories are places where the public may read and review site information, including documents that are the subject of public comment.

Ecology has established four repositories for the Sauro's Cleanerama cleanup project.

- Tacoma Public Library – 1102 Tacoma Avenue, Tacoma, WA 98402, (253) 591-5666.
- Citizens for a Healthy Bay – 917 Pacific Ave. Suite 100, Tacoma 98402, (253) 383-2429.
- Washington State Department of Ecology, 300 Desmond Drive, Lacey, WA 98516. Please call (360) 407-6045 for an appointment.

Some site information also will be posted on Ecology's web site at http://www.ecy.wa.gov/programs/tcp/sauros/sauros_hp.htm.

Site Register

Ecology's Toxics Cleanup Program uses its bimonthly *Site Register* to announce all of its public meetings and comment periods, as well as many other activities. To receive the *Site Register* in electronic or hard copy format, contact Linda Thompson at (360) 407-6069 or by e-mail at Ltho461@ecy.wa.gov. It is also available on Ecology's web site at http://www.ecy.wa.gov/programs/tcp/pub_inv/pub_inv2.html

Mailing List

Ecology has created a mailing list for the site. The list includes individuals, groups, public agencies, elected officials, private businesses, potentially affected parties, and other known interested parties. Residents and property owners living within a half mile of the site boundaries were included. The list will be maintained at Ecology's Southwest Regional Office and will be updated as needed.

Please contact Hannah Aoyagi at (360) 407-6790 or by e-mail at haoy461@ecy.wa.gov if you would like to be involved or have your address added to or deleted from this mailing list.

Fact Sheets

Ecology will mail fact sheets to persons and organizations interested in the Sauro's Cleanerama cleanup project to inform them of public meetings and comment opportunities and important site activities. Ecology also may mail fact sheets about the progress of site activities.

Newspaper Display Ads

Ecology will place ads in the Tacoma News Tribune to announce public comment periods and public meetings or hearings for the site.

Plan Update

This public participation plan may be updated as the project moves forward. If an update is necessary, the revised plan will be submitted to the public for comment.

Points of Contact

If you have questions or need more information about this plan or the Sauro's Cleanerama cleanup project, please contact:

Marv Coleman, Site Manager
Washington State Department of Ecology
SWRO Toxics Cleanup Program
P.O. Box 47775
Olympia, WA 98504-7775
Phone: (360) 407-6259
Email: mcol461@ecy.wa.gov

Hannah Aoyagi, Public Involvement Coordinator
Washington State Department of Ecology
SWRO Toxics Cleanup Program
P.O. Box 47775
Olympia, WA 98504-7775
Lacey, WA 98503
Tel: (360) 407-6790
Email: haoy461@ecy.wa.gov

GLOSSARY

Agreed Order: A legal agreement between Ecology and a potentially liable person to conduct work toward a cleanup.

Cleanup: Actions taken to deal with a release, or threatened release of hazardous substances that could affect public health and/or the environment. The term "cleanup" is often used broadly to describe various response actions or phases of remedial responses such as the remedial investigation/feasibility study.

Cleanup Action Plan (CAP): A document that explains which cleanup alternative(s) will be used at sites for the cleanup. The cleanup action plan is based on information and technical analysis generated during the remedial investigation/feasibility study and consideration of public comments and community concerns.

Comment Period: A time period during which the public can review and comment on various documents and proposed actions. For example, a comment period may be provided to allow community members to review and comment on proposed cleanup action alternatives and proposed plans.

Contaminant: Any hazardous substance that does not occur naturally or occurs at greater than natural background levels

Feasibility Study: This study develops and evaluates cleanup options for a given site.

Groundwater: Water found beneath the earth's surface that fills pores between materials such as sand, soil, or gravel. In some aquifers, ground water occurs in sufficient quantities that it can be used for drinking water, irrigation and other purposes.

Information Repository: A file containing current information, technical reports, and reference documents available for public review. The information repository is usually located in a public building that is convenient for local residents such as a public school, city hall, or library.

Model Toxics Control Act (MTCA): Legislation passed by citizens of the State of Washington through an initiative in 1988. Its purpose is to identify, investigate, and clean up facilities where hazardous substances have been released. It defines the role of Ecology and encourages public involvement in the decision making process. MTCA regulations are administered by the Washington State Department of Ecology.

Potentially Liable Person: Any individual(s) or company(s) potentially responsible for, or contributing to, the contamination problems at a site. Whenever possible, Ecology requires these PLPs, through administrative and legal actions, to clean up sites.

Public Notice: At a minimum, adequate notice mailed to all persons who have made a timely request of Ecology and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropriate news media; published in the local (city and

county) newspaper of largest circulation; and the opportunity for the interested persons to comment.

Public Participation Plan: A plan prepared to encourage coordinated and effective public involvement designed to the public's needs at a particular site.

Remedial Investigation: This study characterizes the site and defines the extent of contamination.

Remedial Investigation/Feasibility Study: Two distinct but related studies. They are usually performed at the same time, and together referred to as the "RI/FS." They are intended to:

- Gather the data necessary to determine the type and extent of contamination;
- Establish criteria for cleaning up the site;
- Identify and screen cleanup alternatives for remedial action; and
- Analyze in detail the technology and costs of the alternatives.

Responsiveness Summary: A summary of oral and/or written public comments received by Ecology during a comment period on key documents, and Ecology's responses to those comments. The responsiveness summary is especially valuable during the Cleanup Action Plan phase at a site when it highlights community concerns.

Risk: The probability that a hazardous substance, when released into the environment, will cause an adverse effect in the exposed humans or living organisms.

Sediments: Settled particles located at the bottom of a lake, river or in wetlands. Sediment(s) also includes settled particulate matter exposed by human activity (e.g., dredging) to the biologically active aquatic zone or to the water column.

Site: Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft; or any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

Toxicity: The degree to which a substance at a particular concentration is capable of causing harm to living organisms, including people, plants and animals.

EXHIBIT D

APPLICABLE PERMITS AND SUBSTANTIVE REQUIREMENTS

- Chapter 70.105D RCW (Model Toxics Control Act), and Chapter 173-340 WAC (MTCA Regulations);
- Chapter 70.105 RCW (Washington State Hazardous Waste Management Act), and Chapter 173-303 WAC (State Dangerous Waste Regulations);
- Chapter 90.48 RCW (State Water Pollution Control Act);
- Chapter 70.95 RCW (Solid Waste Management – Reduction and Recycling);
- Chapter 70.94 RCW (Washington Clean Air Act);
- Chapter 173-160 RCW (Minimum Standards for Construction and Maintenance of Wells);
- Chapter 43.21C RCW (State Environmental Policy Act), and Chapter 197-11 WAC (State Environmental Policy Act Rules);
- Washington Industrial Safety and Health Act (WISHA);
- Puget Sound Air Pollution Control Agency (Regulation I and III);
- City of Tacoma Municipal Code – Chapter 70 (Uniform Building Code – Excavation and Grading);
- City of Tacoma Municipal Code – Chapter 12.08 City Code (Provisions for Acceptance for Discharges to Sewer System); and
- Tacoma Pierce County Health Department (Waste Disposal Authorization).

EXHIBIT E

Model Restrictive (Environmental) Covenant

After Recording Return to:

Department of Ecology
[fill in regional address]

Environmental Covenant

Grantor: [land owner]

Grantee: State of Washington, Department of Ecology

Legal: [fill in brief legal description]

Tax Parcel Nos.: [fill in]

Cross Reference: [if amendment, recording number of original covenant]

Grantor, _____ [land owner] _____, hereby binds Grantor, its successors and assigns to the land use restrictions identified herein and grants such other rights under this environmental covenant (hereafter "Covenant") made this day of _____, 200__ in favor of the State of Washington Department of Ecology (Ecology). Ecology shall have full right of enforcement of the rights conveyed under this Covenant pursuant to the Model Toxics Control Act, RCW 70.105D.030(1)(g), and the Uniform Environmental Covenants Act, 2007 Wash. Laws ch. 104, sec. 12.

This Declaration of Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by [NAME OF PROPERTY OWNER], its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

A remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Covenant. The Remedial Action conducted at the property is described in the following document[s]:

[INSERT THE DATE AND TITLE FOR CLEANUP ACTION PLAN and other documents as applicable].

These documents are on file at Ecology's [Insert Office Location] Office.

+++++++Select the appropriate scenario for the property+++++++

SCENARIO 1:

This Covenant is required because the Remedial Action resulted in residual concentrations of [SPECIFICALLY LIST SUBSTANCE(S)] which exceed the Model Toxics Control Act Method [LIST APPLICABLE METHOD] Cleanup Level(s) for [SOIL, GROUNDWATER, ETC.] established under WAC 173-340-____.

++++and/or++++

SCENARIO 2:

This Restrictive Covenant is required because a conditional point of compliance has been established for [SOIL, GROUNDWATER, ETC.].

SCENARIO 3:

If the Remedial Action does not fit within Scenarios 1 and/or 2 and you believe that the property still needs a Restrictive Covenant, contact the AG's office.

+++++

The undersigned, [NAME OF PROPERTY OWNER], is the fee owner of real property (hereafter "Property") in the County of [NAME OF COUNTY], State of Washington, that is subject to this Covenant. The Property is legally described [AS FOLLOWS: (insert legal description language)] -or- [IN ATTACHMENT A OF THIS COVENANT AND MADE A PART HEREOF BY REFERENCE (attach document containing legal description)].

[NAME OF PROPERTY OWNER] makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

Section 1. (This Section must describe with particularity the restrictions to be placed on the property.)

1. If the property was remediated to industrial soil cleanup standards, then use the following sentence: "The Property shall be used only for traditional industrial uses, as described in RCW 70.105D.020(23) and defined in and allowed under the [CITY -or- COUNTY] of [_____] 's] zoning regulations codified in the [OFFICIAL NAME OF ZONING REGULATION] as of the date of this Restrictive Covenant."

2. If the groundwater contains hazardous substances above cleanup levels, then use the following sentence: "No groundwater may be taken for [LIST THE PROHIBITED USES, E.G., DOMESTIC, AGRICULTURAL, OR ANY USE] from the Property."

3. If the soil contains hazardous substances above cleanup levels, then describe prohibited activities as follows:

a. For contaminated soil under a structure use the following sentence: "A portion of the Property contains [SPECIFICALLY LIST SUBSTANCE(S)] contaminated soil located [SPECIFICALLY DESCRIBE WHERE THE SOIL IS LOCATED, I.E., UNDER THE SOUTHEAST PORTION OF BUILDING 10]. The Owner shall not alter, modify, or remove the existing structure[s] in any manner that may result in the release or exposure to the environment of that contaminated soil or create a new exposure pathway without prior written approval from Ecology."

b. Example language for contaminated soil under a cap: "Any activity on the Property that may result in the release or exposure to the environment of the contaminated soil that was contained as part of the Remedial Action, or create a new exposure pathway, is prohibited. Some examples of activities that are prohibited in the capped areas include: drilling, digging, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability, piercing the surface with a rod, spike or similar item, bulldozing or earthwork."

Section 2. Any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited.

Section 3. Any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 4. The Owner of the property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 5. The Owner must restrict leases to uses and activities consistent with the Covenant and notify all lessees of the restrictions on the use of the Property.

Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 7. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, to determine compliance with this Covenant, and to inspect records that are related to the Remedial Action.

Section 8. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

[NAME OF GRANTOR]

[Name of Signatory]
[Title]

Dated: _____

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

[Name of Person Acknowledging Receipt]
[Title]

Dated: _____

[INDIVIDUAL ACKNOWLEDGMENT]

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 20__, I certify that _____ personally appeared before me, and acknowledged that **he/she** is the individual described herein and who executed the within and foregoing instrument and signed the same at **his/her** free and voluntary act and deed for the uses and purposes therein mentioned.

Notary Public in and for the State of
Washington, residing at _____.
My appointment expires _____.

[CORPORATE ACKNOWLEDGMENT]

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 20__, I certify that _____ personally appeared before me, acknowledged that **he/she** is the _____ of the corporation that executed the within and foregoing instrument, and signed said instrument by free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that **he/she** was authorized to execute said instrument for said corporation.

Notary Public in and for the State of
Washington, residing at _____.
My appointment expires _____.

[REPRESENTATIVE ACKNOWLEDGEMENT]

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 20__, I certify that _____ personally appeared before me, acknowledged that **he/she** signed this instrument, on oath stated that **he/she** was authorized to execute this instrument, and acknowledged it as the _____ [type of authority] of _____ [name of party being represented] to be the free and voluntary act and deed of such party for the uses and purposes mentioned in the instrument.

Notary Public in and for the State of
Washington, residing at _____.
My appointment expires _____.