

1998

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:)
The Port of Olympia)
Nick Handy, Executive Director) AGREED ORDER
915 Washington Street Northeast) NO. DE 97TC-S417
Olympia, WA 98501)

TO: The Port of Olympia
915 Washington Street Northeast
Olympia, WA 98501

I.

JURISDICTION

This Agreed Order (Order) is issued pursuant to the authority of Revised Code of Washington 70.105D.050(1).

II.

FINDINGS OF FACT

The Department of Ecology makes the following Findings of Fact, without admission of such facts by the Port of Olympia.

1. The Cascade Pole-Olympia hazardous waste site is located on North Washington Street, at the northern end of the Port of Olympia peninsula between the east and west bays of Budd Inlet. From 1957 to 1986, the Cascade Pole Company operated a wood-treating facility on property leased from the Port of Olympia. Prior to that time, several other wood-treating businesses operated at the site. The legal description of the site is Section 11, Township 18 North, Range 2 West of the Willamette Meridian, Thurston County, Washington.

2. The site is the subject of a prior Consent Decree, State of Washington v. Cascade Pole Co., Inc. and the Port of Olympia, Thurston County Superior Court No. 90-2-1183-3, hereinafter

referred to as "the Decree". Section I. of the Decree identifies the jurisdictional facts upon which this Order is based.

3. In 1996, Ecology required the Port of Olympia to contain and recover DNAPLs in order to protect human health and the environment. The Port of Olympia constructed a DNAPLs recovery trench and installed a subsurface containment wall along a 350-foot portion of the site shoreline to reduce the potential for liquid creosote to move offshore.

At the present time approximately 5.8 acres of the site is being paved which is within the containment wall. The purpose of paving the 5.8 acres is to reduce infiltration of rainwater into the highly contaminated area of the site, which will reduce the amount of contaminated ground water for treatment. This will in turn enhance effectiveness of the pump/treat system by creating an inward ground water gradient away from the containment wall and an upward gradient from the lower aquitard. Figure 1 in Appendix A. shows the approximate sections of the site, which are being paved. This Order requires the Port of Olympia to submit preliminary and as-built plans and specifications of the paved area within the containment wall upon completion of construction.

4. This Order also requires the Port of Olympia to install multi-lingual signs on the shoreline area in the vicinity of contaminated sediments to warn the public of sediment contaminated with wood treating chemicals.

5. Since 1993, the Port of Olympia has been recovering free product. At the present time, there are approximately 2,200 gallons of DNAPLs and LNAPLs stored at the site. This Order requires the Port of Olympia to submit a proposal to recycle or dispose of the recovered DNAPLs and LNAPLs that are stored at the site and that will be recovered in the future by the existing systems.

6. Following two studies by the Port of Olympia in 1992 and 1993, the Department of Ecology and the Port of Olympia negotiated that contaminated sediment from approximately 6 acres area in Budd Inlet must be excavated in order to reduce the threat to human health and the environment. The Port of

Olympia proposed a pilot project to dredge approximately 100 yards of contaminated sediment between June 15 and September 30 of 1998. The pilot dredging project will provide information for development of a full -scale sediment cleanup effort for the 6 acres area. Figure 1 shows the approximate area of the pilot dredging area.

III.

ECOLOGY DETERMINATIONS

1. The Port of Olympia is an owner as defined at RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4).
2. The facility is known as Cascade Pole and is located at Olympia, Washington.
3. The substances found at the facility as described above are "hazardous substances" as defined in RCW 70.105D.020(7).
4. Based on the presence of these hazardous substances at the facility and all factors known to Ecology, there has been a release of hazardous substances from the facility, as defined in RCW 70.105D.020(20).
5. Ecology has previously notified the Port of Olympia of its status as a PLP as defined in RCW 70.105D.040 and RCW 70.105D.020 (16) after notice and opportunity for comment. The PLP has performed the remedial investigation and feasibility study. The remedial action will be done in the future.
6. Pursuant to RCW 70.105D.030(1) and 70.105D.050, the Department may require potentially liable persons to investigate or conduct other remedial actions with respect to the release or threatened release of hazardous substances, whenever it believes such action to be in the public interest.
7. Based on the foregoing facts, Ecology believes the remedial action required by this Order is in the public interest. The interim actions required are considered to be fundamental components of any long term remedial action and do not preclude future alternatives for permanent cleanup or land- use.

IV.

WORK TO BE PERFORMED

Based on the foregoing Facts and Determinations, it is hereby ordered that Port of Olympia take the following interim remedial actions and that these actions be conducted in accordance with Chapter 173-340 Washington Administrative Code (WAC) unless otherwise specifically provided for herein.

1. Within thirty (30) days of the effective date of this agreed order, submit a document outlining the Port of Olympia's plans for disposal or recycling of recovered DNAPLs and LNAPLs presently stored at the site and product DNAPLs and LNAPLs recovered in the future by the existing system.
2. The final DNAPLs and LNAPLs handling plan incorporating Ecology's comments on the draft version shall be submitted to Ecology within fifteen (15) days of receipt of Ecology's comments.
3. Subsequent to approval of the final document the Port of Olympia will dispose of or recycle the recovered free product in accordance with the approved plan governed by this agreed order. Any deviation from this plan must be submitted in writing reviewed and approved by Ecology.
4. Submit preliminary plans and specifications for the proposed paved area within the containment wall within ten (10) days of the effective date of this agreed order and submit as-built plans and specifications for the paved area within thirty (30) days of completion of the paving within the containment wall.
5. Upon installation of the signs on the shoreline area, submit a letter to Ecology stating the number of signs that have been installed, their contents, and the various languages in which they have been

written.

6. Within sixty (60) days of the effective date of this agreed order, submit a plan describing in detail the pilot dredging project to Ecology for review and comments. Submit final pilot dredging project plan incorporating Ecology's comment on the draft version within fifteen (15) days of receipt of Ecology's comments.

V.

TERMS AND CONDITIONS OF ORDER

1. Definitions.

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

2. Public Notices.

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

3. Remedial Action Costs.

The Port of Olympia shall pay to Ecology costs incurred by Ecology pursuant to this Order. These costs shall include work performed by Ecology or its contractors for investigations, remedial actions, Order preparation, oversight, and administration. Ecology costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). The Port of Olympia 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 description of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges.

4. Designated Project Coordinators.

The project coordinator for Ecology is:

Mohsen Kourehdar
Department of Ecology
Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775

The project coordinator for the Port of Olympia is:

Don J. Bache
915 Washington Street Northeast
Olympia, WA 98501-6931

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and the Port of Olympia, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the project coordinator(s). Should Ecology or the Port of Olympia change project coordinator(s), written notification shall be provided to Ecology or the Port of Olympia at least ten (10) calendar days prior to the change. Ecology shall not communicate or give direction to contractors or subcontractors on site that would result in a change in the contract between the Port and those with whom the Port has contracted for work to be performed on the site. This restriction does not limit Ecology's authority expressed in Section "6. Access" below.

5. Performance.

All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or similar expert, with appropriate training, experience and expertise in hazardous waste site investigation and cleanup. The Port of Olympia shall notify Ecology as to the identity of such engineer(s) or hydrogeologist(s), and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the site. The Port of Olympia shall provide a copy of this Order to all agents, contractors, and subcontractors

retained to perform work required by this Order and shall ensure that all work undertaken by such agents, contractors and subcontractors will be in compliance with this Order.

Except where necessary to abate an emergency situation, the Port of Olympia shall not perform any remedial actions at Cascade Pole/Olympia outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

6. Access

Ecology or any Ecology authorized representative shall have the authority to enter and freely move about the site at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the Port of Olympia. By signing this Order, the Port of Olympia agrees that this Order constitutes reasonable notice of access, and agrees to allow access to the site at all reasonable times for purposes of overseeing work performed under this Order. Ecology shall not communicate or give direction to contractors or subcontractors on site and shall communicate only through authorized Port personnel. Ecology shall allow split or replicate samples to be taken by the Port of Olympia during an inspection unless doing so interferes with Ecology's sampling. The Port of Olympia shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before any sampling activity.

7. Public Participation

The Port of Olympia shall prepare and/or update a public participation plan for this order. Ecology shall maintain the responsibility for public participation at the site. The Port of Olympia shall help coordinate and implement public participation for the site.

8. Retention of Records

The Port of Olympia shall preserve in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of completion of the work performed pursuant to this Order, all records, reports, documents, and underlying data in its possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of the Port of Olympia, then the Port of Olympia agrees to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.

9. Dispute Resolution.

The Port of Olympia may request Ecology to resolve disputes, which may arise during the implementation of this Order. Such request shall be in writing and directed to the signatory, or his/her successor(s), to this Order. Ecology's resolution of the dispute shall be a final decision by Ecology. The Port of Olympia is not relieved of any requirement of this Order during the pendency of the dispute and remains responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.

10. Reservation of Rights/No Settlement.

This Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against the Port of Olympia to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the Port of Olympia to require those remedial actions required by this Order, provided the Port of Olympia complies with this Order.

This work to be performed in this order is an interim step, not intended to complete the remediation at the site. Ecology reserves the right, however, to require additional remedial actions at the site should it deem such actions necessary.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources


resulting from the releases or threatened releases of hazardous substances from Cascade Pole/Olympia.

In the event Ecology determines that work done pursuant to this order is creating or has the potential to create a danger to the health or welfare of the people on the site or in the surrounding area or to the environment, Ecology may order the Port of Olympia to stop further implementation of this Order for such period of time as needed to abate the danger.

11. Transference of Property.

No voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the site shall be consummated by the Port of Olympia without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to transfer of any legal or equitable interest the Port of Olympia may have in the site or any portions thereof, the Port of Olympia shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, the Port of Olympia shall notify Ecology of the contemplated transfer.

 12. Compliance with Applicable Laws.

A. All actions carried out by the Port of Olympia pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in paragraph B of this section.

B. Pursuant to RCW 70.105D.090(1), the substantive requirements of Chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial action under this Order that are known to be applicable at the time of issuance of the Order are binding and enforceable requirements of the Order.

Port of Olympia 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 the Port of Olympia determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify Ecology of this determination. Ecology shall determine whether Ecology or the Port of Olympia shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the Port of Olympia shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the Port of Olympia and on how the Port of Olympia must meet those requirements. Ecology shall inform the Port of Olympia in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The Port of Olympia shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Ecology shall ensure that notice and opportunities for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the state to administer any federal law, the exemption shall not apply and the Port of Olympia shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

VI.

SATISFACTION OF THIS ORDER

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

Order, as amended by any modifications, and that all other provisions of this Order have been complied with.

VII.

ENFORCEMENT

1. Pursuant to RCW 70.105D.050, this Order may be enforced as follows :

- A. The Attorney General may bring an action to enforce this Order in a state or federal court.
- B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent

by Ecology for investigative and remedial actions and orders related to this order.

C. In the event the Port of Olympia refuses, without sufficient cause, to comply with any term of this Order, the Port of Olympia will be liable for:


(1) 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

Civil penalties of up to \$25,000 per day for each day it refuses to

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: 4/24/98

The Port of Olympia


ACTING EXECUTIVE DIRECTOR
Nixon Handy, Executive Director

4/8/98

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY


David B. Jansen
Southwest Region Supervisor
Toxics Cleanup Program