



FS 1770486

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

January 18, 2005

CERTIFIED MAIL

Mr. Scott Strine
Vice President
ProLogis Development Services Incorporated
14100 East 35th Place, Suite 100
Aurora, CO 80011-1618


Dear Mr. Strine:

Re: ProLogis Site Agreed Order No. 1160

Enclosed is a copy of the Department of Ecology (Ecology) signed Final Agreed Order No. 1160 for ProLogis site located at 2000 Taylor Way, Tacoma, Washington. Ecology appreciates your cooperation in finalizing this Agreed Order. The 30-day public comment period on this Agreed Order will start on January 19, 2005.

If you have any questions, please call me at (360) 407-6243.

Sincerely,


Panjini Balaraju
Project Manager
Toxics Cleanup Program
Southwest Regional Office

PB:le(1/top)
Enclosure

cc: Brad Jones, Gordon, Thomas, Honeywell et.al
Rebecca Lawson, Ecology
Bob Warren, Ecology
Kaia Petersen, Ecology





RECEIVED

DEC 21 2004

Washington State
Department of Ecology

December 20, 2004

VIA OVERNIGHT

Mr. Panjini Balaraju
Department of Ecology
Toxics Cleanup Program – Southwest Regional Office
300 Desmond Drive
Olympia, Washington 98504

**Re: Agreed Upon Order
DE TCPSR-1160
Tacoma, Washington**

Dear Mr. Balaraju:

Enclosed for you are two (2) copies of the Agreed Upon Order DE TCSSR-1160 signed by ProLogis Development Services Incorporated. Please have the Department of Ecology sign both copies and return one (1) copy for my records. After I have received the executed copy, I will authorize Floyd Snider to schedule the initial investigation work at the site. We expect this work to start in mid-January.

Please call me at (303) 576-2676 if you have any questions.

Sincerely,

PROLOGIS DEVELOPMENT
SERVICES INCORPORATED

A handwritten signature in black ink, appearing to read "Scott Strine", written over a white background.

Scott Strine
Vice President

Cc: Brad Jones -- Gordon, Thomas, Honeywell



STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

P.O. Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

CERTIFIED MAIL

December 10, 2004

Mr. Scott Strine
ProLogis Development Services Incorporated
14100 E 35th Place, Suite 100
Aurora, Colorado 80011-1618

Re: ProLogis Site Agreed Order Number DE ICPSR-1160

Dear Mr. Strine:

Enclosed is a copy of ProLogis Site's Final Agreed Order Number DE ICPSR-1160 for your signature. Please sign the Agreed Order and send it back to me at your earliest convenience.

The Department of Ecology (Ecology) is developing a Public Participation Plan and finalizing a Fact Sheet. Soon after the signed Agreed Order is received by Ecology, it will be sent out for the public comment.

If you have any questions, please call me at (360) 407-6243.

Sincerely,

Panjini Balaraju
Project Manager
Toxics Cleanup Program
Southwest Regional Office

PB/ksc:Agreed Order Cover letter prologis

Enclosure:

Cc: Brad Jones, Gordon, Thomas, Honeywell et. al
Rebecca Lawson, Ecology
Bob Warren, Ecology
Kaia Petersen, Ecology





STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

RECEIVED

DEC 21 2004

Washington State
Department of Ecology

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF REMEDIAL ACTION BY:)

ProLogis Development Services Incorporated)

)

)

AGREED ORDER

NO. DE 04TCPSR-1160

PROLOGIS SITE



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EXHIBITS

Exhibit A:	Site Diagram
Exhibit B:	Agreed Order Schedule
Exhibit C:	Groundwater Flow Direction
Exhibit D:	CleanCare Facility Groundwater Investigation Results
Exhibit E:	Don Oline Landfill Activities
Exhibit F:	Poligen (current CleanCare Facility) Activities
Exhibit G:	Historical Land Use/Backfilling in the vicinity of ProLogis Property
Exhibit H:	AOL Express Phase I Investigation
Exhibit I:	AOL Express Phase II Investigation
Exhibit J:	AOL Express Phase II Investigation, Soil Vapor Survey
Exhibit K:	AOL Express Phase II Investigation, Soil and Groundwater Results
Exhibit L:	AOL Express Phase II Groundwater Monitoring Results
Exhibit M:	AOL Express Final Independent Remedial Action (IRA)
Exhibit N:	Ecology No Further Action Letter
Exhibit O:	RI/FS Work Plan
Exhibit P:	Public Participation Plan

I. INTRODUCTION

The mutual objective of the Washington State Department of Ecology (Ecology) and ProLogis Development Services Incorporated (ProLogis) under this Agreed Order is to provide for a remedial investigation (RI) and feasibility study (FS) at a facility where Ecology has determined there has been a release or threatened release of a hazardous substance. ProLogis has been identified by Ecology as potentially a liable person (PLP) for the "ProLogis" site (or Site) and is participating in this Agreed Order without any admission of liability or fact. The activities in this Agreed Order are designed to evaluate the potential for contamination from total petroleum hydrocarbons (TPH), volatile organic compounds (VOCs), semivolatile organic compounds (SVOCs), and metals that may be present at the ProLogis Site located at 2000 Taylor Way in Tacoma, Washington, and the risks, if any, posed to human health and the environment from contamination at the Site.

II. JURISDICTION

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

III. PARTIES BOUND

This 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 the Order. ProLogis agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter ProLogis' responsibility under this Order. ProLogis 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, 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.

1. "Site" or "ProLogis Site": Means the real property located at 2000 Taylor Way in Tacoma, Washington, in Pierce County currently owned by ProLogis. The Site is defined by the extent of contamination caused by the release of a hazardous substance(s) at the ProLogis property. Based upon

factors currently known to Ecology, the Site is more particularly described in Exhibit A to this Order, which is a detailed Site diagram. The Site constitutes a Facility under RCW 70.105D.020(4)

2. Parties: Refers to the State of Washington, Department of Ecology (Ecology) and ProLogis Development Services Incorporated (ProLogis).

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

4. RI/FS Work Plan: Refers to the Remedial Investigation and Feasibility Study Work Plan prepared by Floyd/Snider and dated October, 2004.

V. FINDINGS OF FACT

Ecology makes the following Findings of Fact, without any express or implied admissions of such facts by ProLogis.

1. The Site is located at 2000 Taylor Way, in Tacoma, Washington. Based on activities involved with the historical land use of the adjacent property which may have extended onto the ProLogis property, there is the potential for the presence of hazardous substances at the ProLogis property (as a result of the potential presence of hazardous substances on the adjoining property or contamination that has migrated from that property) including the possibility of releases of VOCs, SVOCs, TPHs, and metals. The zoning land usage in and around the Site vicinity is all heavy industrial and warehousing. The property is currently owned by ProLogis and is bounded by the former CleanCare Corporation Facility (CleanCare Facility) and Philips Corporation Facility (PSC Facility) to the west, Taylor Way to the north, Safeway to the east, and Educator to the south. The Site's location and the general vicinity map are shown on Exhibit A.

2. Based on the water level measurement contours developed at the PCS Facility and CleanCare Facility, the groundwater flow direction in the uppermost water bearing zone appears to be in the easterly direction (Exhibit C).

3. During groundwater investigations conducted at the former CleanCare Facility (located just west of ProLogis Site) between February 2001 and September 2002 a total of ten groundwater monitoring wells (shallow and deep) were installed and four rounds of quarterly groundwater monitoring

were conducted by the Tacoma Pierce County Health Department (TPCHD). Results of the groundwater samples collected from some of the monitoring wells (CCW-6C, CCW-6B, CCW-7C, and CCW-7B) located near the eastern property boundary between the CleanCare and ProLogis properties showed elevated levels of arsenic, TPHs, benzene, and polyaromatic hydrocarbons (PAHs) indicating the potential for off-site migration of these contaminants onto the ProLogis property (Exhibit D).

4. Don Oline operated a landfill on parcels 2002, 2044, 2043, 2052, and 2053 from late 1960s to early 1980s. Two of the parcels (2052 and 2053) were located adjacent (west) of the ProLogis property. The parcels were back filled with material that included lime solvent sludge wastes from Hooker Chemical, auto fluff from General Metals, ASARCO slag, etc. These filling activities might have crossed over onto ProLogis property since there may not have been any clear property demarcation such as the presence of a fence (Exhibit E).

5. Ecology records indicate that in 1984 an unspecified black material may have seeped from the Poligen Facility (current CleanCare Facility, Parcel 2054) onto the AOL Express property (currently ProLogis, formerly Buffelen Woodworking Company). The CleanCare facility was a treatment, storage, and disposal (TSD) facility located just west of the ProLogis property and is currently an inactive facility. When it was active, petroleum related wastes were handled at this facility (Exhibit F).

6. Historical aerial photographs (1961 through 1974) show impoundments on the eastern and northern portions of parcel 2052, on eastern portions of 2053 and the presence of a light-colored opaque liquid, a light-colored granular substance and waste piles located on the CleanCare property. Active filling appeared to have taken place during the early 1970s with lime sludge. The above parcels were located just west of the ProLogis property, and part of the impoundments appear to have been located on the current ProLogis property. Since some portions of these impoundments may have been on the current ProLogis property, there is the potential for the presence of hazardous substances on ProLogis property as a result of backfilling (Exhibit G).

7. The current ProLogis property was a portion of a larger size property formerly owned by AOL Express Inc. Ecology records show that phase I and II investigations were conducted at AOL Express property during the 1990s. Dames and Moore Consulting Company was hired by AOL Express Inc. to conduct the Phase I and II investigations at the AOL Express property described below.

8. In February 1990, a Phase I investigation was conducted of the larger AOL Express property. That Phase I investigation recommended a phase II investigation to evaluate the potential for contaminants at the AOL Express property (Exhibit H).

9. In July 1990, a Phase II investigation of soils and groundwater was conducted on the AOL Express property. Seven soil borings were drilled to approximately 25 foot depth and four borings were converted to monitoring wells. Soil samples were collected from each boring and analyzed for Volatile Organic Compounds (VOCs), Semivolatile Organic Compounds (SVOCs), and metals. There were no chemical exceedances of MTCA cleanup standards in any of the samples with the exception of organic compounds related to petroleum associated with a former underground storage tank (UST). Groundwater samples were collected and analyzed for VOCs, SVOCs and metals. Results failed to disclose chemical exceedances of MTCA cleanup standards with the exception of organic compounds encountered in one groundwater sample collected near the former UST. The Phase II investigation report recommended conducting additional investigations under the Model Toxics Control Act (MTCA) to investigate a potential petroleum release from the former UST (Exhibit I).

10. In June 1991, a soil vapor survey was conducted at the AOL Express property to evaluate the lateral extent of the total petroleum hydrocarbon-gasoline (TPH-G) contamination related to the former UST. Soil vapor samples were collected at twenty-eight (28) locations at 2 feet below the ground surface in the vicinity of the former UST. Volatile vapor concentrations ranged from 1.1 to 295 parts per million by Volume (ppmV) and the highest concentrations were recorded near the former UST location (Exhibit J).

11. In August 1991, twelve soil borings were drilled at the AOL Express property and seven of these borings were converted into groundwater monitoring wells based on the soil vapor survey results. Nine of these borings were drilled to a depth of 15 feet and the other three to a depth of 5 feet. A total of eight soil samples (one sample per boring) were collected for total petroleum-gasoline (TPH-G), benzene, ethyl benzene, toluene, and xylenes (BEIX) analysis. The maximum TPH-G and BEIX concentrations detected were 3600 mg/kg, 13 mg/kg, 100 mg/kg, 230 mg/kg, and 650 mg/kg, respectively (Exhibit K, Table 1a).

12. Twelve groundwater samples were subsequently collected from these borings at the AOL Express property as a part of the Phase II investigation into the extent of petroleum releases from the former UST. Samples were analyzed for TPH-G, BEIX, and lead (both total and dissolved). The

maximum TPH-G, BETX, and dissolved lead concentrations detected were 22,000 ug/l, 1,700 ug/l, 670 ug/l, 3200 ug/l, 4300 ug/l and 6 ug/l, respectively (Exhibit K, Table 1b).

13. During the AOL Express property Phase II investigation, seven groundwater monitoring wells were also installed. One well was monitored for five rounds, two wells were monitored for four rounds, and the other four wells were monitored for three rounds between 1990 and 1993. Groundwater samples were analyzed for TPH-G, BETX, and total and dissolved lead. The groundwater sample from one of the wells located near the former UST showed elevated levels of TPH-G (1800 ug/l) and benzene (1700 ug/l). Results of groundwater samples from all other wells were either non-detects or showed low levels of contamination (Exhibit L, Table 1b).

14. AOL Express, Inc. hired Dames and Moore to conduct a final independent remedial action at the property in 1998. As a part of this action, a total of 1820 cubic yards of TPH-G related contaminated soils exceeding the MICA cleanup levels were excavated and disposed of off-site (Exhibit M).

15. During the above excavation, groundwater was encountered at 3 to 4 feet below ground level with a minor hydrocarbon sheen. Approximately 10,000 gallons of potentially TPH contaminated groundwater was collected in baker tanks, treated with air sparging, and discharged into a City of Tacoma Sanitary Sewer System with a special discharge permit (Exhibit M).

16. A total of eighteen (18) soil and two groundwater samples were collected during December 1998 and February 1999, respectively, as a part of the post excavation confirmatory sampling for TPH-G and BETX analysis at the AOL Express property. Results of all the confirmatory samples were either non-detects or below MICA cleanup levels (Exhibit M, Table 1 and 2).

17. Ecology reviewed the Independent Remedial Action Reports and issued a No Further Action (NFA) letter to AOL Express, Inc. on June 27, 2000, regarding the release of TPH-related contamination at the AOL Express Inc. property located at 2000 Taylor Way in Tacoma, Washington (Exhibit P). Ecology has no new information that would cause it to withdraw its NFA letter with respect to any petroleum-related contamination in the area of the former UST and nothing in this Order shall be deemed a withdrawal or cancellation of the NFA letter (Exhibit N).

VI. ECOLOGY DETERMINATIONS

Ecology makes the following determinations, without any express or implied admissions by ProLogis.

1. ProLogis is the current "owner or operator," as defined in RCW 70.105D.020(12), of a "facility," as defined in RCW 70.105D.020(4).

2. The TPHs, VOCs, SVOCs, and metals documented in samples described under section V, paragraph 1 above, are "hazardous substances" as defined in RCW 70.105D.020(7). Based upon all factors known to Ecology, a "release" or "threatened release" of a "hazardous substance" as defined in RCW 70.105D.020(20) and RCW 70.105D.020(7), respectively, has occurred as a result of their potential presence at the Site and/or their migration to the Site from the adjacent property.

3. Based upon credible evidence, Ecology issued potentially liable person status letter on March 22, 2004, identifying ProLogis, pursuant to RCW 70.105D.040, RCW 70.105D.020(16), and WAC 173-340-500. ProLogis sent a letter to Ecology on March 29, 2004, waiving its 30-day comment period and accepting the potentially liable person status for the ProLogis Site but reserving any and all defenses it may have under MTCA. After providing for notice and opportunity to comment, Ecology notified ProLogis by letter dated April 1, 2004 of its status as a potentially liable person (PLP) under RCW 70.105D.040.

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

5. 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 foregoing Facts and Determinations, it is hereby ordered that ProLogis take the following actions and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein.

1. Remedial Investigation/Feasibility Study (RI/FS)

The ProLogis Site may contain IPH, VOCs, SVOCs, and metals contamination in Site soils and groundwater. The extent of soil and groundwater contamination, if any, on the Site is not known. ProLogis shall conduct a remedial investigation (RI) and a feasibility study (FS) at the Site in accordance with WAC 173-340, and comply with the following requirements:

A. Scope of Work:

(1) Work Plan: ProLogis submitted the RI/FS Work Plan to Ecology which Ecology approved on December 6, 2004. The RI/FS Work Plan includes a sampling and analysis plan (SAP) and a site specific health and safety plan (HASP). Ecology has determined that the RI/FS Work Plan meets the requirements of both a remedial investigation and a feasibility study under MTCA. Ecology has also determined that the sampling and analysis plan (SAP) and the site specific health and safety plan (HASP) for field work meet the requirements of WAC 173-340-820 and WAC 173-340-810, respectively. The SAP identifies the proposed number of soil borings and groundwater monitoring locations but does not limit the number of such potential locations, approximates depths of samples and borings (as appropriate), and includes a quality assurance/quality control (QA/QC) plan.

A draft RI/FS report shall be submitted to Ecology for review and comment within 90 calendar days of completion of field work and receipt of final analytical results. Ecology shall provide written comments within 45 calendar days of receipt of the draft report. ProLogis shall complete a final report within 30 calendar days of receipt of Ecology's comments.

Preparation of a draft cleanup action plan (draft CAP) is not a part of this Order. Ecology intends to require the preparation of a draft CAP for the Site in a subsequent Agreed Order or Consent Decree.

Ecology recognizes that there is an area wide groundwater issue with potential intermingled plumes in the vicinity of the ProLogis Site. Ecology intends to address the issues concerning area wide groundwater at a later date under a separate Agreed Order or Consent Decree with multiple PLPs. The resolution of issues associated with the area wide groundwater contamination are not a part of this Order.

(2) Schedule: The RI/FS Work Plan contains a schedule for the implementation of the work and includes provisions for Ecology's review and approval. This schedule is

attached as Exhibit B to this Agreed Order (Schedule). The RI/FS Work Plan shall be implemented according to the Schedule attached to this Order as Exhibit B.

ProLogis shall submit to Ecology a progress report the first week of each month regarding the progress of RI/FS work until such time as ProLogis has completed the work required in the RI/FS Work Plan. The monthly progress report shall include work completed to date, problems encountered and how they were resolved, and work scheduled for the subsequent month. Electronic submittals are acceptable.

(3) Extension of Schedule: The approved schedule attached as Exhibit B is based on the assumption that the weather will cooperate during the investigation. However, if good cause exists for an extension, a timely request for an extension may be granted pursuant to Section VIII.9. Should significant additional work be necessary based on information obtained during the remedial investigation, a supplemental work plan will be submitted to Ecology for review and approval according to an agreed schedule, including an agreed revised schedule for submission of the resulting RI/FS.

VIII. TERMS AND CONDITIONS OF ORDER

1. Public Notices: This Order has been the subject of public notice and comment pursuant to WAC 173-340-600.
2. Remedial Action Costs: ProLogis 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 both subsequent to the issuance of this Order and retroactive to January 1, 2004. As of September 30, 2004, Ecology has incurred approximately \$8,985 (staff time costs) at this Site. ProLogis shall pay this amount to Ecology as a single payment within sixty (60) days of signing this Agreed Order. ProLogis shall pay the subsequent quarterly invoices 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, the amount of time spent by involved staff members on the project, and a general description of the work performed. 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 pursuant to WAC 173-340-550(4).

3. Designated Project Coordinators:

The project coordinator for Ecology is:

Mr. Panjini Balaraju
Department of Ecology
Toxics Cleanup Program
Southwest Regional Office
P O. Box 47775
Olympia, WA 98504-7775
Telephone: (360) 407-6243
E-mail: pbal461@ecy.wa.gov

The primary project coordinator for ProLogis is:

Mr. Thomas Colligan
Floyd/Snider
83 South King Street, Suite 614
Seattle, WA 98104
Telephone: (206) 292-2078
E-mail: tom.colligan@floydsnider.com

with copies of all correspondence, reports, etc. to:

Mr. Scott Strine
ProLogis Trust
14100 East 35th Place
Aurora, CO 80011
Telephone: (303) 576-2676
E-mail: sstrine@prologis.com

Mr. Bradley Jones
1201 Pacific Avenue, Suite 2200
P.O. Box 1157
Tacoma, WA 98401-1157
Telephone: (253) 620-6485
E-mail: bjones@gth-law.com

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and ProLogis, 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 ProLogis change project coordinator(s), written notification shall be provided to Ecology or ProLogis at least ten (10) calendar days prior to the change.

4. Performance: All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or licensed hydrogeologist, or equivalent expert, with appropriate training, experience, and expertise in hazardous waste site investigation and cleanup. The ProLogis project coordinator 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 ProLogis project coordinator 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, ProLogis shall not perform any remedial actions at the Site outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

5. 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 ProLogis. By signing this Agreed Order, ProLogis agrees that this Order constitutes reasonable notice of access, and agrees to allow access to the Site at all reasonable times for purposes of overseeing work performed under this Order. Ecology shall allow split or replicate samples to be taken by ProLogis during an inspection. The PLP shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before any sampling activity.

6. Public Participation: Ecology shall prepare and/or update a public participation plan for the Site. Ecology shall maintain the responsibility for public participation at the Site. ProLogis shall help coordinate and implement public participation for the Site.

7. Retention of Records: ProLogis 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 ProLogis, then ProLogis agrees to include in the contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.

8. Dispute Resolution:

A. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, the Parties shall utilize the dispute resolution procedure set forth below.

(1) Upon receipt of the Ecology project coordinator's decision, ProLogis has fourteen (14) days within which to notify Ecology's project coordinator of its objection to the decision.

(2) 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.

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

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

B. 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.

C. 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.

9. Extension of Schedule

A. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least 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 the reason(s) the extension is needed. A requested extension shall not be effective until approved by Ecology. Ecology shall act upon any written request for extension in a timely fashion. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology shall give ProLogis written notification in a timely fashion of any extensions granted or denied pursuant to this Order.

B. The burden shall be on ProLogis to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion under the circumstances and that good cause exists for granting the extension. Good cause includes, but is not limited to:

(1) Circumstances beyond the reasonable control and despite the due diligence of ProLogis 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 ProLogis;
or

(2) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or

(3) Endangerment as described in Section VIII.10 of this Order.

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

10. 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 ProLogis to cease such activities for such period of time as it deems necessary to abate the danger. ProLogis shall immediately comply with such direction.

If, for any reason, ProLogis 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, ProLogis may cease such activities. ProLogis 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 ProLogis shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the ProLogis' cessation of activities, it may direct ProLogis to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, ProLogis' 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 for such period of time as Ecology determines is reasonable under the circumstances.

11. Reservation of Rights/No Settlement: This Agreed Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against ProLogis to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against ProLogis regarding remedial actions required by this Order provided ProLogis complies with this Order.

Ecology reserves the right, however, to require additional investigation at the Site should it deem such investigation necessary. 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.

12. Transference of Property: Ecology acknowledges that ProLogis may sell its interest in the ProLogis property to a third party prior to the completion of the work required by this Order. Nonetheless, no voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by ProLogis without provision for continued implementation of all requirements of this Order.

Prior to transfer of any legal or equitable interest ProLogis may have in the Site or any portions thereof, ProLogis 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, ProLogis shall notify Ecology of said transfer.

13. Compliance with Applicable Laws:

A. All actions carried out by ProLogis 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 subparagraph 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 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.

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

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

C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the state to administer any

federal law, the exemption shall not apply and ProLogis 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.

IX. SATISFACTION OF THIS ORDER

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

X. ENFORCEMENT

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

1. The Attorney General may bring an action to enforce this Order in a state or federal court.

2. 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.

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

A. Up to three 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 \$25,000 per day for each day it refuses to comply.

4. The terms of this Order are not appealable to the Washington Pollution Control Hearings Board. The terms of this Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order:

January 19, 2005

**PROLOGIS DEVELOPMENT SERVICES
INCORPORATED**

By: *[Signature]*

Its: Vice President

Date: December 16, 2004

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

By: *[Signature]*

Rebecca S. Lawson, P.E., Manager
Toxics Cleanup Program – SW Regional
Office

Date: January 19, 2005

REFERENCES

1. Tacoma Pierce County Health Department, CleanCare Groundwater Investigation
2. Dames & Moore, Final Independent Remedial Action Report, AOL Express, Tacoma, Washington, March 29, 1999.
3. Dames & Moore, Final Independent Remedial Action, Groundwater Monitoring Letter Report, AOL Express, Tacoma, Washington, August 17, 1999.
4. Dames & Moore, Soil and Groundwater Investigation and Independent Remedial Action, AOL Express, Tacoma, Washington, September 19, 1996.
5. Dames & Moore, AOL Express Facility 2000 Taylor Way, Tacoma, Washington, September 25, 1995.
6. Dames & Moore, Independent Remedial Action Report, AOL Express, Inc., Tacoma, Washington, June 29, 1994.
7. Dames & Moore, Results of the Fourth Ground Water Sampling Event at AOL Express, Inc., January 17, 1994.
8. Dames & Moore, AOL Express, Inc., Phase II Report, February 4, 1992.
9. Dames & Moore, AOL Express, inc., Phase II Site Assessment Report, July 26, 1990.
10. Science Applications International Corporation, Technical Enforcement Support at Hazardous Waste Sites, TES 11-Zone 4, February 1990.
11. PII Environmental Services, Chempro Tacoma Facility Potentially Liable Party Search, December 1989.