

Site Mgr. Marv Coleman
Site # 1213
SLC # J1B26
"1913 Marine View Dr. Site"

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:

Occidental Chemical Corporation
General Metals of Tacoma
SRS Properties
Don Oline

AGREED ORDER

No. DE 1679

TO: Occidental Chemical Corporation
c/o Glenn Springs Holdings, Inc.
709 Alexander Avenue
Tacoma, WA 98421

General Metals of Tacoma, Inc.
c/o Schnitzer Steel, Inc.
P.O. Box 10047
Portland, OR 97296-0047

SRS Properties
c/o Guy Sternal
Eisenhower and Carlson PLLC
1201 Pacific Avenue, Suite 1200
Tacoma, WA 98402

Don Oline
1940 Marine View Drive
Tacoma, WA 98402

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Occidental Chemical Corporation (Occidental), General Metals of Tacoma (General Metals), SRS Properties, and Don Oline (the PLPs) under this Agreed Order (Order) is to provide for a remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the PLPs to complete remedial investigation of the facility, develop a Remedial Investigation/Feasibility Study (RI/FS) to determine a preferred cleanup strategy, and develop a draft Cleanup Action Plan. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the authority of 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 the Order. The PLPs agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the PLPs' responsibility under this Order. The PLPs 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 used in this Order.

1. Site: The Site is referred to as the 1913 Marine View Drive Site (Site) and is generally located at 1913 Marine View Drive in Tacoma, Washington. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. Based upon factors currently known to Ecology, the Site is more particularly described in Exhibit A to this Order, which includes a detailed Site diagram. The Site constitutes a Facility under RCW 70.105D.020(4).

2. Parties: Refers to the Washington State Department of Ecology and Occidental Chemical Corporation, General Metals of Tacoma, Inc., SRS Properties, and Don Oline.

3. PLP: Refers to Occidental Chemical Corporation, General Metals of Tacoma, Inc., SRS Properties, and Don Oline.

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

V. FINDINGS OF FACT

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

1. The property in question at the Site was previously owned by Don Oline. The property was subsequently purchased from Don Oline under a real estate contract in 1975 by SRS Properties and deeded to SRS Properties in 1982, currently recorded by the Pierce County Assessors office as Parcel #0321362051.

2. Initial remedial investigations of the Site have documented the presence of a variety of contaminants that are present in concentrations exceeding the Method B cleanup standards of MTCA in both soil and groundwater. These chemicals of concern (COCs) include chlorinated organic compounds, semi-volatile organic compounds, polychlorinated biphenyls, heavy metals, and asbestos that are hazardous to human health and the environment.

In addition to certain historical information that had been obtained over a period of several years, four studies, in particular, provide details regarding the extent and nature of the contamination on the Site: *TACOMA Off-Plant Disposal Site Investigation*, Marine View Drive, Conestoga-Rovers and Associates Ltd., December 1984, *1988 Sampling Report*, Oxychem Special Environmental Programs, November 1988, *Review of Site Conditions and Proposed Additional Work*, CRA Services, September 1998 and *Site Characterization Report*, CRA Services, March 1999.

3. Between 1970 and 1973, lime sludge was transported from the Occidental Chemical Corporation Tacoma facility to the Site and placed on the property by Don Burrows (deceased). The lime sludge is a byproduct of the production of solvents such as trichloroethylene and tetrachloroethylene produced by Occidental Chemical Corporation at the Tacoma facility between 1947 and 1973 and which they arranged to have transported from their facility. It has been documented to contain COCs that have been documented to be present at the site in the above referenced studies.

4. During the early 1970's, auto fluff was transported from General Metals of Tacoma to the Site and placed on the property by Don Oline. Auto fluff consists of non-ferrous byproducts of auto scrapping that General Metals arranged to have transported from their facility. It has been documented to contain COCs that have been documented to be present at the site in the above referenced studies.

5. SRS Properties is the current owner of the Site

6. Don Oline owned the Site until 1975. During the time of his ownership, lime sludge and auto fluff, as noted above, were transported to the Site and placed there.

VI. ECOLOGY DETERMINATIONS

Ecology makes the following determinations, without any express or implied admissions of such determinations by the PLPs:

1. Occidental Chemical Corporation generated lime sludge, a “hazardous substance” as defined in RCW 70.105D.020(7) that was disposed of at the Site, a “facility” as defined in RCW 70.105D.020(4), after being transported there. Occidental arranged for the disposal of the lime sludge.

2. General Metals of Tacoma was the generator of auto fluff, a “hazardous substance” as defined in RCW 70.105D.020(7), that was disposed of at the Site, a “facility” as defined in RCW 70.105D.020(4), after being transported there. General Metals arranged for the disposal of the auto fluff.

3. SRS Properties is an “owner or operator” as defined in RCW 70.105D.020(12) of the Site, a “facility” as defined in RCW 70.105D.020(4).

4. Don Oline was an “owner or operator” as defined in RCW 70.105D.020(12) of the Site, a “facility” as defined in RCW 70.105D.020(4), at the time of disposal or release of hazardous substances. Don Oline also transported hazardous substances to the Site, from which there was a “release” as defined in RCW 70.105D.020(20).

5. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(20) and RCW 70.105D.020(7), respectively, has occurred at the Site.

6. Based upon credible evidence, Ecology issued potentially liable person status letters dated September 29, 2003, to Occidental, General Metals, SRS Properties, and Don Oline, pursuant to RCW 70.105D.040, 020(16) and WAC 173-340-500. By letter dated November 3, 2003, SRS Properties voluntarily waived its right to notice and comment and accepted Ecology's determination that SRS Properties is a potentially liable person (PLP) under RCW 70.105D.040, subject to the terms set forth in such letter. By letter dated October 30, 2003, Occidental voluntarily waived its rights to notice and comment and accepted Ecology's determination that

Occidental is a potentially liable person (PLP) under RCW 70.105D.040, subject to the terms set forth in such letter. By letter dated October 28, 2003, Don Oline voluntarily waived his rights to notice and comment and accepted Ecology's determination that he is a potentially liable person (PLP) under RCW 70.105D.040, subject to the terms set forth in such letter. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued determinations that Occidental, General Metals, SRS Properties, and Don Oline are potentially liable persons (PLPs) under RCW 70.105D.040 and notified each PLP of this determination by separate letters dated February 2, 2004.

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

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the PLPs 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:

1. Remedial Investigation (RI)

Considerable environmental investigation has been performed on the Site. The PLPs shall prepare, and have approved by Ecology, a draft work plan to perform the additional remedial investigation necessary to complete the requirements for a RI under MTCA, shall prepare a Remedial Investigation/Feasibility Study (RI/FS), and shall prepare a draft Cleanup Action Plan for the Site, as follows:

A. Scope of Work:

(1) Work Plan: The PLPs shall submit a draft work plan to Ecology that proposes a scope of work to further delineate and quantify the contaminants of concern at the site and determines what effect they are having on soil and groundwater. The work plan shall include a sampling and analysis plan (SAP) and a site specific health and safety plan (HASP) in compliance with WAC 173-340-810 and 820.

(2) Schedule: A draft work plan for additional investigation shall be submitted within 45 calendar days of the effective date of this Agreed Order. The document shall include a schedule for implementation of activities to follow. The PLPs shall submit a final work plan that incorporates Ecology's comments within 30 days of receipt of Ecology's comments. The PLPs shall perform the final work plan, as approved by Ecology and according to the approved schedule.

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

Based on the results of remedial investigations, prepare a draft RI/FS in accordance with WAC 173-340-350 that provides information regarding the full nature and extent of soil and groundwater contamination and presents potential options and a preferred option for the remediation of the contamination located at the Site.

A. Scope of Work:

(1) RI/FS: 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 contaminants of concern in both media. Additionally, the report shall include an analysis of potential remedial alternatives and recommendations regarding a preferred remedial action to be implemented, including recommendations regarding implementation of any pilot study(ies) considered necessary to determine the efficacy of a potential bioremediation technology. The recommendations shall include a schedule for any proposed pilot study(ies)

(2) Schedule: The draft RI/FS shall be submitted within 90 days of the completion of the investigation work plan activities performed in accordance with the approved schedule as noted above. The PLPs shall submit a final RI/FS report within 30 days of the receipt of Ecology's comments regarding the draft RI/FS.

3. Cleanup Action Plan (CAP)

Upon Ecology approval of the final RI/FS, the PLPs shall prepare a draft CAP in accordance with WAC 173-340-380 that provides a proposed remedial action to address the contamination present on the site.

A. Scope of Work:

(1) CAP: The CAP shall include a general description of the proposed remedial action, results of any remedial technology pilot studies, cleanup standards from the RI/FS and a rationale regarding their selection, a schedule for implementation, description of any institutional controls proposed, and a summary of applicable local and state laws pertinent to the proposed cleanup action.

(2) Schedule: The draft CAP shall be provided to Ecology for its review within 90 days of Ecology's approval of the final RI/FS.

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

VIII. TERMS AND CONDITIONS OF ORDER

A. **Public 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.

B. **Remedial Action Costs**

The PLPs shall pay to Ecology the amount of \$16,446.18 to reimburse Ecology for remedial action costs incurred for, or on, the Site prior to June 30th, 2005. Such payment shall be made to Ecology within ninety (90) days of the effective date of this Agreed Order.

In addition, the PLPs shall pay to Ecology costs incurred by Ecology subsequent to June 30th, 2005, that are or were incurred pursuant to this Order and that are 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. The PLPs 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 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.

C. Implementation of Remedial Action

Except where necessary to abate an emergency situation, the PLPs 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
Department of Ecology
Toxics Cleanup Program
Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775

The project coordinators for the PLPs are:

Maury Wassmann
Occidental Chemical Corporation
c/o Glenn Springs Holdings, Inc.
709 Alexander Avenue
Tacoma, WA 98421

Jim Jakubiak
General Metals of Tacoma, Inc.
c/o Schnitzer Steel, Inc.
P O. Box 10047
Portland, OR 97296-0047

Guy Sternal
SRS Properties
Eisenhower and Carlson PLLC
1201 Pacific Avenue, Suite 1200
Tacoma, WA 98402

Don Oline
1940 Marine View Drive
Tacoma, WA 98402

Although four PLP project coordinators are noted above, Maury Wassmann shall be the single lead project coordinator and the primary point of contact for Ecology's communications with the PLPs. The project coordinator(s) shall be responsible for overseeing the implementation of this Order. The Ecology project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the PLPs, 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).

Ecology and the PLPs may change their respective project coordinator(s), but must provide ten (10) days advance written notification of the change to the other party.

E. Performance

All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a licensed professional engineer or licensed hydrogeologist, or equivalent as approved by Ecology, with experience and expertise in hazardous waste site investigation and

cleanup. The PLPs shall notify Ecology in writing of the identity of such engineer(s), or hydrogeologist(s), or others, 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.

Any construction work performed pursuant to the Order shall be under the 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 provided in RCW 18.43.130.

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 the PLPs either own, control, or have 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 the PLPs' 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 the PLPs. The PLPs shall make all reasonable efforts to secure access rights for those properties within the Site, if any, not owned or controlled by the PLPs 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 the PLPs unless an emergency prevents such notice. All persons who access the Site pursuant to this paragraph shall comply with the approved health and safety plan, if any. Ecology employees and their representative shall not be required to sign any release or waiver as a condition of site property access. SRS Properties shall grant the other PLPs and the PLPs'

contractors and subcontractors access to the property at the Site owned by SRS Properties for the purpose of accomplishing the work performed pursuant to this Order.

G. Sampling, Data Reporting, and Availability

With respect to the implementation of this Order, the PLPs shall make the results of all sampling, laboratory reports, and/or test results generated by them or on their behalf available to Ecology and shall submit these results 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.

Pursuant to WAC 173-340-840(5), all soil and groundwater sampling data shall be submitted to Ecology in printed form and in electronic form capable of being transferred into the department's data management system. Electronic data submittal requirements are provided at <http://www.ecy.wa.gov/eim/>.

If requested by Ecology, the PLPs shall allow split or duplicate samples to be taken by Ecology and/or its authorized representative of any samples collected by the PLPs pursuant to implementation of this Order. The PLPs shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order to be taken by the PLPs or its authorized representative provided it does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII F of this Order, Ecology shall notify the PLPs 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 the PLPs.

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

1. If agreed to by Ecology, develop appropriate mailing list, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings;

2. Notify Ecology's project coordinator prior to any of the following: the issuance of all press releases; distribution of fact sheets; performance of other outreach activities; meetings with the interested public and/or local governments. Likewise, Ecology shall notify the PLPs prior to the issuance of all press releases and fact sheets, and before meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the PLPs that do not receive prior Ecology approval, the PLPs shall clearly indicate to

their audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology;

3. When requested by Ecology, participate in public presentations on the progress of the remedial 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, the PLPs shall preserve all records, reports, documents,

and underlying data in their 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, the PLPs shall make all records available to Ecology and allow access for review within a reasonable time, subject to any applicable limitations imposed by law or court rule relating to the attorney-client or work product privileges.

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 the Ecology project coordinator's decision or the itemized billing statement, the PLPs have fourteen (14) days within which to notify Ecology's project coordinator 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) The PLPs 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.
- (d) The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within sixty (60) days of the PLPs' request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

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

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

K. Extension of Schedule

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify the reason(s) the extension is needed. 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 the PLPs 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 includes, but is not limited to:

- (a) Circumstances beyond the reasonable control and despite the due diligence of the PLPs 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 the PLPs; or

- (b) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- (c) Endangerment as described in Section VIII M of this Order

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 the PLPs.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the PLPs written notification in a timely fashion of any extensions granted pursuant to the 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 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 of this Order.

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 of this Order, 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 the PLPs. The PLPs 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 the Order represents a substantial change, Ecology will provide additional public notice and opportunity to comment. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII J of this Order.

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

If, for any reason, the PLPs determine that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, the PLPs may cease such activities. The PLPs 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 the PLPs shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the PLPs' cessation of activities, it may direct the PLPs to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, the PLPs' 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.

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 Ecology rights or authority. Ecology will not, however, bring an action against the PLPs 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 PLPs regarding remedial actions required by this Order, provided the PLPs comply 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.

The PLPs' signatures on this Order in no way constitute any admissions of liability or any waivers of any rights, defenses, positions, or claims that may be asserted by the PLPs in any context regarding the Site. The PLPs reserve all rights, defenses, positions, and claims that may be asserted by the PLPs in any context regarding the Site. Neither this Order nor any actions taken by any PLP pursuant to this Order shall constitute, be interpreted, construed or used as evidence of any admission of liability, law or fact, a waiver or any right or defense, or an estoppel against a PLP by any other Party among the Parties or by any person not a Party.

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 the PLPs 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 the PLPs' transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the PLPs shall provide a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, the PLPs shall notify Ecology of said transfer. Upon transfer of any interest, the PLPs 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 the PLPs 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. A list of the required permits known at the time of entry of this Order have been included in Exhibit D.

2. Pursuant to RCW 70.105D.090(1), the PLPs are 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, the PLPs shall comply with the substantive requirements of such permits or approvals. A list of such permits and approvals and/or the substantive requirements of those permits and approvals as they are known to be applicable at the time of entry of this Order have been included in Exhibit D.

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

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 which is necessary for the state to administer any federal law, the exemption shall not apply and the PLPs shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

Q. Indemnification

The PLPs agree 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 arising from or on account of acts or omissions of the PLPs, their officers, employees, agents, or contractors in entering into and implementing this Order. However, the PLPs shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in implementing the activities pursuant to this Order.

IX. SATISFACTION OF ORDER

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

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 remedial actions and orders related to the Site

3. In the event the PLPs refuse, without sufficient cause, to comply with any term of this Order, the PLPs 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 \$25,000 per day for each day it refuses to comply.

4. 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: _____

Occidental Chemical Corporation
c/o Glenn Springs Holdings, Inc.
709 Alexander Avenue
Tacoma, WA 98421

General Metals of Tacoma, Inc.
c/o Schnitzer Steel, Inc
P.O. Box 10047
Portland, OR 97296-0047

By _____
Its _____
At _____
Telephone _____

Jim Jakubiak
Environmental Manager
Portland, Oregon
(503) 286-6976

SRS Properties
c/o Guy Sternal
Eisenhower and Carlson PLLC
1201 Pacific Avenue, Suite 1200
Tacoma, WA 98402

Don Oline
1940 Marine View Drive
Tacoma, WA 98402

Alan Sussman
Partner, on behalf of SRS Properties
c/o Guy Sternal
Tacoma, Washington
(253) 572-4500

Don Oline
Tacoma, Washington

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Rebecca S. Lawson, P.E.
Regional Section Manager
Southwest Regional Office
Toxics Cleanup Program
(360) 407-6241

Effective date of this Order: 7/6/07

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709 Alexander Avenue
Tacoma, WA 98421

General Metals of Tacoma, Inc.
c/o Schnitzer Steel, Inc.
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By John H. Gaisko
Its Vice President
At LEXINGTON, KY
Telephone 253-274-9740

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By _____
Its _____
At _____
Telephone _____



Tom Zelepka
Vice President
Portland, Oregon
(503) 224-9900

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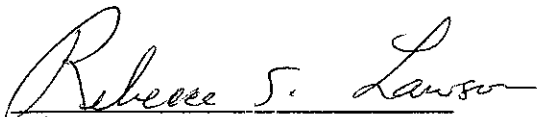
Don Oline
1940 Marine View Drive
Tacoma, WA 98402



Alan Sussman
Partner, on behalf of SRS Properties
c/o Guy Sternal
Tacoma, Washington
(253) 572-4500

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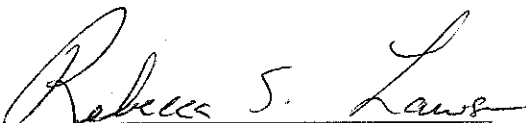
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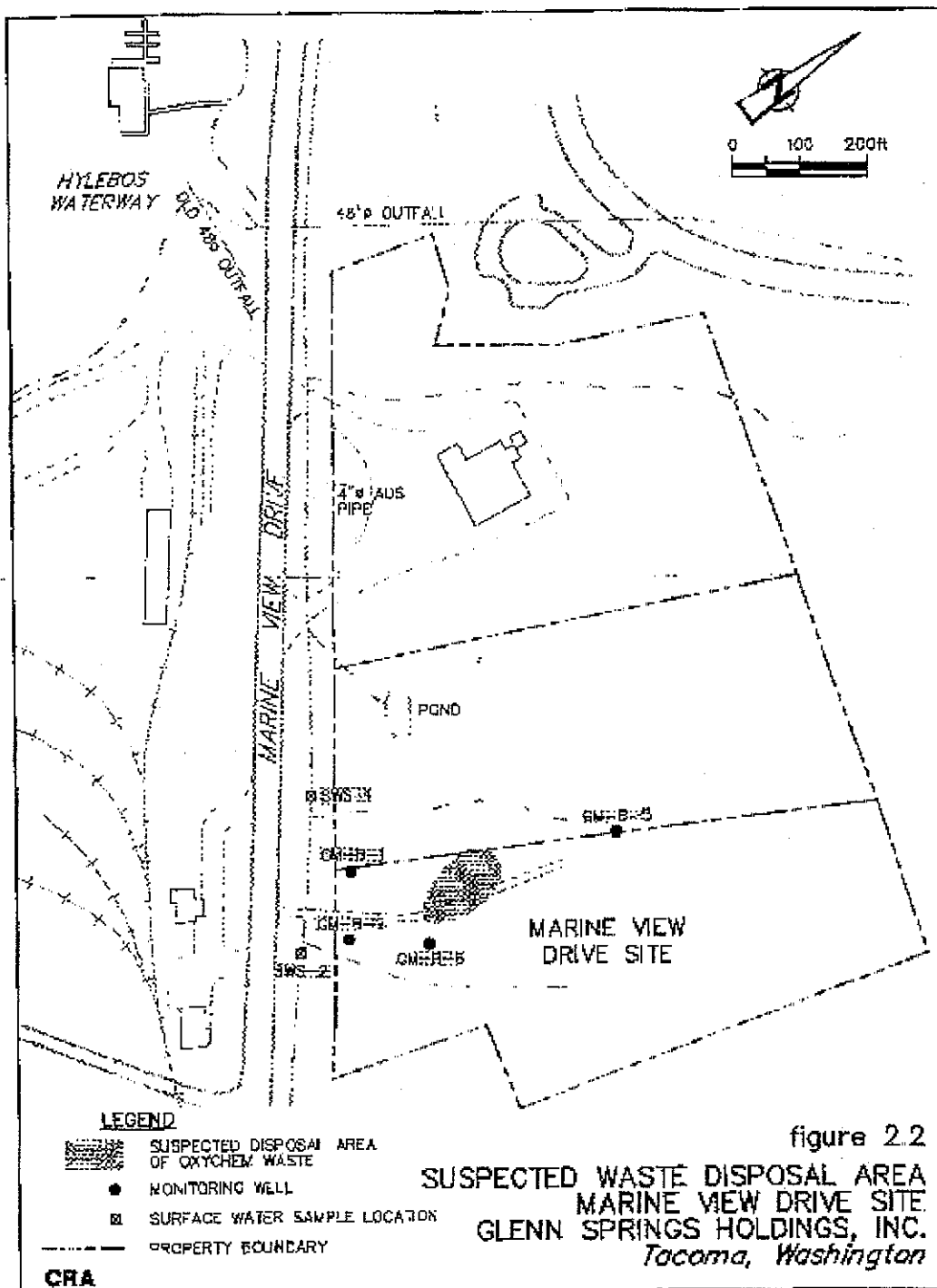
Don Oline
Tacoma, Washington

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



Rebecca S. Lawson, P.E.
Regional Section Manager
Southwest Regional Office
Toxics Cleanup Program
(360) 407-6241

Exhibit A
SITE DIAGRAM



09973-00(001)04-NF002 AUG 12/98

Exhibit B

LEGAL DESCRIPTION

Section 36 Township 21 Range 03 Quarter 21 : BEG AT NE COR OF GOVT LOT 1 TH S ALG E LI SD GOVT LOT 1 660 FT TO NE COR OF S 1/2 OF NE OF NW TH N 88 DEG 14 MIN 00 SEC W ALG N LI OF SD SUBD 150 FT TH S 00 DEG 16 MIN 35 SEC E PAR/W E LI OF SD SUBD 251.08 FT TH N 64 DEG 25 MIN 55 SEC W 89.19 FT TH N 69 DEG 01 MIN 10 SEC W 235.81 FT TH NELY TO A PT ON N LI OF SD GOVT LOT 1 SD PT BEING 250 FT W OF NE COR OF SD GOVT LOT 1 TH E ALG N LI OF SD LOT 250 FT TO POB EASE OF RECORD OUT OF 2/050 SEG H 2352 BG

EXHIBIT C
PUBLIC PARTICIPATION PLAN

1913 Marine View Drive Public Participation Plan

**Prepared by Washington State Department of Ecology (Ecology)
January 10, 2007**

Overview

The 1913 Marine View Drive Site, formerly known as the Occidental Chemical Marine View Drive Site is located at 1913 Marine View Drive, Tacoma. Initial site investigations have found chemicals in concentrations exceeding state standards for both soil and groundwater. These chemicals of concern include chlorinated organic compounds, semi-volatile organic compounds (SVOCs), polychlorinated biphenyls (PCBs), and heavy metals that are hazardous to human health and the environment.

Ecology is proposing to enter into an Agreed Order (agreement) with the parties it believes are responsible for contamination and clean up of the site (Occidental Chemical Corporation, General Metals of Tacoma, SRS Properties, and Don Oline). The Agreed Order requires further investigation and clean up of the site. For more information, please refer to the Occidental Chemical Fact Sheet (Ecology publication #05-09-033) and attached Agreed Order No. DE 1679.

What is a Public Participation Plan?

Public participation plans are an important component of Washington's Model Toxics Control Act and RCW 70.15D *et seq*. Public participation plans summarize activities designed to give the public meaningful opportunities to learn about, and provide input on, actions related to cleanup of contaminated sites. Plans may be simple or complex depending on human health and environmental risks and other factors. Ecology welcomes public comment on this plan.

Public Participation Grants Available

Grants from Ecology's Solid Waste and Financial Assistance Program may be available to groups of residents, neighborhood committees, and others living near the site. These funds may be used to provide additional public involvement, receive technical assistance, and/or enhance the public's understanding of the cleanup. For more information, contact Kathy Seel at (360) 407-6061 or ksee461@ecy.wa.gov or go to Ecology's website: www.ecy.wa.gov/programs/swfa/grants.html.

Public Participation Methods to Be Used

Ecology or the responsible parties listed above will use a variety of methods to involve the public in the site investigation and cleanup. The methods to be used are described below and may be changed when more is known about the site. Any substantial changes will be made available for public review and comment.

Public Comment: Ecology will ask for public input on key decisions affecting the investigation and cleanup of the site. The public will have at least 30 days to provide written or verbal comment on each key decision.

Responsiveness Summary: After every public comment period, Ecology will review the comments received and may respond in a written responsiveness summary. The summary will then be made available to the public at the information repositories listed below.

Information Repositories: Documents and other printed materials will be made available to the public at the local library and at least one other convenient location near the Occidental Chemical site. Printed materials will be placed at these locations for the duration of the cleanup process.

- Tacoma Public Library, 1102 Tacoma Ave., Tacoma, WA, (253) 591-5666
- Citizens for a Healthy Bay, 917 Pacific Avenue, Suite 100, Tacoma (253) 383-2429
- Washington State Department of Ecology, SW Regional Office, Toxics Cleanup Program 300 Desmond Drive, Olympia (360) 407-6365

Make Copies for a Fee: Ecology will make copies of documents available for a small fee through Debbie Nelson at Ecology's SW Regional Office, (360) 407-6365 or dene461@ecy.wa.gov.

Site Register and Public Events Calendar: Ecology's Toxics Cleanup Program will use its bimonthly *Site Register* and web-based *Public Events Calendar* to announce all public meetings and comment periods related to the Occidental Chemical site.

To receive a copy of the *Site Register*, please contact Linda Thompson at (360) 407-6069 or ltho461@ecy.wa.gov. Copies also are available on the Ecology website at www.ecy.wa.gov/biblio/site_reg.html. Ecology's *Public Events Calendar* may be found at www.ecy.gov

Mailing List: Ecology's SW Regional Office has created a mailing list specific to the Occidental Chemical site and will update the list as needed. Please contact Marv Coleman at (360) 407-6259 or MCOL461@ecy.wa.gov to be added to or removed from the list.

Fact Sheets: Fact sheets will be used to inform the public of meetings, comment opportunities on key decisions, and other important activities. Fact sheets will be:

- directly mailed to key stakeholders, including property owners and residents within one-half mile of the site;
- made available at the repositories listed above; and
- posted on Ecology's website at www.ecy.wa.gov/programs/tcp/sites/OccidentalChemCorp/occ_hp.htm.

Legal Notices: Legal notices announcing each public comment period or meeting will be placed in *The Tacoma News Tribune*. Each notice will run for three days before the comment period begins or a meeting is held.

Contacts

For project-related questions, please contact Ecology's manager for the 1913 Marine View Drive site:

Marv Coleman, SWRO Toxics Cleanup Program
300 Desmond Drive
PO Box 47775
Olympia, WA 98504-4775
Phone: (360) 407-6259
Email: mcol461@ecy.wa.gov

EXHIBIT D

APPLICABLE PERMITS AND SUBSTANTIVE REQUIREMENTS

WORK PERFORMED SHALL BE DONE IN ACCORDANCE WITH SUBSTANTIVE REQUIREMENTS OF THE FOLLOWING LAWS

- 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).