

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:

Gateway Investment LLC and  
Linda Y.T. Lee

**AGREED ORDER FOR INTERIM  
ACTION**

NO. DE \_\_\_\_\_

TO: Gateway Investment LLC  
c/o McCracken & Associates  
2800 South 192nd Street, Suite 102  
SeaTac, WA 98188

AND TO:  
Ms. Linda Y.T. Lee  
c/o Mr. Stanley Hsiao  
9709 Third Avenue NE  
Suite 209  
Seattle, WA 98155

**I.**

**JURISDICTION**

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

## II.

### FINDINGS OF FACT

Ecology makes the following Findings of Fact, without admission of such facts by Linda Y.T. Lee, hereinafter referred to as “Lee”, and/or by Gateway Investment LLC, hereinafter referred to as “Gateway”.

1. Lee is the owner of property formerly known as the Tac-Sea Motel (the “Site”), located at 17024 Pacific Highway South, SeaTac, Washington 98188 and has been the owner of the Site at which she operated a motel for many years.

2. Gateway became a tenant on the property at the Site pursuant to a lease agreement effective June 1, 1998 and is engaged in negotiation with Ecology and the Attorney General for a consent decree applicable to cleanup of the Site.

3. The Site was the location of a dry cleaning facility, operated prior to the time that the Tac-Sea Motel operated on the Site. The “owner” or “operator” of the dry cleaner is unknown at this time; research is continuing to discover this information. The Tac-Sea Motel building recently has been demolished

4. Operation of the dry cleaning facility left soil and groundwater underlying the Site contaminated with a volatile organic compound identified as perchloroethylene (“PCE”) and other hazardous substances as defined in paragraph 5.

5. In connection with demolition of the motel building on the Site, certain septic tanks and associated piping and conduits have been located, one or more of which contain effluents and/or sediments that have been determined, on the basis of laboratory analysis, to contain PCE, related chlorinated solvents (including chloroform, cis-1,2-dichloroethelene, tetrachloroethelene, 1,1,1-trichloroethane and trichloroethene),

total petroleum hydrocarbons ("TPH") and/or other hazardous substances.

6. In order to protect human health and the environment and to prevent the release or threatened release of hazardous substances from the septic tanks, piping and conduits located on the Site, as well as petroleum contaminated soil associated with two heating oil underground storage tanks which have been removed from the Site, an interim action is necessary to eliminate or substantially reduce pathways for exposure to hazardous substances from the Site.

### III.

#### ECOLOGY DETERMINATIONS

1. Lee is the "owner" as defined at RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D. 020 (4). As of June 1, 1998, Gateway became the lessee of the facility.

2. The facility was known as the Tac-Sea Motel and is located at 17024 Pacific Highway South, SeaTac, Washington, 98188. The motel building was demolished during late August 1998.

3. PCE, related chlorinated solvents (including chloroform, cis-1,2-dichloroethelene, tetrachloroethelene, 1,1,1-trichloroethane and trichloroethene) and total petroleum hydrocarbons ("TPH") are the substances found at the facility as described above and are "hazardous substances" as defined at RCW 70.105D.020(7).

4. Based on the presence of hazardous substances at the facility and all factors known to the Department, there is a release or threatened release of hazardous substances from the facility, as defined at RCW 70.105D.020(20).

5. Gateway and Lee voluntarily waive their rights to notice and comment

regarding Ecology's determination that they are "potentially liable persons" under RCW 70.105D.040.

6. Pursuant to RCW 70.105D.030(1) and 70.105D.050, Ecology may require potentially liable persons to investigate or conduct 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 interim remedial action required by this Order is in the public interest.

#### **IV.**

#### **WORK TO BE PERFORMED**

Based on the foregoing Facts and Determinations, it is hereby ordered that Lee and Gateway take the following interim remedial actions and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein. The interim actions provided for herein do not foreclose reasonable alternatives for the final cleanup action.

1. Purpose and Scope of the Interim Remedial Work (the "Work").

The purpose of the Work will be to remove septic sludge and water known to contain hazardous substances, including PCE and/or other chlorinated VOCs from the septic tank that serviced the former dry cleaning facility at the site. Once the septic tank has been cleaned it will be demolished and disposed as solid waste. The underlying soils will then be tested for volatile organics. Soil samples will be screened by placing the contents in a plastic resealable bag and disaggregating the soil; after approximately 5 minutes, an OVM-PID probe will be inserted through the bag into the headspace

above the soil and the maximum reading of headspace vapors recorded. The foregoing procedures shall be conducted with reference to *Statistical Guidance Manual for Ecology Site Managers* and *Ecology's Guidance for Site Checks and Site Assessments for Underground Storage Tanks*. After soil screening, a total of 5 samples will be taken and analyzed to confirm that soils adjacent to the concrete structure do not contain volatile organics above Method A cleanup levels. All Work shall be done in conformity with the Stormwater Pollution Prevention Plan and/or Temporary Erosion and Sedimentation Control Plan for the Site.

The following sections describe with greater particularity each stage of the Work. The Work shall be completed within thirty (30) days of the effective date of this Order.

#### 2(a) Septic Waste Disposal

A number of options were reviewed regarding the proper disposal of septic tank sludge and water including disposal at a wastewater treatment facility or landfill and onsite treatment. However, analytical results for soil and water indicate that these materials classify as a dangerous waste. At this time, the only acceptable method of disposal of this type of waste is at a licensed hazardous waste treatment facility where it will be treated by incineration.

#### 2(b) Septic System Pumping and Cleaning

Pumping of septic tank sludge and water will be performed by a certified waste disposal contractor. The waste disposal contractor will be informed by AGI of the presence of the hazardous substances, including VOCs and the potential biohazards (i.e., fecal matter) present in the wastes. The water and sludge will be pumped and stored in separate drums and labeled. The drums will remain on site until an EPA Site

I.D. number is obtained from Ecology and shipment may proceed. Once the contents of the septic tank have been removed, the inner walls of the tank will be cleaned and rinsed and the rinsate will be collected in a 55-gallon steel drum.

#### 2(c) Septic System Demolition

After the septic tank is inspected and identified as being clean, the concrete will be demolished and disposed as construction debris at a municipal solid waste landfill.

#### 2(d) Sample Collection

A total of five soil samples will be collected. Four samples will be collected from the four side walls and one sample will be collected from the bottom of the excavation. Soil stockpile samples will also be collected based on the sampling frequency criteria established in the Ecology publication *Guidance for Site Checks and Site Assessments for Underground Storage Tanks (10/92)*.

All soil samples will be collected using a clean stainless steel spoon, packed in laboratory-supplied glass jars, secured with chain-of-custody seals, labeled, and packed in a cooler chilled with Blue Ice and delivered to a certified analytical laboratory for subsequent chemical analyses.

#### 2(e) Chemical Analyses

Soil samples will be analyzed for halogenated VOCs by EPA Method 8010 or EPA Method 8260.

#### 2(f) Waste Disposition

Sludge, soil, and water removed during the proposed work will be transported and disposed at suitable treatment or disposal facilities based on the chemical results and in compliance with the requirements stipulated in WAC 173-303.

### 3(a) Petroleum Contaminated Soil Interim Action

A number of options were reviewed regarding the disposal of petroleum contaminated soil. These include in situ treatment, excavation and onsite treatment, and excavation and offsite treatment and/or disposal. Based on the relatively small amount of contaminated soils and development issues, excavation and disposal at an offsite landfill or treatment facility is considered to be the most expedient and economical alternative. Petroleum contaminated soils at this site will be readily accepted by a RCRA Subtitle D landfill or a thermal desorption treatment facility permitted to handle such wastes.

### 3(b) Removal of Petroleum Contaminated Soil

Petroleum contaminated soil associated with two heating oil underground storage tanks (USTs) that were removed on September 9, 1998 will be excavated and disposed. The soil will be disposed either through TPS Technologies in Tacoma, or Rabanco in Seattle. TPS Technologies specializes in treatment of petroleum hydrocarbon contaminated soils by thermal desorption. Rabanco disposes of petroleum contaminated soil at their RCRA Subtitle D permitted landfill in Roosevelt, Washington regional landfill. Contaminated soil is expected to be loaded immediately into a dump truck and transported to the disposal facility. If any excavated soil is stockpiled onsite it will be placed on visqueen, bermed, and covered with visqueen until disposal.

### 3(c) Sample Collection

Sampling will meet or exceed the sampling frequency criteria established in the Ecology publication Guidance for Site Checks and Site Assessments for Underground

Storage Tanks (10/92) and will be done with reference to the Statistical Guidance Manual for Ecology Site Managers. At a minimum, five samples will be collected from the limits each UST excavation. One sample will be collected from each sidewall and one sample will be collected from the excavation bottom.

All soil samples will be collected from the backhoe bucket (away from the edges of the bucket) using a clean stainless steel spoon, packed in laboratory-supplied glass jars, secured with chain-of-custody seals, labeled, placed in a chilled cooler. The samples will be delivered under chain-of-custody protocol to a certified analytical laboratory for subsequent chemical analysis.

#### 3(d) Chemical Analysis

Soil samples will be analyzed for diesel-range petroleum hydrocarbons by Northwest Method TPH-D, since the issue is heating oil.

#### 3(e) Excavation Backfill

The excavation will be secured pending analytical results. The excavation will be backfilled with clean material after analytical results confirm that petroleum hydrocarbon concentrations no longer exceed the Model Toxics Control Act (MTCA) Method A cleanup level of 200 milligrams per kilogram. If necessary, additional soil will be removed and the new excavation limits sampled as outlined above.

#### 3(f) Reporting

A cleanup report will be prepared and submitted to Ecology within 90 days after completing these interim cleanup actions related to the USTs. The report will describe soil excavation, sampling methods, and site observations, and will include figures, summary tables, analytical reports, and copies of bill-of-lading tickets for soil disposal.



## V.

### TERMS AND CONDITIONS OF ORDER

#### 1. Definitions

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

#### 2. Public Notices

Pursuant to RCW 70.105D.030(2)(a), this Order shall be subject to concurrent public notice.

Ecology shall be responsible for providing such concurrent 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

Lee and Gateway 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, and 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). Lee and Gateway shall pay the required amount within 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 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:

Ms. Glynis A. Carrosino  
Washington Department of Ecology  
Northwest Regional Office  
3190 - 160th Avenue SE  
Bellevue, WA  
98008-5452  
phone: (425) 649-7263

The project coordinator for Lee and Gateway is:

Gary L. Laakso  
Remediation Services Manager  
AGI Technologies  
PO Box 3885  
Bellevue, WA 98009-3885  
phone: (425) 453-8383

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

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. Lee and Gateway 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. Lee and Gateway 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, Lee and Gateway 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.

WAC 173-340-400(7)(b) (i) requires that "construction" performed on the Site must be under the supervision of a professional engineer registered in Washington.

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 Lee and Gateway. By signing this Agreed Order, Lee and Gateway agree that this Order constitutes reasonable notice of access, and agree 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 Lee and Gateway during an inspection unless doing so interferes with Ecology's sampling. Lee and Gateway 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.

Lee and Gateway shall prepare and/or update a public participation plan for the site. Ecology shall maintain the responsibility for public participation at the site. Lee and Gateway shall help coordinate and implement public participation for the site.

8. Retention of Records.

Lee and Gateway 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 Lee and Gateway, then Lee and Gateway agree to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.

9. Dispute Resolution.

Lee and Gateway 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 resolution of the dispute shall be binding and final. Lee and Gateway are not relieved of any requirement of this Order during the pendency of the dispute and remain responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.

10. Reservation of Rights/No Settlement.

This Agreed Order is not a settlement under ch. 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 Lee and Gateway to recover remedial action costs paid to and received by Ecology under this Agreed Order. In addition, Ecology will not take additional enforcement actions against Lee and Gateway to require those remedial actions required by this Agreed Order, provided Lee and Gateway comply with this Agreed Order.

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 the Site.

In the event Ecology determines that conditions at the Site are creating or have 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 Lee and Gateway 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 Lee and Gateway 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 Lee and Gateway may have in the site or any portions thereof, Lee and Gateway 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, Lee and Gateway shall notify Ecology of the contemplated transfer.

12. Compliance with Other Applicable Laws.

A. All actions carried out by Lee and Gateway 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 have been included in Section IV and are binding and enforceable requirements of the Order.

Lee and Gateway 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 Lee and Gateway determine that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, they shall promptly notify Ecology of this determination. Ecology shall determine whether Ecology or Lee and Gateway shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Lee and Gateway 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 Lee and Gateway and on how Lee and Gateway must meet those requirements. Ecology shall inform Lee and Gateway in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Lee and Gateway shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

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 Lee and Gateway 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 Lee and Gateway's receipt of written notification from Ecology that Lee and Gateway have 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.

## 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 the Site.
  - C. In the event Lee and Gateway refuses, without sufficient cause, to comply with any term of this Order, Lee and Gateway will be liable for:
    - (1) up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and
    - (2) civil penalties of up to \$25,000 per day for each day it refuses to comply.
  - D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under Section 6 of ch. 70.105D RCW.



Effective date of this Order:

\_\_\_\_\_

STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

Linda T.Y. Lee

By \_\_\_\_\_

\_\_\_\_\_

Owner

Gateway Investment LLC

By \_\_\_\_\_

Its \_\_\_\_\_

291/47311.01  
100198/1025/44939.00002

AGREED ORDER - 18  
291/47311.01  
092898/1228/44939.00002