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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:)	
)	MODEL
Mr. Bud Owens)	AGREED ORDER
)	
)	
)	No. DE 03 TCPCR-5877
)	
RE: Comet Trailer Manufacturing Facility)	
501 South 1st Street)	
Selah, Washington 98942)	

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 Mr. Bud Owens.

1. Mr. Owens owns parcel #18130122423 located in Selah, Washington:
2. Mr. Owens owned and operated a truck trailer manufacturing business at this site from 1984 until 1995. Since 1995, he has been leasing the property.
3. Mr. Owens leases parcel #18130123900 from the Burlington Northern and Santa Fe Railway Company (BNSF). Waste generated during the operation of Comet Facility was deposited on this property.
4. Mr. Owens has communicated to Ecology that he would like to take full responsibility for Comet Facility activities that occurred on parcels #18130122423 and #18130123900. Per Mr. Owens request, BNSF will not be involved in this or future remedial activities.
5. On March 11 and May 13, 1991, Ecology staff conducted initial investigations of the site. Due to the nature of business at Comet Facility, Ecology opted to collect samples of sandblast waste and sludge from a catch basin on the north end of the Comet Facility. The catch basins are connected to a storm drain system which enters a nearby stormwater drain and eventually flows to the Yakima River. The samples were analyzed for volatile organics and total metals.

- a. Catch basin sludge samples - The results revealed the presence of trichlorofluoromethane, toluene, styrene, ethylbenzene, and total xylenes.
- b. Sandblast waste material samples - Total metals analysis results revealed the presence of chromium at 261 ppm and 207 ppm. These levels are above the Model Toxics Control Act cleanup levels for chromium VI and below that for chromium III. Additional metals analysis needs to be conducted to determine which chromium species is present.

The analytical results of samples collected during these investigations were used for scoring in the Site Hazard Assessment.

6. In 1992, Ecology completed a Site Hazard Assessment for this site. Ecology determined that the site would rank a "1", where 1 represents the highest relative risk and 5 the lowest. The ranking indicates that this site poses a high potential threat to human health and the environment relative to other Washington State sites ranked at that time.
7. During September 1991 and May 2002 site visits, sandblast grit piles were identified as being in the following locations:
 - a. South of the warehouse in a low area that has since been filled (identified by Mr. Owens)
 - b. Southeast corner of the unpaved area, south of the facility, and about 10 yards from the irrigation ditch (photographs on file at Ecology)
 - c. East section of the facility on BNSF property (photographs on file at Ecology)
 - d. Southwest corner of the unpaved area (previously sampled by Ecology in March 1991)

III.

Ecology Determinations

1. Mr. Bud Owens is an "owner or operator" as defined at RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4).
2. The facility is known as Comet Trailer Manufacturing Corporation (Comet Facility) and is located at parcel #18130122423 in Selah, WA. Comet Facility also operated on parcel #18130123900, which is owned by Burlington Northern Santa Fe.
3. The substances found at the facility as described above are "hazardous substances" as defined at RCW 70.105.010(14).
4. Based on the presence of these 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. By letter dated January 22, 2003, Ecology notified Mr. Owens of his status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.

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

IV.

Work to be Performed

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

1. Mr. Owens shall develop a Scope of Work and Work Plan for a Remedial Investigation/ Feasibility Study (RI/FS). The Scope of Work and Work Plan shall contain all of the elements outlined in WAC 173-340-350, -355, and -357. The RI/FS shall be designed to determine the horizontal and vertical extent and magnitude of all hazardous substances released at the site, including metals and volatile organics.
2. Upon Ecology approval of the Scope of Work, Mr. Owens shall implement this Work Plan and prepare a Draft RI/FS that complies with WAC 173-340-350 through 370 for Ecology review and public comment.
3. Upon Ecology approval of the Draft RI/FS and incorporation of public comment, Mr. Owens shall deliver three copies of the Final RI/FS incorporating Ecology's comments to Ecology for review and approval.
4. In accordance with WAC 173-340-820, Mr. Owens shall submit to Ecology for review and approval a Sampling and Analysis Plan with the Work Plan.
5. In accordance with WAC 173-340-810, Mr. Owens shall submit to Ecology for review a Worker Safety and Health Plan with the Work Plan.
6. In accordance with WAC 173-340-600, Mr. Owens shall submit to Ecology for review and approval a Public Participation Plan.
7. Mr. Owens shall submit sampling data in accordance with Environmental Information Management (EIM) guidelines.
8. The work required under the Order shall be completed in such a manner to meet the schedule below.

Deliverable or Action Required	Completion or Date Due to Ecology
Draft Scope of Work and Work Plan for the Remedial Investigation/Feasibility Study (RI/FS)	Due 45 days after the issue date of the Agreed Order
Public Participation Plan	Due 14 days after receipt of Ecology written comments on Draft Scope of Work and Work Plan
Final Scope of Work and Work Plan for RI/FS	Due 14 days after receipt of Ecology written comments on Draft Scope of Work and Work Plan
Implementation of tasks described in Work Plan	Within 30 days of approval of Final Work Plan
Draft RI/FS	Due 60 days after implementation of tasks described in the Final Work Plan
Final RI/FS	Due 30 days after receipt of public and Ecology comments on Draft RI/FS

Upon completion of each deliverable, Ecology will notify Mr. Owens of exact due dates. These dates will be based on the schedule shown above.

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

Krystal Rodriguez
15 West Yakima Avenue, Suite 200
Yakima, WA 98902
(509) 454-7842

The project coordinator for Comet Facility is:

John Zillich
Technico Environmental Services, Inc.
201 W 33rd Ave.
Kennewick, WA 99337
(509) 585-9553

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Mr. Owens, 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 Mr. Owens change project coordinator(s), written notification shall be provided to Ecology or Mr. Owens 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. Mr. Owens 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. Mr. Owens 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, Mr. Owens shall not perform any remedial actions at Comet Facility 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 Mr. Owens. By signing this Agreed Order, Mr. Owens 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 Mr. Owens during an inspection unless doing so interferes with Ecology's sampling. Mr. Owens 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. Mr. Owens shall prepare and/or update a public participation plan for the site. Ecology shall maintain the responsibility for public participation at the site. Mr. Owens shall help coordinate and implement public participation for the site.
8. Retention of Records. Mr. Owens 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 Mr. Owens, then Mr. Owens agrees to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.
9. Dispute Resolution. Mr. Owens 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. Mr. Owens is not relieved of any requirement of this Order during the pendency of the dispute and remains responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.
10. Reservation of Rights/No Settlement. This Agreed Order is not a settlement beneath 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 Mr. Owens 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 Mr. Owens to require those remedial actions required by this Agreed Order, provided Mr. Owens complies 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 Comet Trailer Manufacturing Facility.

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 Mr. Owens 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 Mr. Owens 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 Mr. Owens may have in the site or any portions thereof, Mr. Owens 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, Mr. Owens shall notify Ecology of the contemplated transfer.

12. Compliance with Other Applicable Laws.

- A. All actions carried out by Mr. Owens 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(I), 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, the Work to be Performed and are binding and enforceable requirements of the Order. Mr. Owens has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(I) would otherwise be required for the remedial action under this Order. In the event Mr. Owens determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify Ecology of this determination. Ecology shall determine whether Ecology or Mr. Owens shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Mr. Owens 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 Mr. Owens and on how Mr. Owens must meet those requirements. Ecology shall inform Mr. Owens in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Mr. Owens 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 Mr. Owens 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 Mr. Owens' receipt of written notification from Ecology that Mr. Owens 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.

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 Mr. Owens refuses, without sufficient cause, to comply with any term of this Order, Mr. Owens will be liable for:
 - i. up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and
 - ii. 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: December 5, 2003

Mr. Bud Owens

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By 

Mr. Bud Owens

By 

Donald W. Abbott
Section Manager
Toxics Cleanup Program
Central Regional Office

