

May 26, 2000

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

In the Matter of  
Cleanup Action at the  
Able Pest Control Site

The Estate of Sheridan Martin,

and

Sharon Schlittenhard

NO. DE 00TCPNR-1151

AGREED ORDER

TO: The Estate of Sheridan Martin  
c/o Sharon Keller  
Personal Representative for Estate  
134 Rockaway Beach Lane  
Camano Island, WA 98292

and

Sharon Schlittenhard  
7561 Holiday Boulevard  
Anacortes, WA 98221

## **I. JURISDICTION**

This Agreed Order ("Order") is issued pursuant to the authority of RCW 70.105D 050(1). This is an Order for the preparation and submittal of a Cleanup Action Plan and Health and Safety Plan and the implementation and completion of the cleanup action to be set forth and described in the Cleanup Action Plan.

## **II. FINDINGS OF FACT**

Ecology makes the following findings of fact, without admission of such facts by the Estate of Sheridan Martin or Sharon Schlittenhard.

1. King County Records and Elections Division property records indicate that Sheridan Martin was an owner of the property located at 18115 62nd Avenue Northeast, Kenmore, Washington ("62nd Avenue Property"), between the years 1969 and 1986. The 62nd Avenue Property is within the boundaries of the Able Pest Control Site. Sheridan Martin was a principal stockholder of a pest control business, Able Pest Control, Inc. ("Able Pest Control No. 1"), that operated at the 62nd Avenue Property between the years 1969 and 1985. See Attachment A.

2. On October 31, 1985, Able Pest Control No. 1 changed its name to VAM-SAM Corporation, and the assets of the business were sold to Tommy E. Reed and James W. Nation. On that same day, Reed and Nation formed a Washington corporation named Able Pest Control, Inc. ("Able Pest Control No. 2"). Able Pest Control No. 2 operated at the 62nd Avenue Property between November 1985 and January 1986. See Attachment A.

3. Both Able Pest Control No. 1 and Able Pest Control No. 2 (hereinafter collectively "Able Pest Control") stored and dispensed pesticides, including, but not limited to, chlordane, at the 62nd Avenue Property between 1969 and 1986. The storage and dispensation of pesticides occurred in several areas, including the garage and an enclosed area underneath the back porch at the

southwest corner of the residential structure located on the 62nd Avenue Property. See Attachment A.

4. On November 14, 1986, Sheridan Martin sold the 62nd Avenue Property to Sharon Schlittenhard. Sharon Schlittenhard is the current owner of the 62nd Avenue Property. See Attachment A.

5. In 1994, Sharon Schlittenhard expanded the basement apartment of the residential structure at the 62nd Avenue Property. Soil was excavated from the former pesticide storage area underneath the back porch in order to pour a concrete slab for a new bedroom. The excavated surface soil was reportedly placed in the southwest corner of the 62nd Avenue Property. See Attachment A.

6. On July 16, 1997, the Washington State Department of Ecology ("Ecology") conducted an initial investigation at the Site. As part of the initial investigation, Ecology collected soil samples at the 62nd Avenue Property. Laboratory analysis of those samples showed the presence of chlordane and dieldrin above the residential cleanup standards set forth in WAC 173-340-740(3)(B)(a)(iii)(A). See Attachment B. All documents referenced in Attachment B are hereby incorporated by this reference and are an integral and enforceable part of this Order.

7. On February 18, 1998, the Seattle-King County Department of Public Health ("SKCDPH") conducted a Site Hazard Assessment at the Site. In the course of conducting the Site Hazard Assessment, additional soil samples were collected at the Site. Laboratory analysis of those samples showed the presence of chlordane and dieldrin, known pesticides, at the 62nd Avenue Property and at the adjacent property to the south occupied by the Lake Forest Park Preschool at 6124 Northeast 181st Street, Kenmore, Washington ("Preschool Property"). Dieldrin was found at concentrations above MTCA Method B levels for residential soils. The Preschool Property is within the boundaries of the Site. See Attachment B.

8 On March 25, 1998, Ecology returned to the Site and took additional samples from the Preschool Property. Laboratory analysis of those samples showed that chlordane and dieldrin concentrations were below the residential cleanup standards set forth in WAC 173-340-740(3)(B)(a)(iii)(A). See Attachment B.

9 On or about May 15, 1998, Ecology issued Emergency Agreed Order DE98TC-N170 to Sheridan Martin and Sharon Schlittenhard (collectively "the PLP Group") requiring certain actions as specified in the Work Plan for Interim Remedial Action ("Interim Action Work Plan"), dated May 14, 1998. The Interim Action Work Plan was developed by SECOR International Incorporated ("SECOR"), a consultant to the PLP Group. The Interim Action Work Plan called for the removal of all contaminated soil at the Preschool Property and contiguous contaminated soil in the southwest corner of the 62nd Avenue Property containing one or more pesticides in concentrations exceeding applicable Method B cleanup standards. Ecology reviewed and approved the Interim Action Work Plan before its implementation. See Attachment B

10 SECOR completed the soil removal work at the Preschool Property on or about May 5, 1998. SECOR excavated and removed approximately 10 tons of soil from the Preschool Property containing concentrations of pesticides above applicable Method B cleanup levels. The excavated soil was disposed of at the Subtitle C Hazardous Waste Landfill in Arlington, Oregon, with the advance approval of Ecology. Ecology inspected and approved this soil removal action.

11 SECOR began the soil removal work on the 62nd Avenue Property on May 15, 1998. On that day, SECOR collected soil samples on the 62nd Avenue Property that contained pesticides including chlordane, dieldrin, heptachlor, heptachlor epoxide (a breakdown product of heptachlor), and DDD (a breakdown product of DDT) in concentrations that exceeded applicable Method B cleanup levels. Some of the samples exceeded Method B cleanup levels by 1 to 3 orders of magnitude. The highest concentration occurred in soil sample S-13 which had a hazard quotient of

approximately 41.8 and an excess cancer risk of approximately  $1.6 \times 10^{-4}$  (1.6 in 10,000 increased risk of developing cancer). A hazard quotient of 1.0 and an excess cancer risk of  $1.0 \times 10^{-6}$  (one in 1,000,000) are considered allowable risks by Ecology at contaminated sites. See Attachment B.

12. SECOR completed the initial round of soil removal work at the 62nd Avenue Property on or about June 1, 1998. SECOR excavated and removed from the southern boundary of the 62nd Avenue Property approximately 20 tons of soil containing concentrations of pesticides above applicable Method B cleanup levels. The excavated soil was disposed of at the Subtitle C Hazardous Waste Landfill in Arlington, Oregon, with the advance approval of Ecology. Ecology inspected and approved this soil removal interim action contingent upon monitoring to confirm that migration of the contaminants did not occur to or towards the Preschool Property. This removal action did not remove all contiguous contaminated soils on the 62nd Avenue Property as specified in Emergency Agreed Order DE98TC-N170.

13. On July 10, 1998, the PLP Group submitted to Ecology an Addendum to the Interim Action Work Plan ("Addendum"). The purpose of the Addendum was to require limited additional soil sampling on the 62nd Avenue Property, expand the excavated area on the 62nd Avenue Property to create a buffer zone between the 62nd Avenue Property and Preschool Property, and implement a monitoring and maintenance program for the Site. Ecology reviewed and approved the Addendum prior to its implementation contingent upon monitoring to confirm that migration of the contaminants did not occur to or towards the Preschool Property. See Attachment B.

14. SECOR completed the second round of soil removal work at the 62nd Avenue Property in August 1998. SECOR removed approximately 80 additional tons of contaminated soil from the 62nd Avenue Property in the southwest corner and along the southern boundary of the property. An area approximately 5 feet wide by 2 to 3 feet deep and 60 feet long was excavated and backfilled with clean soil to act as a buffer zone between the 62nd Avenue Property and the Preschool

Property. Jute matting and bark chips were placed on top of the soil that was disturbed by the excavation during the interim action. The excavated soil was disposed of at the Subtitle C Hazardous Waste Landfill in Arlington, Oregon, with the advance approval of Ecology. Ecology inspected and approved this soil removal action and the construction of the buffer zone contingent upon monitoring to confirm that migration of the contaminants did not occur to or towards the Preschool Property.

15. On October 9, 1998, as part of the monitoring and maintenance program for the Site, SECOR collected two soil samples from the buffer zone on the 62nd Avenue Property. One of the two samples was found to contain dieldrin in concentrations above applicable Method B cleanup levels. The other sample did not contain any detectable concentrations of any pesticide. SECOR collected an additional two soil samples from the buffer zone on October 13, 1998. One of the two samples was found to contain dieldrin in concentrations above applicable Method B cleanup levels. The other sample did not contain any detectable concentrations of any pesticide. The analytical results for all four samples were submitted to Ecology in a Monitoring and Maintenance Program Status Report dated January 15, 1999. See Attachment B.

16. In October and November 1998, in response to the discovery of dieldrin in the buffer zone, SECOR removed the sod from the impacted area of the buffer zone and placed it in a covered stockpile near the northern boundary of the 62nd Avenue Property. SECOR also constructed a silt fence barrier immediately north of the buffer zone intended to inhibit the future migration of pesticides into the buffer zone. Ecology was provided with advance notice of and approved this modification to the interim remedial action contingent upon monitoring to confirm that the migration of the contaminants to or towards the Preschool Property did not occur.

17. On November 25, 1998, the Washington State Department of Health ("WSDOH") published a public health consultation of the Able Pest Control Site. WSDOH concluded that no apparent public health hazard then existed for children exposed to pesticides in soil at the Preschool

Property. The exposure did not exceed a level of health concern even in those areas of the Preschool Property with the highest concentration of pesticides. WSDOH concluded that a potential health hazard then existed for residents of the 62nd Avenue Property who were exposed to the contaminated soil at the 62nd Avenue Property. WSDOH stated, however, that it did not consider the available data to be sufficient to accurately assess the potential health hazard posed to residents living at the 62nd Avenue Property. WSDOH recommended that additional soil sampling be performed at the 62nd Avenue Property in order to obtain more data. See Attachment B.

18. On December 9, 1998, as part of the monitoring and maintenance program for the Site, TriHydro Northwest, LLC ("TriHydro Northwest"), a consultant for the PLP Group, collected two soil samples from the buffer zone on the 62nd Avenue Property. One of the two samples was found to contain dieldrin in concentrations above applicable Method B cleanup levels. The other sample did not contain any detectable concentrations of any pesticide. On February 23, 1999, TriHydro Northwest collected five additional samples from the buffer zone in order to evaluate the transport mechanism for the pesticides. Two of the samples were found to contain dieldrin in concentrations above applicable Method B cleanup levels. One of these same samples also contained aldrin in concentrations above applicable Method B cleanup levels. Based on these analytical results, TriHydro Northwest concluded that the pesticides were probably being carried by vadose water from unremediated portions of the 62nd Avenue Property to the buffer zone. Vadose water is defined as pore water within the near surface soil above the regional or perched water table. The analytical results for the soil samples collected in December 1998 and February 1999 were submitted to Ecology in a Monitoring and Maintenance Program Status Report dated March 11, 1999. Ecology reviewed the analysis and conclusions of TriHydro Northwest and acknowledged that vadose water is a possible transport mechanism for pesticides to the buffer zone. See Attachment B.

19. On January 5, 1999, Sheridan Martin died as a result of injuries sustained in a car accident. Sharon Keller, his daughter, has been appointed the Personal Representative of the Estate of Sheridan Martin in Washington State. The Estate is currently involved in probate proceedings in Washington, Minnesota, and Florida.

20. On January 7, 1999, Ecology took soil samples ABLE M-1 (on the Preschool Property) and ABLE M-2 (on the 62nd Avenue Property) to monitor the effectiveness of the interim action and the integrity of the buffer zone. Both soil samples contained detectable levels of chlordane and dieldrin below applicable Method B cleanup levels. See Attachment B.

21. On January 15, 1999, the PLP Group submitted to Ecology an Interim Remedial Action Report that summarized all of the work conducted at the Site through that date. The Interim Remedial Action Report was prepared by SECOR on behalf of the PLP Group. See Attachment B.

22. On March 11, 1999, TriHydro Northwest submitted a Monitoring and Maintenance Program Status Report to Ecology for soil sampling done on February 23, 1999. The analytical results indicated that the soils in the buffer zone area, adjacent to the Preschool property, contained dieldrin above applicable Method B cleanup levels for residential soils. See Attachment B.

23. In March 1999, WSDOH collected dust samples from inside the two apartments at the 62nd Avenue Property and from a piece of carpet allegedly removed from the lower apartment by a former tenant. The analytical results indicate that dust within the two apartments contained detectable levels of the following pesticides: chlordane; dieldrin; nonachlor; heptachlor; Gamma-BHC (Lindane); and methoxychlor. The analytical results indicated that the carpet sample contained detectable levels of the following compounds: chlordane; dieldrin; heptachlor; nonachlor; methoxychlor; and PCB-1254. The following compounds were detected in dust and/or carpet in concentrations exceeding applicable Method B cleanup levels (which were used for comparative purposes): chlordane; dieldrin; PCBs; heptachlor; and Lindane. The following pesticide was detected

in dust and/or carpet in concentrations below applicable Method B cleanup levels (which were used for comparative purposes): methoxychlor, Nonachlor, PCBs, and methoxychlor were not detected in any soil or vadose zone water sample collected at the Able Pest Control Site for the interim action and/or RI/FS. See Attachment B.

24. On April 16, 1999, the PLP Group submitted to Ecology a Work Plan for Remedial Investigation/Feasibility Study ("RI/FS Work Plan") for soils at the Site under the Voluntary Cleanup Program (VCP). TriHydro Northwest prepared the RI/FS Work Plan on behalf of the PLP Group. Ecology approved the RI/FS Work Plan for soils in May 1999. The PLP Group proceeded to perform the RI/FS for soils under the Voluntary Cleanup Program ("VCP"). See Attachment B.

25. On May 21, 1999, as part of the monitoring and maintenance program for the Site under Agreed Order No. DE98TC-N170, TriHydro Northwest collected three soil samples from the buffer zone on the 62nd Avenue Property. One of the three soil samples was found to contain dieldrin at concentrations exceeding applicable Method B cleanup levels. The other two samples did not contain any detectable concentrations of any pesticide. The analytical results for these samples were submitted to Ecology in a Monitoring and Maintenance Program Status Report dated August 13, 1999. See Attachment B.

26. On May 24 and 25 1999, in response to the discovery of detectable concentrations of dieldrin and aldrin in the buffer zone, TriHydro Northwest constructed and installed an interceptor trench in the buffer zone to capture vadose water migrating into the buffer zone. The interceptor trench was connected to a sump and a 200-gallon aboveground storage tank. All water captured in the interceptor trench was pumped into the storage tank. During Site visits in June and July 1999, TriHydro Northwest reported to Ecology that they did not discover any significant amount of water in the storage tank. On June 4, 1999, the PLP Group submitted to Ecology a report entitled "Description of Vadose Zone Water Interceptor Trench." TriHydro Northwest prepared the report

on behalf of the PLP Group. This work was conducted under the authority of Agreed Order No. DE98TC-N170, although construction was completed prior to Ecology review of plans and specifications for the interceptor trench. This work was intended to meet the condition that the buffer-zone approach to the interim action prevent movement of concentrations of pesticides in vadose zone water from the 62nd Avenue Property to the Preschool Property. See Attachment B.

27. On June 1, 1999, Sharon Schlittenhard sent a letter to the tenants of the 62nd Avenue Property, Ernesto and Regan Cains and Travis and Deanna Brown, requesting that they move off the premises before the PLP Group began the remedial investigation of the 62nd Avenue Property. Ms. Schlittenhard offered to reimburse the tenants for their reasonable relocation expenses. The tenants moved off of the 62nd Avenue Property in July 1999. The residential structure on the 62nd Avenue Property has been unoccupied since that time.

28. In June of 1999, TriHydro Northwest changed its corporate name to Farallon Consulting, LLC ("Farallon Consulting"). On June 18, 1999, Farallon Consulting began the sampling at the Site as outlined in the RI/FS Work Plan to determine the lateral and vertical extent of the pesticide contamination at the Site.

29. In June, July, and August 1999, the PLP Group submitted to Ecology the analytical results from the soil samples collected during the RI/FS. The analytical results indicate that pesticides were present in soil at levels exceeding applicable Method B cleanup standards throughout the entire 62nd Avenue Property at depths from 0 to 36 inches below ground surface. No pesticides were detected in concentrations above applicable Method B cleanup levels in the soil samples collected at the properties to the north or west of the 62nd Avenue Property, except for one soil sample collected from the adjacent property to the north of the 62nd Avenue Property. This soil sample contained dieldrin in concentrations exceeding applicable Method B cleanup levels. See Attachment B.

30. Pursuant to the Monitoring and Maintenance Plan, the PLP Group was required to sample soils in the buffer zone between the 62nd Avenue Property and the Preschool Property. The monitoring and maintenance sampling was modified. The modification included collection of vadose zone water samples from the temporary storage tank rather than in-place soil samples. This sampling modification was conducted for two sampling periods only.

31. On September 14, 1999, as part of the monitoring and maintenance program for the Site, Farallon Consulting collected a sample of standing water from the 200-gallon aboveground storage tank used to retain vadose water extracted from the interceptor trench and migrating into the buffer zone on the 62nd Avenue Property. The water sample was found to contain chlordane, dieldrin, aldrin, endrin, and DDD in concentrations exceeding applicable Method B cleanup levels for surface water. The analytical results for this sample were submitted to Ecology and the King County Department of Natural Resources in a Monitoring and Maintenance Program Status Report dated November 18, 1999. See Attachment B.

32. On September 20, 1999, the PLP Group submitted to Ecology a draft RI/FS report for soils for review and comment under the Voluntary Cleanup Plan. Ecology submitted its comments to the PLP Group on October 11, 1999. See Attachment B.

33. On November 15 and November 18, 1999, the PLP Group submitted application materials to the King County Department of Natural Resources ("KCDNR") to obtain permission to continuously discharge surface water collected in the 200-gallon aboveground storage tank at the 62nd Avenue Property directly into the King County sanitary sewer system. On November 23, 1999, KCDNR issued a permit to the PLP Group authorizing the discharge of up to 100 gallons of wastewater per day into the sanitary sewer system, subject to certain conditions. See Attachment B.

34. On or about September 1999, Ecology requested that Farallon Consulting collect two soil samples from the Preschool Property to evaluate whether the buffer zone and interceptor trench

were effectively inhibiting the migration of pesticides from the 62nd Avenue Property to the Preschool Property. On or about November 17, 1999, Ecology again requested that Farallon Consulting collect two soil samples from the Preschool Property to evaluate whether the buffer zone and interceptor trench were effectively inhibiting the migration of pesticides from the 62nd Avenue Property to the Preschool Property. Two samples were collected on November 22, 1999, and were found to contain dieldrin in concentrations exceeding applicable Method B cleanup levels. No other pesticides were present in the soil at concentrations above applicable Method B cleanup levels. The analytical results for these samples were submitted to Ecology on December 7, 1999. See Attachment B.

35. On December 6, 1999, the PLP Group submitted to Ecology a final RI/FS report for soils at the Site ("RI/FS Report"). The RI/FS Report summarizes the results of the remedial investigation of the Site and evaluates the feasibility of various soil cleanup action alternatives. The RI/FS Report selects a cleanup action referred to as Alternative 5. Alternative 5 involves the excavation and disposal of all soil containing one or more target pesticides in concentrations above applicable Method B cleanup levels. See Attachment B.

36. On December 8, 1999, at the request of Ecology, Farallon Consulting collected eight additional soil samples and one wood chip sample from the previously remediated portion of the Preschool Property immediately adjacent to the buffer zone. The additional soil samples were collected to delineate the area of soil contamination on the Preschool Property. One of the soil samples contained dieldrin in concentrations above applicable Method B cleanup levels. One of the soil samples contained dieldrin and chlordane in concentrations below applicable Method B cleanup levels. The six remaining samples did not contain any detectable levels of pesticides. The analytical results were submitted to Ecology in a Technical Memorandum dated December 15, 1999. Farallon Consulting prepared the Technical Memorandum on behalf of the PLP Group. See Attachment B.

37. On December 15, 1999, the PLP Group submitted a draft Addendum No. 1 to the Interim Action Work Plan ("Addendum No. 1") for review and comment by Ecology. Ecology submitted its written comments to the PLP Group on December 22, 1999. The PLP Group submitted the final Addendum No. 1 to Ecology on December 27, 1999. The Addendum No. 1 sets forth the scope of work that the PLP Group agreed to perform to remove all contaminated soil from the previously remediated Preschool Property. See Attachment B.

38. On December 29 and 30, 1999, Farallon Consulting completed the soil removal work at the Preschool Property. Farallon Consulting excavated and removed approximately 6 cubic yards of soil from the Preschool Property. The excavated soil was separately stockpiled near the northern boundary of the 62nd Avenue Property. On January 5, 2000, Farallon Consulting submitted a Technical Memorandum to Ecology summarizing the work completed on the Preschool Property. See Attachment B.

39. On January 3, 2000, as part of the monitoring and maintenance program for the Site, Farallon Consulting collected a sample of standing water from the 200-gallon aboveground storage tank used to retain vadose water collected from the interceptor trench migrating into the buffer zone on the 62nd Avenue Property. The water sample was found to contain chlordane, dieldrin, aldrin, endrin, and DDD in concentrations above applicable Method B cleanup levels for surface water. The analytical results for this sample were submitted to Ecology and KCDNR in a report dated January 13, 2000. See Attachment B.

### **III. ECOLOGY DETERMINATIONS**

1. The Estate of Sheridan Martin is an "owner or operator" as defined at RCW 70.105D 020(12) of a "facility" as defined at RCW 70.105D 020(4).

2. Sharon Schlittenhard is an "owner or operator" as defined as RCW 70.105D 020(12) of a "facility" as defined at RCW 70.105D 020(4).

3. The facility is known as the Able Pest Control Site and is located at 18115 62nd Avenue Northeast, Kenmore, Washington, and any other areas where hazardous substances have come to be located, including, but not limited to, the property occupied by the Lake Forest Park Preschool located at 6124 Northeast 181st Street, Kenmore, Washington.

4. The substances found at the facility as described above are "hazardous substances" as defined at RCW 70.105D.020(7).

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

6. By letter dated May 1, 1998, Ecology notified Sheridan Martin and Sharon Schlittenhard of their status as "potentially liable persons" under RCW 70.105D.040 and WAC 173-340-500 after notice and opportunity for comment.

7. Pursuant to RCW 70.105D.030(1) and 70.105D.050, Ecology may require the 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.

8. Pursuant to WAC 173-340-430, interim remedial actions may occur prior to the selection and completion of a cleanup action if the interim action is technically necessary to reduce a threat to human health and the environment by eliminating or substantially reducing one or more pathways of exposure to a hazardous substance at a facility and if the interim action is approved in writing by Ecology prior to initiation of such action(s) by the PLP Group.

9. The interim action was not adequate to preclude off-site migration of concentrations of one or more of the target pesticides in vadose zone water to the south of the 62nd Avenue Property. Ecology believes that the PLP Group did not comply with the requirements of Emergency

Agreed Order DE98TC-N170 with respect to monitoring of the buffer zone and reporting of the results of this monitoring to Ecology. The PLP Group disputes this assertion and believes that no violations of the Agreed Order were committed.

10. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

#### **IV. WORK TO BE PERFORMED**

Based on the foregoing facts and determinations, it is hereby ordered that the Estate of Sheridan Martin and Sharon Schlittenhard (herein referred to as the "Potentially Liable Persons" or "PLP Group") are ordered to take the following remedial actions and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein. This Order requires: (a) the preparation and submittal of a Cleanup Action Plan and Health and Safety Plan; and (b) the implementation and completion of the cleanup action to be set forth and described in the Cleanup Action Work Plan. Completion of the work required by this Order will constitute the final cleanup of the Able Pest Control Site. All dates stated in this section are end dates and are not intended to limit or prevent earlier completion of tasks or submittals.

1. On April 21, 2000, the PLP Group submitted to the Ecology Site Coordinator a Pre-Draft Cleanup Action Plan ("Pre-Draft CAP") describing in detail the work necessary to implement Alternative 5, the cleanup action for the Site selected in the RI/FS Report. The Pre-Draft CAP complied with all requirements of WAC 173-340-360(10). The Pre-Draft CAP addressed all aspects of the cleanup action, including, but not limited to, specification of cleanup standards, specification of State Environmental Policy Act requirements and timelines, specification of local permit substantive requirements, specification of excavation methods, and specification of waste storage and disposal methods. The Pre-Draft CAP included as attachments: (1) an Ecology approved Environmental Media Management Plan ("EMMP"); (2) a Pre-Draft Health and Safety Plan ("HASP"); (3) a Pre-

Draft Sampling and Analysis Plan ("SAP"); (4) a Pre-Draft Quality Assurance Project Plan ("QAPP"); (5) a Draft Monitoring and Maintenance Plan ("MMP"), including procedures to confirm compliance with final cleanup standards; and (6) a SEPA checklist.

2. Ecology provided the PLP Group with its written comments on the Pre-Draft CAP, Pre-Draft HASP, Pre-Draft SAP, and Pre-Draft QAPP in May of 2000.

3. In May of 2000, the PLP Group submitted to the Ecology Site Coordinator a revised PCAP, HASP, SAP, and QAPP that addressed the Ecology comments to the satisfaction of Ecology. The revised CAP, together with all attachments thereto, shall be deemed the Draft Cleanup Action Plan ("Draft CAP").

4. Ecology shall publish the Draft CAP and SEPA checklist for public comment on May 26, 2000. Within fifteen (15) days of the expiration of the public comment period and receipt by the PLP Group of comments, the PLP Group shall submit to the Ecology Site Coordinator a revised Draft CAP that takes into account and addresses the public comments to the satisfaction of Ecology. The revised Draft CAP, upon the approval of Ecology, shall be deemed the Final Cleanup Action Plan ("Final CAP"). The Final CAP shall be attached to this Order as Attachment C. Attachment C is hereby incorporated by this reference and is an integral and enforceable part of this Order.

5. The PLP Group shall begin implementation of the cleanup action set forth and described in the Final CAP within a timeframe consistent with the operation of the Preschool.

6. Beginning on June 30, 2000, and every Friday thereafter during the construction phase of the cleanup until completion of the cleanup action set forth and described in the CAP, the PLP Group shall submit to the Ecology Site Coordinator a written weekly report. The report shall describe all work conducted at the Site since submission of the previous report and all work to be performed at the Site in the coming workweek.

7 Any changes in the work specified in the weekly reports or in the schedule for completion of the work shall be immediately communicated in writing to the Ecology Site Coordinator. A change of work notice shall include the work task(s) to be delayed, the reason(s) for the delay, the anticipated completion date, and the identity of the person responsible for the task. The Project Coordinator for the PLP Group shall retain copies of all change notices together with the confirmation of their delivery to Ecology in accordance with the record retention requirements set forth in this Order. The PLP Group shall make every effort to meet all required completion dates specified in this Order and the Final CAP, notwithstanding any change notice(s) provided to Ecology.

8. Upon completion of the cleanup action set forth and described in the Final CAP, the PLP Group shall submit to Ecology a Draft Site Closure Report describing all of the work and activities performed under this Order, including, but not limited to: (1) sample analytical results of soil characterization samples; (2) all samples collected and analyzed during the completion of the work performed; (3) documentation confirming the disposition of all soils and water handled during the completion of work performed; and (4) any incidents, accidents, injuries, or reported off-site impacts or complaints alleging impacts that occurred during the work performed. The PLP Group shall submit the Draft Site Closure Report to the Ecology Site Coordinator within one month after completion of Site restoration. Ecology shall provide the PLP Group with its written comments on the Draft Site Closure Report no later than two weeks after receipt of the draft report. Ecology's comments on the Draft Site Closure Report will also include final comments on the previously submitted MMP. Ecology will also make every reasonable effort to provide comments on the MMP during the cleanup action so that changes to the MMP following the completion of cleanup actions can be minimized. The PLP Group shall submit the Final Site Closure Report to the Ecology Site Coordinator no later than two weeks after receipt of Ecology comments.

9. The Work to be Performed required by Emergency Order No. DE98TC-N170 shall be incorporated by reference and superceded by this Agreed Order. However, all monitoring and control measures specified in or required by Emergency Order No. DE98TC-N170, this Order, or thereafter required in writing by Ecology shall remain in effect until either: (1) Ecology issues a Letter of Completion and removes the Site from the Hazardous Sites List and the Confirmed and Suspected Contaminated Sites List; or (2) Ecology determines that monitoring is no longer required and notifies the PLP Group of that determination in writing. Points of compliance for cleanup actions required by this Order and specific substantive requirements of local permits, including water discharge permits, are set forth in the Cleanup Action Plan (Attachment C).

#### **V. TERMS AND CONDITIONS OF ORDER**

1. **Definitions**. Unless otherwise specified, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meaning 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 this Order is inadequate or improper in any respect.
3. **Remedial Action Costs**. The PLPs 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, preparation of this Order, oversight, and administration. Ecology costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). The 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 of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges.

4. Designated Project Coordinators. The project coordinator for Ecology is:

Name: Louise Bardy

Address: Department of Ecology  
Northwest Regional Office  
Toxics Cleanup Program  
3190-160th Avenue S.E.  
Bellevue, WA 98008-5452  
Tel: (425) 649-7000  
Fax: (425) 649-7098

The project coordinator for the PLP Group is:

Name: Peter Jewett

Address: Farallon Consulting, LLC  
320 3rd Avenue N.E., Suite 200  
Issaquah, WA 98027  
Tel: (425) 427-0061  
Fax: (425) 427-0067

The project coordinator(s) shall be responsible for oversight of the implementation of this Order. To the maximum extent possible, communications between Ecology and the PLP Group and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the project coordinator(s). Should Ecology or the PLP Group change project coordinator(s), written notification shall be provided to Ecology or the PLP Group at least ten (10) 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. The PLPs shall notify Ecology as to the identity of such engineers or hydrogeologists, 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 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 will be in compliance with this Order. Except where necessary to abate an emergency situation, the PLPs shall not perform any remedial actions at the Able Pest Control Site outside those required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

6. Access Ecology or any Ecology authorized representative shall have the authority to enter and freely move about the Site at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the PLPs. This Order constitutes reasonable notice of access, and the PLPs shall allow access to the 62nd Avenue Property at all reasonable or necessary times for purposes of overseeing work performed under this Order and assuring compliance with this Order. Ecology shall allow split or replicate samples to be taken by the PLPs during an inspection unless doing so interferes with Ecology's sampling. The PLPs 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 Ecology shall prepare and maintain the responsibility for public participation at the Site. The PLPs shall help coordinate and implement public participation for the Site.

8. Retention of Records The PLPs shall preserve in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of completion of the work performed

pursuant to this Order, all records, reports, documents, and underlying data in its possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of the PLPs, then the PLPs agree to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.

9. Dispute Resolution. The PLPs may request Ecology to resolve disputes that 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 a final decision by Ecology. The PLPs 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 this Order unless otherwise provided by Ecology in writing. Failure by any PLP to comply with this Order does not relieve any other PLP from the requirement and obligation to comply with same.

10. Reservation of Rights -- No Settlement

a. 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.

b. In addition, Ecology will not take additional enforcement actions against the PLPs to require those remedial actions required by this Order, provided the PLPs comply with this Order. Ecology reserves the right, however, to require additional remedial actions at the Site should it deem such actions necessary. 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 the PLPs to stop further implementation of this Order for such period of time as needed to abate the danger.

c. 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.

d. This Order shall not be construed as proof of liability or responsibility for any releases of hazardous substances or cost for remedial action or an admission of any facts provided, however, that the PLPs shall not challenge the jurisdiction of Ecology in any proceeding to enforce this Order.

11. Transference of Property. No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated or allowed 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 transfer of any legal or equitable interest the PLPs may have in the Site or any portion thereof, the PLPs shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, the PLPs shall notify Ecology of the contemplated transfer.

12. Compliance with Other Applicable Laws.

a. 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 paragraph b of this section.

b. Pursuant to RCW 70.105D.090(l), 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 this Order have been included in the Final CAP attached hereto as Attachment C and are binding and enforceable requirements of this Order. 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 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, they shall promptly notify Ecology of this 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.

c. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the State to administer any federal law, the exemption shall not apply, and the 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.

## **VI. SATISFACTION OF THIS ORDER**

The provisions of this Order shall be deemed satisfied upon receipt by the PLPs of written notification from Ecology that the PLPs have completed the remedial activity required by this Order, as amended by any modifications, and that all other provisions of this Order have been complied with. Ecology shall make best efforts to respond to the PLPs within a reasonable time of receiving a request from the PLPs for notice of completion.

## **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 the PLPs refuse, without sufficient cause, to comply with any term of this Order, the PLPs and each individual PLP who refuses, without sufficient cause to comply 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 State Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70.105D 060.

Effective date of this Order: \_\_\_\_\_, 2000

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

Steve Alexander  
Section Manager  
Toxics Cleanup Program  
Northwest Regional Office

By \_\_\_\_\_

**ESTATE OF SHERIDAN MARTIN**

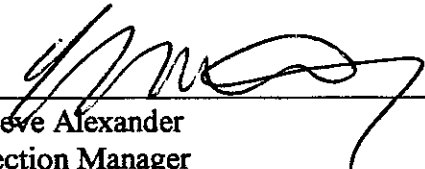
By \_\_\_\_\_  
Sharon Keller  
Personal Representative of Estate

**SHARON SCHLITTENHARD**

By \_\_\_\_\_  
Sharon Schlittenhard

Effective date of this Order: May 26<sup>th</sup>, 2000

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

By  for Steve Alexander  
Steve Alexander  
Section Manager  
Toxics Cleanup Program  
Northwest Regional Office

**ESTATE OF SHERIDAN MARTIN**

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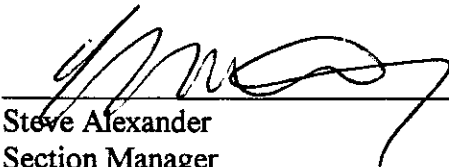
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By Sharon Schlittenhard  
Sharon Schlittenhard

Effective date of this Order: May 26<sup>th</sup>, 2000

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

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