

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial) Enforcement Order
Action by:))
))
UNITED STATES DEPARTMENT OF) No. DE 91TC-C445
AGRICULTURE FOREST SERVICE))

To: Forest Supervisor
Okanogan National Forest
United States Department
Agriculture Forest Service
1240 South Second
Post Office Box 950
Okanogan, Washington 98840

I.

Jurisdiction

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

II.

Statement of Facts

Based on currently known information, Ecology makes the
following Statement of Facts:

2.1 The [REDACTED], hereinafter referred
to as the "facility", is located in [REDACTED]
Washington, approximately eight miles south of Twisp,
Washington. The facility is situated in Leecher Canyon,
approximately three miles northeast of Carlton, Washington.
As part of the Okanogan National Forest, the facility is
owned by the United States Department of Agriculture Forest
Service, hereinafter referred to as the Forest Service.
Mining claims associated with the facility were staked by
Fred Higby, who operated a small cyanide leach plant in 1982.
The existing cyanide heap leach operation was operated by the
lessees of Mr. Higby's claims, Cordilleran Development, Inc.,
which ceased mining in 1986.

2.2 Arsenic, mercury, lead, chromium, cadmium, and cyanide have been detected in solids or liquids at the site at levels which may pose a threat to human health and the environment.

2.3 The foregoing information is contained in the following document: United States Department of Agriculture Forest Service, Okanogan National Forest. 1991. "Minnie Mine Action Plan."

III.

Ecology Determinations

3.1 The Forest Service is an "owner or operator" as defined at RCW 70.105D.020(6) of a "facility" as defined in RCW 70.105D.020(3).

3.2 The facility is known as Minnie Mine mill site and is located in Section 23, Township 32 North, Range 22 East, Willamette Meridian, approximately 8 miles south of Twisp, Okanogan County, Washington.

3.3 The substances found at the facility as described above are "hazardous substances" as defined at RCW 70.105D.020(5).

3.4 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(10).

3.5 By letter dated September 11, 1991, Ecology notified the Forest Service of its status as a "potentially liable person" under RCW 70.105D.040 after notice and opportunity for comment.

3.6 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.

3.7 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 the Forest Service take the following remedial actions and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein. In accordance with WAC 173-340-840(5), sampling data required by this Order shall be submitted according to Appendix 1: GROUND WATER SAMPLING DATA SUBMITTAL REQUIREMENTS.

4.1 The Forest Service will plan, conduct, and finance an interim action which removes and properly disposes of all liquid in the lined ponds on-site and which prevents any future accumulation of liquid in the ponds.

4.2 The Forest Service will conduct and finance a State Remedial Investigation and Feasibility Study (RI/FS) for the Facility.

4.3 The Forest Service will conduct and finance the implementation of a Cleanup Action Plan (CAP), as necessary, for the Facility.

4.4 All work performed pursuant to this Order shall be under the direction and supervision of a professional engineer or hydrogeologist, or similar expert, with appropriate training, experience, and expertise in hazardous waste site investigations and cleanup.

4.5 The Forest Service shall prepare and transmit the following documents to Ecology for review, comment, and approval in accordance with the provisions of this part:

- a. Interim Action Scope of Work.
- b. Interim Action Management Plans, including work plan, health and safety plan, sampling

and analysis plan, and public participation plan.

- c. RI/FS Scope of Work.
- d. RI/FS Management Plans, including work plan, health and safety plan, sampling and analysis plan, and public participation plan.
- e. RI/FS Report.
- f. Cleanup Action Management Plans, including a Draft Cleanup Action Plan and Engineering Design Report, Construction Plans and Specifications, Operation and Maintenance Plan, and Compliance Monitoring Plan.

4.6 The procedure for review, comment, and approval of the documents required by paragraph 4.5 shall be as follows:

- a. The Forest Service will initially submit each document to Ecology as a "draft document" for review and comment.
- b. Within thirty (30) days of receipt of the draft document, Ecology will provide the Forest Service with comments; provided, that on draft documents involving the Interim Action, Ecology will provide the Forest Service with comments within ten (10) days of receipt of the draft document.
- c. Following receipt of comments on a draft document, the Forest Service will have thirty (30) days to respond to comments and submit a "draft final" to Ecology for approval; provided, that on draft documents involving the Interim Action, the Forest Service will have ten (10) days to respond to comments and submit a "draft final" to Ecology for approval.

- d. Within thirty (30) days of receipt of a draft final document, Ecology will notify the Forest Service in writing of Ecology's approval or disapproval of the document; provided, that on documents involving the Interim Action Ecology will notify the Forest Service in writing of Ecology's approval or disapproval of the document within ten (10) days of receipt of a draft final document.
- e. If disapproved, Ecology may revise the draft final document for the Forest Service as an approved draft final document.
- f. Upon approval of the draft final document, the document becomes "final" and the terms and schedules therein become incorporated into this Order as enforceable parts of this Order.

4.7 The Forest Service shall perform the tasks and submit plans, reports, and other documents as required by the management plans developed under paragraphs 4.5 and 4.6. This Order will fully incorporate the provisions of the management plans developed under paragraphs 4.5 and 4.6. In the event of any inconsistency between this Order and the management plans developed under paragraphs 4.5 and 4.6, this Order shall govern.

4.8 All documents submitted pursuant to paragraphs 4.5 and 4.6 shall comply with the applicable requirements of chapter 70.105D and chapter 173-340 WAC.

4.9 Within twenty-one (21) days of the effective date of this Order, the Forest Service shall propose to Ecology the deadline for completion of the preliminary draft Interim Action Scope of Work. Interim Action work shall be completed no later than one-hundred-eighty (180) days following the effective date of this Order. Within twenty-one (21) days following completion of the Interim Action, the Forest Service shall propose to Ecology the deadline for completion of the preliminary draft RI/FS Scope of Work.

4.10 Within twenty-one (21) days of the issuance of the final RI/FS Scope of Work, the Forest Service shall propose deadlines for the following preliminary draft documents:

- a. RI/FS Management Plans, including work plan, safety and health plan, sampling and analysis plan, and public participation plan.
- b. RI/FS Report.
- c. Cleanup Action Management Plans, including the Draft Cleanup Action Plan, and also including a proposed schedule for completion of the engineering design report, the construction plans and specifications, the operation and maintenance plans, and the compliance monitoring plan.

4.11 Within twenty-one (21) days of issuance of the Final Cleanup Action Plan, the Forest Service shall propose deadlines for completion of the following draft documents:

- a. Engineering Design Report.
- b. Construction Plans and Specifications.
- c. Operation and Maintenance Plan.
- d. Compliance Monitoring Plan.

4.12 Within twenty-one (21) days following receipt of the proposed deadlines submitted pursuant to paragraphs 4.9, 4.10 and 4.11, Ecology shall review and provide comments to the Forest Service regarding the proposed deadlines.

Within fifteen (15) days following receipt of the comments, the Forest Service shall, as appropriate, make revisions and reissue the proposal for Ecology approval.

The finalized deadlines shall be incorporated into the appropriate work plans.

V.

Terms and Conditions of Order

5.1 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.

5.2 Public Notice

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.

5.3 Remedial Action Costs

The Forest Service 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; e.g., employee salary, laboratory costs, travel costs, contractor fees, and employee benefit packages; and agency indirect costs of direct activities. The Forest Service 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. Itemized statements shall be prepared quarterly. A description of work performed will be provided upon request. Failure to pay Ecology's costs within 90 days of receipt of the itemized statement of costs may result in interest charges.

5.4 Designated Project Coordinators

The project coordinator for Ecology is:

Robert D. Swackhamer
Department of Ecology
106 South 6th Avenue
Yakima, Washington 98902-3387

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

5.5 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 Forest Service 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.

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.

5.6 Access

Ecology or any Ecology authorized representative shall have the authority to enter and freely move about all property at 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 Forest Service. In the course of conducting oversight of this Order under the Model Toxics Control Act, Ecology shall provide reasonable notice before entering property unless an emergency prevents notice. When Ecology is acting under a statute other than the Model Toxics Control Act, Ecology shall provide notice consistent with that statute. Ecology shall allow split or replicate samples to be taken by the Forest Service during an inspection unless doing so would interfere with Ecology's sampling. The Forest Service shall allow split or replicate samples to be taken by Ecology and shall provide Ecology seven (7) days notice before any sampling activity.

5.7 Public Participation

The Forest Service shall prepare and/or update a public participation plan for the Site. Ecology shall maintain the responsibility for public participation at the Site.

The Forest Service shall help coordinate and implement public participation for the Site.

5.8 Retention of Records

The Forest Service 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 Forest Service, a record retention requirement meeting the terms of this paragraph shall be required of such contractors and/or agents.

5.9 Dispute Resolution

The Forest Service may request Ecology to resolve factual or technical disputes which may arise during the implementation of this Order. Such request shall be in writing and directed to the signatory of this Order. Ecology resolution of the dispute shall be binding and final. The Forest Service 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.

5.10 Reservation of Rights

Ecology reserves all rights to issue additional Orders or take any action authorized by law in the event or upon the discovery of a release or threatened release of hazardous substances not addressed by this Order, upon discovery of any factors not known at the time of issuance of this Order, in order to abate an emergency, or under any other circumstances deemed appropriate by Ecology.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release of hazardous substances from Minnie Mine Mill 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 the Forest Service to stop further implementation of this Order for such period of time as needed to abate the danger.

5.11 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 the Forest Service 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 Forest Service may have in the Site or any portions thereof, the Forest Service 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 Forest Service shall notify Ecology of the contemplated transfer.

5.12 Compliance With Other Applicable Laws

All actions carried out by the Forest Service pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements.

VI.

Satisfaction of this Order

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

VII.

Enforcement

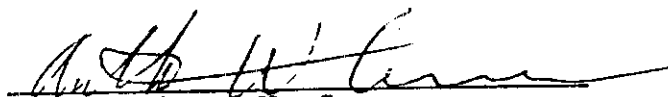
7.1 Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

- 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 Forest Service refuses, without sufficient cause, to comply with any term of this Order, the Forest Service will be liable for:

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- (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 RCW 70.105D.060.

Effective date of this Order: NOV 15 1991.



Anthony W. Grover
Section Manager
Toxics Cleanup Program
Central Regional Office

AWG/RDS:vw

November 15, 1991
mmineord mem

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APPENDIX 1