

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

In the Matter of Remedial	)	
Action by:	)	Enforcement Order
	)	No. DE 93TC-C528
UNITED STATES DEPARTMENT OF	)	
AGRICULTURE FOREST SERVICE	)	
MINNIE MINE MILL Facility	)	
OKANOGAN COUNTY, WASHINGTON	)	

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 Revised Code of Washington (RCW) 70.105D.050(1).

II.

Statement of Facts

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

2.1 The Minnie Mine Mill Facility, hereinafter referred to as the Facility, is located in Okanogan County, 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 Facility 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."

2.4 On July 14, 1993 the U.S. Forest Service notified Ecology of six dead cows at the Facility.

The animal deaths occurred in and around the ponds located on the Facility hereinafter referred to as "the ponds." The fence surrounding the ponds was breached.

2.5 On July 29, 1993 Ecology issued Emergency Enforcement Order DE 93TC-C418 to the U.S. Forest Service. This Order required, among other things, the immediate removal of known hazardous substances and the development of a schedule for a remedial investigation of the Facility.

2.6 In September and October 1993, the Forest Service removed the solids, liquids and pond liners from the ponds.

2.7 On October 16, 1993 the U.S. Forest Service provided Ecology with a proposed schedule for a Remedial Investigation of the Minnie Mine Facility.

### 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 Facility and is located in Section 23, Township 32 North, Range 22 East, Willamette Meridian, approximately eight miles south of Twisp, Okanogan County, Washington.

3.3 The substances found at the Facility as described

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above are "hazardous substances" as defined in  
RCW 70.105D.020(5).

3.4 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 in 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, Ecology 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.

3.8 This Order supersedes Emergency Enforcement Order No. DE 91TC-C418.

#### 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.

- 4.1 Upon receipt of this Order, the Forest Service shall:
- a. Conduct and finance a State Remedial Investigation and Feasibility Study (RI/FS) for the Facility. This RI/FS will include the actions set forth and described in the attached Phase 1 Remedial Investigation Work Plan. The Work Plan is attached to this Order as Exhibit A. Exhibit A is incorporated by this reference and is an integral and

enforceable part of this Order.

The Phase 1 Remedial Investigation will collect, develop, and evaluate sufficient information regarding the Facility to enable the selection of a cleanup action under WAC 173-340-360. The Phase I Remedial Investigation will be implemented to meet the requirements of WAC 173-340-350.

In accordance with WAC 173-340-840(5), groundwater sampling data developed for the Phase I Remedial Investigation or any other portion of this Order, shall be submitted according to Exhibit B: SAMPLING DATA SUBMITTAL REQUIREMENTS. Exhibit B is incorporated by this reference and is an integral and enforceable part of this Order.

4.2 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 facility investigations and cleanup.

4.3 The Forest Service shall prepare and transmit the submittals required in the Work Plan for the RI/FS (Exhibit A) to Ecology for review, comment, modification, and approval.

4.4 The procedure for review, comment, and approval of the documents required by paragraph 4.1 and 4.3 shall be as follows:

- a. The Forest Service will initially submit the Phase 1 Remedial Investigation document to Ecology as a "draft document" for review and comment by January 15, 1994.
- b. Ecology will provide the Forest Service with comments within 30 days.
- 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.
- d. Ecology will notify the Forest Service in writing of Ecology's approval or disapproval of the document.

- e. If disapproved, Ecology may revise the draft final document for the Forest Service as an approved draft final document or return the document to the Forest Service for additional revisions.
- 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.

All documents submitted pursuant to paragraphs 4.4 and 4.5 shall comply with the applicable requirements of chapter 70.105D and chapter 173-340 WAC.

4.5 Ecology will determine upon approval of the final document, and after public comment, the next action(s) to occur at the Facility. This may include, but is not limited to, further investigations conducted under a Phase 2 Remedial Investigation, a feasibility study to evaluate potential cleanup actions, or a determination of no further action.

V.

Terms and Conditions of Order

5.1. Definitions

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

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 and support costs of direct activities as defined in WAC 173-340-550(2).

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. 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 may result in interest charges.

#### 5.4. Designated Project Coordinators

The Project Coordinator for Ecology is:

Rick Roeder  
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,

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with appropriate training, experience, and expertise in hazardous waste facility 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 Facility.

[Note: WAC 173-340-400(7)(b)(i) requires that "construction" performed on the Facility 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 Facility 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 Facility. Ecology shall maintain the responsibility for public participation at the Facility.

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

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 requests 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 this 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.

In the event Ecology determines that conditions at the Facility are creating or have the potential to create a danger to the health or welfare of the people on the Facility 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 Facility 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 Facility 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 notice 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.

Enforcement

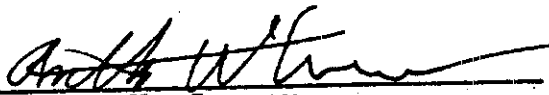
7.1. Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

- 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 Facility.

- 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:
- (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 16 1992.

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