

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by: )  
)  
)  
Earle M. Jorgensen Co. )  
8531 East Marginal Way South )  
Seattle, Washington 98108 )  
)  
and )  
)  
Mr. Dennis Beckwith )  
10860 Southeast 196th Street )  
Renton, Washington 98055 )

AGREED ORDER  
No. DE 91TC-N250

TO: The Earle M. Jorgensen Company, c/o Mr. Jess Farmer;  
and Mr. Dennis Beckwith

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 Earle M. Jorgensen Co. (hereinafter Jorgensen) and Mr. Dennis Beckwith.

1. The "Slag Disposal/Beckwith Property" site/facility ("Site") is located in Township 22 North and Range 5 East, section 7 (USGS 1973). The Site is located in Kent, Washington and is bordered by South 218th Street to the north, 88th Avenue South to the west, a steep embankment to the east and a wooded area to the south.

2. Mr. Dennis Beckwith is the current owner of the Site and has owned the Site since December 20, 1985; previously he had owned an undivided one-half share of the Site since of October 22, 1984.
3. The Earle M. Jorgensen Company is a company that generated slag waste materials from 1985 to 1989. These slag waste materials were used as fill at the Site. Slag waste materials generated by Northwest Steel Rolling Mills were also used as fill at the Site. By letter dated January 21, 1985, a Department of Ecology hazardous waste inspector stated that after reviewing data submitted by Jorgensen and Northwest Steel Rolling Mills, "it appears that the slag described by the data may be utilized as fill material." By letter dated February 21, 1985, the Seattle-King County Department of Public Health classified the waste slag material as "acceptable fill."
4. The Site is nearly level with a slight downgrade slope to the north. The ground in the slag fill area is hard and compacted and has very little vegetative growth. The Site is bordered on the west and east by ditches. There is a steep embankment, which is approximately 50 feet high and heavily vegetated, rising from the east ditch. Water seeps from the embankment and is collected in the ditch. Seep water and surface runoff

water are directed towards a retention pond located at the north end of the Site. Discharge from the retention pond flows through a culvert pipe under South 218th Street about 800 feet to Springbrook Creek and freeway ditches. Residential properties are located to the east and northeast of the Site.

5. In July 1989, Mr. Beckwith and Jorgensen contracted Hart Crowser Inc. of Seattle, Washington, to perform a slag/soil, sediment, and surface water assessment of the Site. In summary, the Hart Crowser report found that the slag fill material had "no extractable metals [using EPTox test] present above regulated hazardous waste levels" and the on-site pond water had "no priority pollutant metals in excess of DWS or Freshwater WQC".
6. On April 17, 1990, after receiving a report from the City of Kent's Operations Department, the Municipality of Metropolitan Seattle (METRO) collected samples at the Site. The surface water sample collected had a pH of 9.5 and failed Microtox tests. The sample was pH adjusted to neutrality (pH 7) and still failed. METRO concluded that the toxicity inherent in the sample is not pH-dependent nor mediated; and therefore, the sample should be regarded as toxic. On April 24, 1990, the City of Kent issued a stop work order at the Site

and stopped processing Beckwith's permit to build pending further study of Site soils.

7. On April 18, 1990, METRO reported the Site to Ecology's Toxics Cleanup Program at the Northwest Regional Office (TCP-NWRO).
8. On April 24, 1990, Site inspectors from the TCP-NWRO collected additional surface water and slag and sediment samples at the Site. One slurry or water sample had a field pH of 12. Formation of crystals had occurred in some areas of the on-site ditches and retention pond. Laboratory results revealed 2,000 to 3,000 ppm of total chromium in the slag and sediment, and 0.30 ppm of total chromium, lead, and copper in the surface water. Follow-up investigations and sampling were recommended. (Reference: Ecology Inspection Report dated 4-24-90.)
9. On July 23, 1990, Mr. Beckwith was notified by TCP that, as a Site which is "known or suspected to be contaminated," the Site had been listed in Ecology's Site Management Information System (SMIS).
10. Pursuant to Contract No. C0089007, Ecology and Environment, Inc. (E & E) performed a Site Hazardous Assessment (SHA) of the subject Site summarized in a report dated January 23, 1991.
11. The SHA process, in general, evaluates actual or potential environmental or public health hazards at the

particular Site and to generate sufficient information for Ecology to determine, if deemed necessary, the hazard ranking of the Site using the Washington Ranking Method (WARM). The SHA process does not include extensive or complete site characterization, contaminant fate determination, or quantitative risk assessment.

12. The SHA results for the six slag fill subsurface samples show metal concentrations substantially higher than background for most metal analytes. Metal samples for arsenic, antimony, beryllium, and nickel exceeded current 1991 Ecology cleanup standards for soil according to Method B (WAC 173-340-740).
13. Sediment sample results indicate that contamination from the slag fill has migrated to the sediments in the east ditch on the Site. The on-site sediment results show increasing metals concentrations in the downgradient ditch locations and in the pond compared to upgradient locations.
14. All surface water sample concentrations collected during the SHA were less than background. The pH values rose from 8.2 in the seep water to between 11.1 and 12.0 in the ditch water.
15. The reported results indicate slag, surface water, and sediment contamination. No groundwater data has been collected to date.

16. There is no evidence that contamination has moved off-site in six years since filling began.

### III.

#### Ecology Determinations

Ecology makes the following determinations, without concurrence with such determinations, by Earle M. Jorgensen Co. or Mr. Dennis Beckwith.

1. The Earle M. Jorgensen Co. is a generator, as described in RCW 70.105D.040(1)(c), of "hazardous substances", as defined in RCW 70.105D.020(5), disposed of at a "facility", as defined in RCW 70.105D.020(3).
2. Mr. Dennis Beckwith is an "owner" as defined in RCW 70.105D.020(6) of a "facility" as defined in RCW 70.105D.020(3).
3. The facility is known as the "Slag Disposal/Beckwith Property" Site and is located in Township 22 North and Range 5 East, Section 7 (USGS 1973). The Site is located in Kent, Washington and is bordered by South 218th Street to the north, 88th Avenue South to the west, a steep embankment to the east and a wooded area to the south.
4. The substances found at the facility as described above are "hazardous substances" as defined at RCW 70.105D.020(5).
5. 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).

6. By a letter of May 22, 1991, Mr. Dennis Beckwith voluntarily waived his rights to notice and comment and accepted Ecology's determination that Mr. Dennis Beckwith is a "potentially liable person" under RCW 70.105D.040 as the landowner of the Site.
7. By a letter of June 13, 1991, signed by Mr. Jack Bunt, on behalf of the company, Earle M. Jorgensen Co. voluntarily waived its rights to notice and comment and accepted Ecology's determination that Earle M. Jorgensen Co. is a "potentially liable person" under RCW 70.105D.040 as a generator.
8. 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.
9. Based on the foregoing facts, Ecology believes the remedial investigation/feasibility study 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 Earle M. Jorgensen Co. and Mr. Dennis Beckwith take the following remedial actions.

1. Complete a focused remedial investigation report that assembles and synthesizes the results of previous investigations and identifies and takes action to fill any data gaps. The focused remedial investigation will be conducted pursuant to WAC 173-340-350 to develop sufficient information to determine the presence of and characterize the distribution of hazardous substances present at the Site, and threat to human health and the environment.
2. A baseline risk assessment may be required pursuant to WAC 173-340-350 if the department determines that proposed cleanup standards are not obvious or are disputed or do not allow an adequate margin of safety for protection of human health and the environment.
3. Complete a focused feasibility study pursuant to WAC 173-340-350 to develop and evaluate cleanup action alternatives for the environmental problems identified in the remedial investigation. The study will identify the estimated costs and effectiveness of the appropriate cleanup action.



4. This program is set forth in the Sampling and Analysis Plan and Safety and Health Plan for the Slag Disposal Site, Kent, Washington (hereinafter "Plan") set forth as Exhibit A to this Order. Exhibit A sets forth the work to be performed to accomplish the required remedial investigation/feasibility study at the Site during the duration of this Order. Exhibit A is an integral and enforceable part of this Order, and the work to be performed pursuant to such Exhibit is consistent with all requirements of state law and regulations. The terms "Agreed Order" or "Order" shall include the Plan whenever used in this document. Except where performance by another party is expressly provided in the Plan, the Earle M. Jorgensen Co. and Dennis Beckwith hereby commit to implement the requirements of the Plan.
  
5. The schedule for completion of the work will begin on the effective date of this Order. The effective date of this Order shall be the date of Ecology's signature following completion of the public comment process required for this Order.

<u>Schedule</u>	<u>Days</u>
Complete draft remedial investigation and feasibility study report.....	150
Ecology reviews draft remedial investigation and feasibility study report.....	60

Complete final remedial investigation and feasibility  
study report..... 30

This schedule assumes no risk assessment will be required. If Ecology makes the determination that a risk assessment is required, the parties will modify this schedule accordingly. It is anticipated by the parties that the addition of a risk assessment task would add approximately 60 days to the draft remedial investigation/feasibility study report task (Task #1 above).

Ecology's failure to perform its reviewing task within the time specified above shall not excuse Jorgensen or Beckwith from their obligations to perform the remaining task. However, the time allowed for Jorgensen and Beckwith to perform their obligation shall be extended by the number of days that Ecology is late in completing its review.

If timely completion of the work is delayed due to labor disputes, fire, unusually severe weather, other acts of God, civil disturbance, casualty or other causes beyond the control of Earle M. Jorgensen Company or Dennis Beckwith (collectively, the "Force Majeure Delays"), then the time for completion of the work shall be extended by the period of the Force Majeure Delay.

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.** WAC 173-340-600(10)(c) requires 30 days advance notice for Agreed Orders covering a state RI/FS. 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.** Earle M. Jorgensen Co. and Mr. Dennis Beckwith agree to pay to Ecology reasonable costs incurred by Ecology pursuant to this Agreed Order. These costs shall include work performed by Ecology or its contractors for investigations, remedial actions, and order preparation, negotiations, oversight and administration consistent with this Order. Ecology costs shall include reasonable costs of direct activities (e.g., employee salary, laboratory costs, travel costs, contractor fees, and employee benefit packages); and reasonable agency indirect costs of direct activities. Ecology's indirect costs are calculated at the rate approved by the Department of Interior. Earle M. Jorgensen Co. and Mr. Dennis Beckwith agree to 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, the amount of time spent by involved staff members on the project, and, if requested, a general description of work performed. Failure to pay Ecology's costs within 90 days of receipt of the itemized statement of costs may result in interest charges.

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

Mr. Brian S. Sato  
3190 - 160th Avenue Southeast  
Bellevue, Washington 98008-5452

The project coordinator for Earle M. Jorgensen Co. and Mr. Dennis Beckwith is:

Del Christensen  
SEACOR  
330 - 112th Avenue N.E., #104  
Bellevue, Washington 98004

(206) 646-0280

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Earle M. Jorgensen Co. and Mr. Dennis Beckwith, 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) with copies to the parties' attorneys.

For Jorgensen:

Mitchell Menzer, Esq.  
O'Melveney & Myers  
400 South Hope Street  
Los Angeles, CA 90071-2899

For Beckwith:

John Bergmann, Esq.  
Helsell, Fetterman, Martin, Todd & Hokanson  
1500 Puget Sound Plaza  
1325 Fourth Avenue  
P.O. Box 21846  
Seattle, WA 98111

Should Ecology or Earle M. Jorgensen Co. or Mr. Dennis Beckwith change project coordinator(s), written notification shall be provided to Ecology and Earle M. Jorgensen Co. and Mr. Dennis Beckwith 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. Earle M. Jorgensen Co. and Mr. Dennis Beckwith 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.
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 Earle M. Jorgensen Co. and Mr. Dennis Beckwith. By signing this Agreed Order, Earle M. Jorgensen Co. and Mr. Dennis Beckwith agree that this Order constitutes reasonable notice of access, and agree to allow access to the Site at all reasonable times for purposes of overseeing work performed under this Order. Unless an emergency requires otherwise, Ecology shall give the project coordinator or the parties reasonable advance notice prior to entering the Site. The project coordinator and the parties shall be entitled to accompany Ecology during Ecology's entry on the Site. Ecology shall allow split or replicate samples to be taken by Earle M. Jorgensen Co. and Mr. Dennis Beckwith during an inspection unless doing so interferes with Ecology's sampling. Earle M. Jorgensen Co. and Mr. Dennis Beckwith 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.** Earle M. Jorgensen Co. and Mr. Dennis Beckwith have assisted Ecology in preparing a public participation plan for the Site. They shall assist Ecology in updating, as appropriate, the public participation plan for the Site. Ecology shall maintain the responsibility for public participation at the Site. Earle M. Jorgensen Co. and Mr. Dennis Beckwith shall help coordinate and implement public participation for the Site.
8. **Retention of Records.** Earle M. Jorgensen Co. and Mr. Dennis Beckwith 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 Earle M. Jorgensen Co. and Mr. Dennis Beckwith, then Earle M. Jorgensen Co. and Mr. Dennis Beckwith agree to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph.
9. **Dispute Resolution.** Earle M. Jorgensen Co. and Mr. Dennis Beckwith may request Ecology to resolve disputes involving minor issues which may arise during the implementation of this Order. An example of an issue that may be resolved according to this process is a disagreement between any of the parties (Beckwith, Jorgensen, Ecology) regarding

modifications to tasks contained in the Sampling and Analysis Plan. Such request shall be in writing and directed to the signatory to this Order. Ecology resolution of the dispute shall be binding and final, except resolution shall not have res judicata effect between Jorgensen and Beckwith. Earle M. Jorgensen Co. and Mr. Dennis Beckwith are not relieved of any requirement of this Order during the pendency of the dispute and remain responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.

10. Reservation of Rights/No Settlement. This Agreed Order is not a settlement under ch. 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against Earle M. Jorgensen Co. and Mr. Dennis Beckwith 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 Earle M. Jorgensen Co. to require those actions required by this Agreed Order, provided Earle M. Jorgensen Co. complies with this Agreed Order. Ecology will not take additional enforcement actions against Mr. Dennis Beckwith to require those actions required by this Agreed Order, provided Mr. Dennis Beckwith complies with this Agreed Order. Ecology reserves the



right, however, to require additional 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 Earle M. Jorgensen Co. and Mr. Dennis Beckwith 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 of relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by Mr. Dennis Beckwith 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. Dennis Beckwith may have in the Site or any portions thereof, Mr. Dennis Beckwith 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. Dennis Beckwith shall notify Ecology and Jorgensen of the contemplated transfer.

12. **Compliance with Other Applicable Laws.** All actions carried out by Earle M. Jorgensen Co. and Mr. Dennis Beckwith

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 Earle M. Jorgensen Co. and Mr. Dennis Beckwith's receipt of written notification from Ecology that Earle M. Jorgensen Co. and Mr. Dennis Beckwith have completed the remedial activity required by this Order, as amended by any modifications, and that all other provisions of this Agreed Order have been complied with.

VII.

Enforcement

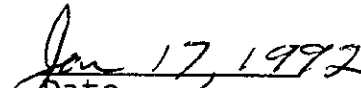
1. Pursuant to RCW 70.105D.050, this Order may be enforced as follows:
  - A. The Attorney General may bring an action to enforce this Order in a state or federal court.
  - B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
  - C. In the event Earle M. Jorgensen Co. and Mr. Dennis Beckwith refuse, without sufficient cause, to comply with any term of this Order, Earle M. Jorgensen Co. and Mr. Dennis Beckwith will be liable for:

- (1) up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and
- (2) civil penalties of up to \$25,000 per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under Section 6 of ch. 70.105D RCW.

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

BY   
MR. DENNIS BECKWITH\*  
Property Owner

  
Date

\* I am signing this Agreed Order as the landowner and give my permission to do this investigation for the good of the public and our environment. It has always been agreed between Jorgensen Steel and myself that Jorgensen Steel would be responsible for any environmental upset and any costs associated therewith. By signing this agreement, I do not waive any of my rights against Jorgensen Steel and reserve specifically my rights to compel Jorgensen Steel to pay all costs of all investigation and/or corrective measures.

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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 Section 6 of ch. 70.105D RCW.

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

By Al Walker

MR. AL WALKER\*\*

Earle M. Jorgensen Co.

1-29-92  
Date

\*\*Jorgensen denies any allegation that it agreed with Dennis Beckwith that Jorgensen would be responsible for any environmental "upset" or other damage or any costs, expenses or liabilities associated therewith. By executing this Agreed Order, Jorgensen does not waive any of its rights against Northwest Slag, Dennis Beckwith or any other party and expressly reserves its rights to compel such parties to pay all costs of investigation or remediation incurred in connection with the Site.

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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 Section 6 of ch. 70.105D RCW.

Effective date of this Order: February 3, 1992

BY Michael J. Gallagher  
MR. MICHAEL J. GALLAGHER\*\*\*  
Toxics Cleanup Program  
Section Supervisor  
Northwest Regional Office  
Washington State  
Department of Ecology

Feb. 3, 1992  
Date

\*\*\*The language inserted by Jorgensen and Beckwith as part of their signatures relates only to the rights and obligations between Jorgensen and Beckwith. The language does not relate to obligations incurred by Jorgensen or Beckwith with respect to the Department of Ecology as adopted by Jorgensen's and Beckwith's signing of this Agreed Order.

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