

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action at:

Reichhold, Inc.
3320 Lincoln Avenue
Tacoma, Washington 98421

AGREED INTERIM ACTION
ADMINISTRATIVE ORDER
No. 1578

By: Reichhold, Inc
P.O. Box 13582
Research Triangle Park, NC 27709-3582

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ATTACHMENTS

Number 1: *Technical Summary, RCRA Corrective Action Management Unit Summary, Reichhold, Inc., 3320 Lincoln Avenue, Tacoma, WA 98421 (CAMU Summary Document), dated March 2004.*

under specified exposure conditions) for hazardous substances present at the Site; (b) The location where these cleanup levels must be met (point of compliance); and (c) Other regulatory requirements that apply to the Site because of the type of action and/or location of the Site ("applicable state or federal laws").

7. Corrective Action means any activities including investigations, studies, characterizations and corrective measures, including actions taken pursuant to Chapter 70 105D RCW and Chapter 173-340 WAC, undertaken in whole or in part to fulfill the requirements of WAC 173-303-646, or applicable EPA requirements.

8. Corrective Action Management Unit (CAMU) means the area within the Facility that is designated by Ecology pursuant to WAC 173-303-646(4), (5) and (6) for the purpose of implementing the corrective action requirements of WAC 173-303-646(2). A CAMU may be used only for the management of remediation wastes pursuant to implementing such corrective action requirements at the Facility.

9. Corrective Measure means any measure or action to control, prevent, or mitigate releases and/or potential releases of dangerous constituents (including dangerous waste and hazardous substances) reviewed and approved by Ecology for the Facility and set forth in a facility-specific Cleanup Action Plan (CAP) prepared in compliance with the requirements of Chapter 173-340 WAC, including WAC 173-340-360. Corrective measures may include interim actions as defined by Chapter 173-340 WAC. Interim actions will not necessarily be set forth in a facility-specific CAP.

10. Dangerous Constituent means any constituent identified in WAC 173-303-9905 or 40 CFR Part 264 Appendix IX, any constituent which caused a waste to be listed or designated as dangerous under the provisions of Chapter 173-303 WAC, and any constituent defined as a hazardous substance at RCW 70.105D.020(7).

11. Dangerous Waste means any solid waste designated in WAC 173-303-070 through 173-303-100 as dangerous or extremely hazardous or mixed waste. As used in this Order and in any attachments or submittals hereto, the term dangerous waste includes the terms hazardous waste and acute

hazardous waste as defined in EPA regulations and Ecology regulations. Dangerous wastes are considered hazardous substances under RCW 70 105D.020(7).

12. Dangerous Waste Constituent means any constituent listed in WAC 173-303-9905 and any other constituent that has caused a waste to be a dangerous waste under Chapter 173-303 WAC.

13. Dangerous Waste Management Unit (DWMU) is a contiguous area of land on or in which dangerous waste is placed, or the largest area in which there is a significant likelihood of mixing dangerous waste constituents in the same area, as defined in WAC 173-303-040.

14. Ecology means the Department of Ecology.

15. EPA means the U.S. Environmental Protection Agency.

16. Facility or Site means the property owned and occupied by Reichhold, Inc. (Reichhold), located at 3320 Lincoln Avenue, Tacoma, Washington, and all property contiguous thereto also controlled by Reichhold, and all property, regardless of control, affected by releases or threatened releases of hazardous substances, including dangerous wastes and dangerous constituents, at and from these areas.

17. Feasibility Study (FS) means the focused investigation and evaluation of potential corrective measures performed in accordance with the feasibility study (FS) requirements of WAC 173-340-350, which includes the substantive requirements for a RCRA corrective measures study, and undertaken in whole or in part to fulfill the corrective action requirements of WAC 173-303-646.

18. HWMA means the Washington Hazardous Waste Management Act, chapter 70.105 RCW.

19. MICA means the Model Toxics Control Act, chapter 70 105D RCW.

20. Permit or Permitting Requirement, unless otherwise specified, means the requirements of Chapter 173-303-WAC for applying for, obtaining, maintaining, modifying, and terminating dangerous waste management facility permits.

21. RCRA means the federal Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.

22. RCRA Facility Assessment (RFA) means the investigation conducted by EPA and Ecology of releases and potential releases at the Facility and the information contained in the report entitled Reichhold Chemicals, Inc. – RCRA Facility Assessment, dated July 1987 ("RFA Report"). The RFA Report is incorporated into this Order by this reference as if fully set forth herein.

23. Release means any intentional or unintentional spilling, leaking, pouring, emitting, emptying, discharging, injecting, pumping, escaping, leaching, dumping, or disposing of dangerous waste or dangerous constituents into the environment. It also includes the abandonment or discarding of barrels, containers, and other receptacles containing dangerous waste or dangerous constituents and includes the definition of release in RCW 70.105D 020(20).

24. Remedial Actions or Remedial Activities, means any action or expenditure consistent with the purposes of chapter 70.105D RCW to identify, eliminate, or minimize any threat posed by hazardous substances to human health or the environment including any investigating and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

25. Remedial Investigation (RI) means a focused investigation and characterization performed in accordance with the requirements of Chapter 173-340 WAC, which includes the substantive requirements for a RCRA facility investigation, undertaken in whole or in part to fulfill the applicable corrective action requirements of WAC 173-303-646.

26. Solid Waste Management Unit (SWMU) means any discernible location at the Facility where solid wastes have been placed at any time, irrespective of whether the location was intended for the management of solid or dangerous waste. Such locations include any area at the dangerous waste management facility at which solid wastes, including spills, have been routinely and systematically released. Such units include regulated units as defined by Chapter 173-303 WAC.

III. OBJECTIVES

The objectives of this Order are as follows:

1. To establish a CAMU, through an interim action, to facilitate the final remedial action at the Facility. Reichhold shall operate the CAMU at the Facility as approved by Ecology and in accordance with the requirements of Chapter 173-340 WAC. By facilitating a final cleanup under the Model Toxics Control Act (MTCA), Chapter 17.105D RCW, the CAMU shall also help satisfy corrective action requirements under WAC 173-303-646. This Agreed Interim Action Administrative Order is incorporated in the final dangerous waste management permit for corrective action issued for the Facility by Ecology.

2 Ecology and Reichhold have also entered into a separate enforceable order under MICA for a focused remedial investigation and focused feasibility study to satisfy the corrective action requirements of WAC 173-303-646. The separate MICA order (Agreed Order No. 1577) also is incorporated into the final dangerous waste management permit for corrective action issued for the Facility by Ecology.

3. After public review and comment, Reichhold will complete the design and operation of the CAMU as set forth in this Agreed Order. In accordance with the requirements of WAC 173-340-430(3)(b) this interim action allows for the creation of a CAMU that can be incorporated into a final remedial action at the Facility and thus does not foreclose reasonable alternatives for any additional corrective action to be undertaken at the Facility. Any remaining relevant terms from this Agreed Order will be incorporated into the Consent Decree addressing final cleanup of the Facility.

IV. FINDINGS OF FACT

Ecology makes the following Findings of Fact, which Reichhold neither admits nor denies.

1. Reichhold has owned and operated the Facility since 1956 for, among other things, the production of a variety of chemical products, including pentachlorophenol, formaldehyde, calcium chloride solution, and formaldehyde catalyst. Reichhold ceased all of its manufacturing operations at the

Facility in September 1990, and currently conducts only soil and groundwater remediation activities at the Site

2. Reichhold owned and operated the Facility as a dangerous waste management facility on or after November 19, 1980, the date that subjects facilities to RCRA permitting requirements pursuant to Section 3005 of RCRA and implementing regulations thereunder, including authorized State regulations promulgated in Chapter 173-303 WAC.

3 In August 1980, Reichhold submitted a Notification of Hazardous Waste Activity (EPA Form 8700-12) for the Facility to EPA. The Notification indicated that Reichhold was engaged in the generation, transportation, and treatment/storage/disposal of hazardous waste. EPA assigned the Facility I.D. No. WAD009252891. In April 1985, Reichhold submitted a subsequent Notification of Hazardous Waste Activity, which indicated that generation was the only hazardous waste activity conducted at the Facility.

4. In November 1980, Reichhold submitted a RCRA Part A application (EPA Forms 3510-1 and 3510-3) to EPA. Reichhold submitted revised Part A applications in September 1982, January 1986, July 1986, and October 1986 to EPA with copies to Ecology. Reichhold submitted Part B applications in February 1986 and October 1986 to EPA with copies to Ecology. Both versions of the 1986 Part B application covered the Facility's wastewater treatment area, spoil disposal area and drum storage area.

5. On June 30, 1986, Reichhold entered into a Consent Agreement and Order (No. 1086-04-33-3008) (1986 Order) with EPA Region 10 and Ecology to undertake an investigation to characterize the Site soils and hydrogeology and to research and identify areas at the Facility that would correspond to RCRA regulated units, SWMUs and Areas of Concern. The 1986 Order was terminated when the 1988 RCRA Permit, described in paragraph 7, below, became effective.

6. In July 1987, EPA performed an RCRA Facility Assessment (RFA) at the Facility. Pursuant to the RFA Report and the 1986 Order, among other information, EPA and Ecology identified various RCRA-regulated units, SWMUs and Areas of Concern at the Facility. Reichhold evaluated each of these units and areas to determine whether any of them potentially could release hazardous substances

into the environment. Based on the results of this evaluation, which was conducted with the review and concurrence of EPA and Ecology, a subset of the total number of the identified RCRA-regulated units, SWMUs, and Areas of Concern was determined to warrant further investigation and possible corrective action.

7. Reichhold submitted a revised Part B application in January 1988. Reichhold's Part B application covered three active units (a proposed new drum storage area, existing drum storage area, and pilot plant area drum storage area), and five inactive units (former main disposal area, former construction debris area, former wastewater treatment ponds, former resin tank farm, and former pentachlorophenol plant area). Based upon this application, EPA issued a RCRA storage and corrective action permit, effective since December 4, 1988 (1988 RCRA Permit). On June 3, 1998, Reichhold submitted renewal Part A and Part B RCRA/HWMA Permit applications to both EPA and Ecology. Because Reichhold submitted timely RCRA/HWMA Permit renewal applications to both EPA and Ecology, the 1988 RCRA Permit was administratively continued pursuant to WAC 173-303-806(7) and provision I.H. of the 1988 RCRA Permit, until the permit was replaced or terminated.

8. Working with both EPA and Ecology under the 1986 Order and the 1988 RCRA Permit, Reichhold has undertaken investigations and corrective actions at the Facility to address those RCRA-regulated units, SWMUs, and Areas of Concern that were determined to require further investigation. As of the effective date of this Order, Reichhold has submitted documents to EPA and Ecology concerning these investigations and corrective actions; a partial list of these documents is set included in Attachment Number 1 to this Order.

9. In 1991, under EPA and Ecology oversight, Reichhold closed unit No. 3, the wastewater treatment ponds in accordance with the closure requirements of the 1988 RCRA Permit.

10. In 1999, under EPA and Ecology oversight, Reichhold closed unit No. 4, the drum storage area and unit No. 32, the pilot plant drum storage in accordance with the closure requirements of the 1988 RCRA Permit.

11. In 2004, under EPA and Ecology oversight, Reichhold closed unit No. 51, the drum storage building, in accordance with the closure requirements of the 1988 RCRA Permit.

12. Under Ecology's authorization to implement RCRA and HWMA corrective action requirements through MTCA and the regulations promulgated thereunder, Ecology will issue a Dangerous Waste Management Permit for Corrective Action, a separate enforceable order under MTCA for a remedial investigation and feasibility study (Agreed Order No. 1577), and this Agreed Interim Action Administrative Order (No. 1578) to establish a CAMU at the Facility. The Orders will be incorporated by reference into Reichhold's Dangerous Waste Management Permit for Corrective Action.

13. A list of known hazardous substances and constituents for soil treated at the Site is contained in the July 22, 2002, letter from Ecology for Reichhold, which is contained in Attachment No. 1 to this Order. Based on documents referenced above and in Attachment No. 1 to Agreed Order No. 1577, soil at the Facility is contaminated with hazardous substances and dangerous waste constituents including, but not limited to, pentachlorophenol, 2,4,6-trichlorophenol, 2,4-dichlorophenol, phenol, other chlorinated phenols, PCBs (Arochlor 1248), formaldehyde, styrene, toluene, ethylbenzene, tetrachloroethylene, trichloroethylene, and molybdenum.

14. On October 20, 2000, Reichhold submitted an application for designation of a CAMU at Reichhold's Tacoma facility in the form of a document entitled *Technical Summary, RCRA Corrective Action Management Unit Summary, Reichhold, Inc., 3320 Lincoln Avenue, Tacoma, WA 98421*. Ecology reviewed the application and determined that it was substantially complete in a letter dated November 22, 2000. Reichhold submitted revised versions of this document in November 2001 and March 2004.

V. ECOLOGY DETERMINATIONS

Ecology makes the following determinations, which Reichhold neither admits nor denies:

1. Reichhold is a person within the meaning of RCW 70 105D.020(14).
2. Reichhold is the owner and operator of a dangerous waste management facility that has operated and is operating under a RCRA permit and is subject to the corrective action requirements thereunder, including authorized state regulations in Chapter 173-303 WAC.

3 Certain waste and constituents found at the Facility are dangerous wastes and/or dangerous constituents as defined by Chapter 173-303 WAC, and shown in Section IV of this Order.

4 These dangerous wastes and dangerous constituents are considered hazardous substances within the meaning of RCW 70.105D.020(7).

5 Based on the Findings of Fact and the administrative record, Ecology has determined that releases and potential releases of hazardous substances at and/or from the Facility present a potential threat to human health and the environment.

6 By letter dated March 2, 2000, Ecology notified Reichhold of its status as a "potentially liable person" under RCW 70.105D.040. By a letter of March 29, 2000, Reichhold agreed not to contest Ecology's determination that Reichhold is a "potentially liable person" under RCW 70.105D.040.

7 Pursuant to RCW 70.105D.030(1) and RCW 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.

8 Ecology's determination that Reichhold submitted a substantially complete application on October 20, 2000, means the application addressed the main elements of CAMU designation that concern long-term effectiveness, including the location of the CAMU, wastes proposed for management, technical design elements and description of treatment. The new CAMU amendments published by the U.S. Environmental Protection Agency on January 22, 2002, allow for grandfathering CAMUs for which substantially complete applications were submitted on or before November 20, 2000. Because Reichhold's substantially complete application was submitted before November 20, 2000, the CAMU proposed by Reichhold remains subject to the 1993 CAMU regulations [58 FR 8658]. To continue to operate pursuant to the requirements of the 1993 CAMU regulations, the CAMU at Reichhold's Tacoma facility must operate within the general scope of this Agreed Interim Action Administrative Order, including type of waste, waste management activities, and design of the CAMU. If the CAMU changes in a way that exceeds the general scope of this Agreed Order, those changes would have to be implemented in accordance with the new CAMU rule.

9 The document entitled *Technical Summary, RCRA Corrective Action Management Unit Summary, Reichhold, Inc., 3320 Lincoln Avenue, Tacoma, WA 98421* (CAMU Summary Document), dated March 2004 addresses the requirements for the CAMU pursuant to WAC 173-303-646(5)(b)

10 Under this Order, a CAMU is designated at the Facility pursuant to WAC 173-303-646(4), (5), and (6) for the purpose of implementing the corrective action requirements of WAC 173-303-646(2).

11. The RCRA regulated units at the Facility (former main disposal area, former construction debris area, former resin tank, and former pentachlorophenol plant) are incorporated into the CAMU under this Order and into Agreed Order No. 1577, pursuant to WAC 173-303-646(6).

12. Pursuant to WAC 173-303-610(1)(d), the closure requirements included in the CAMU Summary Document, dated March 2004, will serve to meet the alternative requirements for closure for the regulated units incorporated into the CAMU under this Order, and are incorporated into Agreed Order No. 1577.

13. Pursuant to WAC 173-303-620(1)(d), the financial assurance requirements for regulated units addressed in this Order are met through the alternative requirements for financial assurance for regulated units set forth in Agreed Order No. 1577

14. Pursuant WAC 173-303-645(1)(e), the groundwater monitoring requirements included in Attachment 2 to Agreed Order No. 1577 will serve to meet the alternative requirements for groundwater monitoring for the regulated units incorporated into the CAMU.

VI. WORK TO BE PERFORMED

Based on the foregoing Facts and Determinations, Reichhold shall design and operate a CAMU at the Site, according to the document entitled *Technical Summary, RCRA Corrective Action Management Unit Summary, Reichhold, Inc., 3320 Lincoln Avenue, Tacoma, WA 98421* (CAMU Summary Document), dated March 2004, included as Attachment Number 1 to this Order. The design and operation of the CAMU shall be undertaken in accordance with Chapter 173-340 WAC and applicable provisions of Chapter 173-303 WAC, unless otherwise specifically provided herein

Once approved or modified and approved in writing by Ecology, submittals are incorporated by reference and become enforceable parts of this Order as if fully set forth herein.

VII. TERMS AND CONDITIONS OF ORDER

1. Public Notices: Ecology shall be responsible for providing 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.
2. Remedial and Investigative Costs: Reichhold agrees to pay costs incurred after June 8, 2000, by Ecology pursuant to this Order. These costs shall include work performed by Ecology or Ecology's contractors for investigations, remedial actions, Order preparation, negotiations, oversight and administration of this Order. Ecology costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Reichhold agrees to pay the required amount, except for those costs that Reichhold disputes, 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, a description of work performed as contained in site logs, and the amount of time spent by involved staff members on the project. Itemized statements will be prepared quarterly. Failure to pay Ecology's costs, other than disputed costs, within ninety (90) days of receipt of the itemized statement of costs will result in interest charges as authorized by State law. Reichhold shall pay any disputed costs that remain after completion of the dispute resolution process set forth below within ninety (90) days of a final determination by Ecology. Payments mailed via the U.S. Postal Service should be addressed to: Cashiering Section, PO Box 5128, Lacey, Washington 98509-5128. Payments sent by a messenger/overnight delivery service should be addressed to: Cashiering Section 300 Desmond Drive, Lacey, Washington 98503. So it is properly credited, Reichhold should indicate the check is for cost recovery on the Reichhold Facility and enclose the bottom portion of Ecology's invoice.

3 Financial Assurance:

A. Reichhold shall establish and maintain financial assurance in the amount necessary for the operation and closure of the CAMU. Financial assurance for the CAMU is addressed in and enforceable under Agreed Order No. 1577.

B. For the RCRA regulated units incorporated into the CAMU (former main disposal area, former construction debris area, former resin tank farm, and former pentachlorophenol plant), the financial assurance requirements for the rest of the CAMU will serve to meet alternative requirements for financial assurance for the regulated units. WAC 173-303-620(1)(d) allows alternative requirements for financial assurance when regulated units are situated among other solid waste management units (SWMUs) and areas of concern (AOCs), and these units and one or more of the SWMUs or AOCs are likely to have contributed to releases of contamination, and the alternative requirements will protect human health and the environment.

4. Designated Project Coordinators:

The project manager for Ecology is:

Name: Stan Leja
Address: Department of Ecology, Southwest Regional Office
P.O. Box 47775
Olympia, Washington 98504-7775
Telephone: (360) 407-6345
FAX: (360) 407-6305
E-mail: slej461@ecy.wa.gov

The project manager for Reichhold is:

Name: William L. Schmithorst
Address: P.O. Box 13582
Research Triangle Park, NC 27709-3582
Telephone: (919) 990-7500
FAX: (919) 558-7167
E-mail: bill.Schmithorst@reichhold.com

The project manager(s) shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communications between Ecology and Reichhold, 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 manager(s). Should Ecology or Reichhold change project manager(s), written notification shall be provided to Ecology or Reichhold at least ten (10) calendar days prior to the change if possible

5. Performance: All work performed by Reichhold pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or licensed hydrogeologist, or similar expert, with appropriate training, experience and expertise in hazardous waste facility investigation and cleanup. Reichhold shall notify Ecology as to the identity of such engineer(s) or hydrogeologist(s), and of any contractors to be used in carrying out the terms of this Order, in advance of their involvement at the Facility. Reichhold 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 and contractors will be in compliance with this Order.

Except where necessary to abate an emergency situation, Reichhold shall not perform any active remedial actions at the Facility other than those required by this Order or another Order, permit, or written authorization issued by Ecology, unless Ecology concurs, in writing, with such additional actions. For purposes of this paragraph, "active remedial actions" shall mean on-the-ground investigation (including sampling), remedy construction, remedy operation, or similar activities.

WAC 173-340-400(6)(b)(i) requires that "construction" performed on the Facility for purposes of implementing this Order must be under the supervision of a professional engineer registered in Washington.

6. Access: Ecology or any Ecology authorized representative shall have the authority to enter and freely move about the Facility at all reasonable times for the purposes of, among other things, 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 manager may deem reasonable and 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 Reichhold. Ecology shall ensure that any Ecology authorized

representative shall follow Ecology's health and safety plan while at the Facility. If requested by Ecology, Reichhold shall allow split or duplicate samples to be taken by Ecology and/or its authorized representatives of any samples collected by Reichhold pursuant to the implementation of this Order. Ecology shall allow split or replicate samples to be taken by Reichhold during an inspection unless doing so interferes with Ecology's sampling. Under this Agreed Order, Reichhold shall provide seven (7) days notice to Ecology's project manager prior to conducting field activities governed by this Order, unless Ecology has provided Reichhold with a written exemption from notification. Reichhold shall provide timely notice to the Puyallup Tribe prior to conducting field activities governed by this Order that are on the Blair Waterway Property or the Blair Backup Property or that are reasonably expected to affect property owned by the Tribe. Without limitation on Ecology's rights under this Section, Ecology shall notify Reichhold prior to any sample collection activity, and shall endeavor to notify Reichhold prior to any access activity.

7. Sampling, data reporting, and availability: With respect to implementation of this Order, Reichhold shall make the results of all sampling, laboratory reports, and/or test results generated by it, or on its behalf available to Ecology.

In accordance with WAC 173-340-840(5), environmental sampling data shall be submitted in a format approved by Ecology.

8. Retention of Records: Reichhold shall preserve in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of issuance by Ecology of written notification that all requirements of this Order have been satisfactorily completed, reports, documents, and underlying data in its possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors of Reichhold, then Reichhold agrees to include in its contracts with its prime contractor a record retention requirement meeting the terms of this paragraph.

9. Dispute Resolution: In the event a dispute arises as to an approval, disapproval, proposed modification or other decision or action by Ecology's project manager under this Order, Ecology and Reichhold shall utilize the dispute resolution procedure set forth below:

A. Upon receipt of the Ecology project manager's decision, Reichhold has fourteen (14) days within which to notify Ecology's project manager of its objection to the decision.

B. Reichhold and Ecology's project managers shall then confer in an effort to resolve the dispute. If the project managers cannot resolve the dispute within fourteen (14) days, Ecology's project manager shall issue a written decision.

C. Reichhold may then request Ecology management review of the decision. This request shall be submitted in writing to the regional section manager of Ecology's Hazardous Waste and Toxics Reduction Program (Section Manager) within fourteen (14) days of receipt of Ecology project manager's decision.

D. Ecology's Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute within thirty (30) days of Reichhold's request for review.

E. Reichhold may then request additional Ecology management review of the Section Manager's decision. This request shall be submitted in writing to the Program Manager of Ecology's Hazardous Waste and Toxics Reduction Program (Program Manager) within fourteen (14) days of receipt of Ecology Section Manager's decision.

F. Ecology's Program Manager shall conduct a review of the dispute and shall issue a written decision within thirty (30) days of Reichhold's request for additional review. The Program Manager's decision shall be Ecology's final decision on the disputed matter. Reichhold 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.

10. Reservation of Rights/No Settlement: This Agreed 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 Reichhold 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 Reichhold for matters addressed in this Agreed Order, provided Reichhold complies with this Agreed Order.

Ecology reserves the right, however, to seek to require additional remedial actions at the Facility should it deem such actions necessary.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the releases or threatened releases of hazardous substances from the Facility.

In the event Ecology determines that conditions at the Facility are creating or have the potential to create a threat to the health or welfare of the people on the Facility or in the surrounding area or to the environment, Ecology may order Reichhold to stop further implementation of this Order for such period of time as needed to abate the threat. In such a case, Reichhold shall not be subject to any enforcement action for stopping or delaying implementation of this Order.

Reichhold reserves all rights and defenses with respect to any additional actions that Ecology may seek to require at the Site.

11. Transfer of Property: Prior to any voluntary or involuntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Facility, Reichhold shall provide 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 Reichhold may have in the Facility or any portions thereof, Reichhold shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least ninety (90) days prior to finalization of any transfer that results in a change in owner or operator status of the Facility, Reichhold shall notify Ecology of the contemplated transfer by submitting a request for modification of its RCRA permit.

12. Compliance with Other Applicable Laws:

A. All actions carried out by Reichhold pursuant to this Order shall be undertaken 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(1), Reichhold, under this Order, is exempt from the procedural requirements of chapters 70.94, 70.95, 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.

Reichhold has 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 Reichhold determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify Ecology of this determination. Ecology shall determine whether Ecology or Reichhold shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Reichhold 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 Reichhold and on how Reichhold must meet those requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Reichhold 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), an exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) shall not apply if Ecology determines that the exemption would result in the loss of approval from a federal agency which is necessary for the State to administer any federal law. In such a case, Reichhold shall comply with both the procedural and substantive requirements of the specific law at issue. Such a determination by Ecology shall not affect the applicability of the exemption to any of the other statutes referenced in RCW 70.105D.090(1).

14. Obligations with Respect to Land Owned by Puyallup Tribe: Ecology recognizes that the Facility is defined in this Order to include property that is owned by the Puyallup Tribe. Reichhold

agrees that it will use its reasonable best efforts to implement this Order with respect to property owned by the Puyallup Tribe. Reichhold shall confer with Ecology after Reichhold believes it has exhausted its "reasonable best efforts" to implement this Order with respect to property owned by the Puyallup Tribe. The contact for the Puyallup Tribe is Bill Sullivan, Director, Environmental Protection Department, Puyallup Tribe of Indians, 1850 East Alexander Avenue, Tacoma, WA 98421.

VIII. SATISFACTION OF THIS ORDER

The provisions of this Order shall be deemed satisfied upon Reichhold's receipt of written notification from Ecology that Reichhold has completed the obligations required by this Order, as amended by any modifications, and that all other provisions of this Agreed Order have been complied with, or upon the incorporation of the applicable remaining terms and conditions of this Agreed Order into a final Consent Decree, whichever is earlier.

IX. ENFORCEMENT

- I. 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 to recover, by filing an action if necessary, the amounts spent by Ecology for investigative and remedial actions and orders related to the Facility.
 - C. In the event Reichhold refuses, without sufficient cause, to comply with any term of this Order, Ecology may seek to hold Reichhold 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 July 30, 2004 :

REICHHOLD, INC.

BY 

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