

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

Estate of Sophie Sussman and
Tacoma Metals, Inc.

ENFORCEMENT ORDER

No. DE 17990

TO: Estate of Sophie Sussman
c/o Loren Dunn
Beveridge & Diamond, P.C.
600 University St., Suite 1601
Seattle, WA 98101

Tacoma Metals, Inc.
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7191 Wagner Way, Suite 202
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I. INTRODUCTION

The objective of the State of Washington, Department of Ecology (Ecology) under this Enforcement Order (Order) is to require remedial action at a facility where there has been a release or threatened release of hazardous substances.

Ecology is entering into Agreed Order No. DE 17990 (2020 Agreed Order) with Potentially Liable Parties (PLPs) International Paper Company and General Metals of Tacoma (hereinafter “AO PLPs”). The 2020 Agreed Order requires the AO PLPs to conduct a supplemental Remedial Investigation and Feasibility Study (RI/FS) per WAC 173-340-350 and WAC 173-204-560 at the Tacoma Metals Site (Site). *See* Exhibit C at 3.

Ecology is issuing this Enforcement Order (Order) to the PLPs who did not sign the 2020 Agreed Order, the Estate of Sophie Sussman and Tacoma Metals, Inc. (hereinafter “EO PLPs”). This Order requires the EO PLPs to conduct a supplemental RI/FS per WAC 173-340-350 and WAC 173-204-560 at the Site. Ecology expects that all PLPs, the AO PLPs and the EO PLPs, will work jointly in completing the work required by this Order and the 2020 Agreed Order. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Enforcement Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

III. POTENTIALLY LIABLE PERSONS BOUND

This Enforcement Order shall apply to and be binding upon the EO PLPs. To the extent allowed by law, changes in ownership or corporate status shall not alter the EO PLPs’ responsibility under this Order. The EO PLPs shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

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

A. Site: The Site (or Facility) refers to the Tacoma Metals Site (Site). The Site constitutes a facility under RCW 70.105D.020(8). The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located. Based upon factors currently known to Ecology, the Site is generally located at 1919 Portland Avenue, Tacoma, Washington. The Site is more particularly described in Exhibit A to this Order which is a detailed site diagram.

B. Potentially Liable Persons (PLPs): Refers to the Estate of Sophie Sussman, General Metals of Tacoma, International Paper Company, Portland Avenue Associates, LLC, and Tacoma Metals Inc.

C. EO PLPs: Refers to PLPs subject to the Order (the Estate of Sophie Sussman and Tacoma Metals).

D. AO PLPs: Refers to the PLPs who are parties to the 2020 Agreed Order (International Paper Company and General Metals of Tacoma).

E. Enforcement Order or Order: Refers to this Order and each of the exhibits to the Order. All exhibits are an integral and enforceable part of this Order.

F. 2000 Order: Refers to Agreed Order No. DE 97-5435, entered in 2000 by Ecology, Mr. and Mrs. Leslie Sussman, and Portland Avenue Associates, for the purpose of conducting a remedial investigation/feasibility study (RI/FS) at the Site.

V. FINDINGS OF FACT

Ecology makes the following findings of fact:

A. The Tacoma Metals; Inc. Site (Site) is generally located at 1919 Portland Avenue, Tacoma, Washington, as shown in the Site Location Diagram (Exhibit A).

B. Portion of property at the Site was first developed in the late 1900s to early 1910s. In or around that time, a creosoting plant was constructed on part of the Site. The St. Paul & Tacoma Lumber Company operated the creosoting plant until the late 1920s to early 1930s. The primary creosoting plant facilities included the main creosoting plant structure, which housed a 130-foot treatment retort and a 1,500-gallon aboveground storage tank (AST). Two separate ASTs (102,000-gallon and 450,000-gallon) were located north of the main structure. The International Paper Company acquired the St. Paul & Tacoma Lumber Company in 1958.

C. In the early 1940s, the Defense Plant Corporation acquired a portion of the Site and entered into a contract with Wilkeson Products Company to build a coke manufacturing facility was constructed on property at the Site. Other structures associated with the coke plant were located on the western portion of the former Tacoma Metals Property, in the vicinity of and east of the former creosoting plant location. The coke manufacturing facility operated from approximately May 1943 to November 1944, when Wilkeson Products was liquidated.

D. Leslie and Sophie Sussman (the Sussmans) acquired real property located at 1919 Portland Avenue in the early 1950s and their corporation, General Metals, Inc. began operating a metal recycling facility at that property. From early 1950s until April 1983, General Metals, Inc., operated the facility and leased the property from the Sussmans. From May 1983 until March 1999, Tacoma Metals, Inc., operated the facility. During this time Tacoma Metals, Inc. leased the property from the Sussmans. In March 1997, the Sussmans transferred the property to Portland Avenue Associates, LLC, which was owned by Leslie and Sophie Sussman.

E. The operational history of the metal recycling facility included the handling of scrap ferrous and non-ferrous metal and processing scrap metal materials. Processing included dismantling and draining transformers, dismantling lead-acid batteries and recovery and recycling lead from copper cables. Scrap materials containing copper, brass, lead, aluminum and stainless steel were processed, handled, and/or redistributed. Metals recycling operations ceased in 1999.

F. On September 9, 1983, the United States Environmental Protection Agency (EPA) issued the owners of Tacoma Metals, Inc. a Notice of Non-Compliance for failure to comply with the Toxic Substance Control Act (TSCA) regulations. The TSCA violation concerned Tacoma Metals' transformer handling practices at the Site.

G. Ecology and EPA conducted a joint inspection during March 1988 and collected soil and sediment samples from a catch basin sump. Results of these samples showed elevated concentrations of polychlorinated biphenyls (PCBs) and heavy metals (arsenic, cadmium, chromium, copper, lead and mercury) exceeding the Model Toxics Control Act (MTCA) Method A cleanup levels. The concentrations of some of the heavy metals aluminum, antimony, barium, iron, manganese, nickel, and zinc) were five to ten times the background concentrations. Based on this investigation, Ecology placed the Site on the site information system (SIS) list on February 14, 1992, and ranked the Site on August 17, 1992. The Site scored a ranking of 2 due to elevated levels of PCBs and metals detected in site soils.

H. A partial cleanup of some PCB contaminated areas was conducted in March 1989. Approximately 70 to 80 cubic yards of PCB-contaminated soils were excavated from two areas, treated on-site and disposed-offsite in the Arlington Hazardous Waste Landfill. Subsequent sampling performed as part of the RI confirms that PCB contamination remains on the Site.

I. On September 27, 1991, the Tacoma Public Works Department notified Ecology of a release of cutting oil into the city storm water collection system from the Site.

J. In January 2000, Ecology, the Sussmans and Portland Avenue Associates entered into the 2000 Order that required the Sussmans and Portland Avenue Associates to perform a remedial investigation/feasibility study (RI/FS) for the Site. Pursuant to the 2000 Order, the Sussmans and Portland Avenue Associates performed an initial remedial investigation (RI) at the Site between 2000 and 2001. The purpose of the 2000 RI was to characterize the nature and extent of impacts to environmental media, including confirmation of the results of several limited

investigations performed prior to the RI between 1988 and 1995, develop a site model, and evaluate remedial options based on findings of the investigation.

K. Prior to the construction of an earthen levee by the U.S. Army Corps of Engineers in the late 1940s and 1950s, the southern bank of the Puyallup River was adjacent to the northern boundary of the Site. Construction of the levee shifted a portion of the river to the north and which provided separation of the Site from the main river channel. The former channel area was gradually filled-in with primarily wood-waste material by other property owners.

L. In 2005, the Puyallup River Side Channel (PRSC) project was constructed. This project was one of the central components of the habitat mitigation for the Thea Foss and Wheeler-Osgood Waterways Remediation Project. This project included the construction of a new setback flood control levee, excavation of the habitat area, placement of habitat materials, and breaching and lowering the elevation of the part of the former levee, creating an estuary adjacent to the Site. During the construction of the PRSC, waste materials were discovered. These materials included unexploded military ordnance, lead-containing battery casings and associated contaminated soil, damaged and deteriorated drums, and metal debris including automobile engines.

M. In June 2005, Ecology approved the construction of a Temporary Containment Unit at the Site to store and treat the lead-contaminated soils that were discovered during the PRSC construction. Approximately 4,000 tons (3,100 cubic yards) of soil were stored and treated. The treatment consisted of the addition of a reagent to bond with the metals in the soil to immobilize them from leaching. By August 2007, soil treatment and off-site disposal and transport of the soil to landfill were completed.

N. Leslie Sussman died on April 23, 2000. Sophie Sussman died on January 8, 2012. The Estate of Sophie Sussman is the successor to the 2000 Order's obligations of the Sussmans. On July 25, 2014, the Pierce County Superior Court, under case number 12-2-14683-2, issued an Order granting the Estate of Sophie Sussman's Motion for Partial Summary Judgment on Escheat of Portland Avenue Associates, LLC to the State of Washington. As a result of the Court's July

25, 2014 Order, three parcels of property at the Site, formerly owned by Portland Avenue Associates, LLC, are now owned by the State of Washington, and managed by the Washington State Department of Natural Resources.

O. Additional RI/FS investigation activities were performed at the Site between 2002 and 2014. The Sussman Estate submitted, among other things, an initial RI/FS, dated October 2001; Augmented RI/FS, dated October 30, 2013; Revised Augmented RI/FS Report, dated September 2014; and Revised Draft RI/FS, dated June 22, 2018. International Paper also prepared an FS Addendum, dated June 30, 2015, and an Interim Action Work Plan, dated November 17, 2017. Ecology sent comment letters on the September 2014 Revised Augmented RI/FS Report and the June 2015 FS Addendum dated April 18, 2016 and April 21, 2016, respectively. Ecology provided subsequent comments on the 2018 Revised Draft RI/FS on December 3, 2018 directing the PLPs to address remaining data gaps regarding petroleum, cPAH and naphthalene impacted soil located at a depth of 20 to 32 feet within the on-and off-property areas of the site. These soils are impacting groundwater beneath the site and the FS does not include alternatives to address this contamination. In addition, the soil beneath the former 450,000 gallon above ground storage tank and northeast of that area needs additional characterization.

P. Environmental investigations at the Site have documented the presence of hazardous substances in various media including soil and groundwater. The contaminants of concern identified in these investigations as exceeding published MTCA cleanup levels include:

- **Soil** – metals, PCBs, carcinogenic polycyclic aromatic hydrocarbons (cPAHs), naphthalene, and benzene, toluene, ethylbenzene, and total xylenes (BTEX), total petroleum hydrocarbons in the diesel and heavy oil ranges (TPH-D and -O).
- **Groundwater** – metals, PCBs, cPAHs, naphthalene, BTEX, TPH-D, and TPH-O.
- **Indoor Air** – There is a potential for vapors from soil and/or groundwater contaminated with volatile organic compounds (VOCs) including naphthalene, BTEX, and TPH-D at the Site to cause an exceedance of indoor air cleanup levels if structures are built in the future over portions of the Site that contain VOCs.

Q. On June 16, 2017, the Pierce County Superior Court, under case number 12-2-14683-2, issued an Order declaring that the Estate of Sophie Sussman is liable as a matter of law under MTCA, RCW 70.105D, for remedial action costs at the Tacoma Metals Site. On November 3, 2017, the Pierce County Superior Court, under case number 12-2-14683-2, issued an Order declaring that General Metals of Tacoma, Inc. is liable as a matter of law under MTCA, RCW 70.105D, for remedial action costs at the Site.

VI. ECOLOGY DETERMINATIONS

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by the EO PLPs.

A. Each of the EO PLPs is a former “owner or operator” as defined in RCW 70.105D.020(22) of a “facility” as defined in RCW 70.105D.020(8).

B. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(32) and (13), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued PLP status letters to the EO PLPs pursuant to RCW 70.105D.040, RCW 70.105D.020(21), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued determinations to each of those PLPs that they were PLPs under RCW 70.105D.040.

D. Pursuant to RCW 70.105D.030(1) and .050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

E. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially

reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan. Either party may propose an interim action under this Order. If the Parties are in agreement concerning the interim action, the Parties will follow the process in Section VII.D. If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70.105D, or to undertake the interim action itself.

F. That in order to facilitate a single feasibility study, per WAC 173-340-350(8), Ecology has determined that the EO PLPs receiving this Enforcement Order shall work with the AO PLPs to complete a final comprehensive FS and conduct other actions required by Section VII (Work to be Performed) and the 2020 Agreed Order's Schedule.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the EO PLPs take the following remedial actions at the Site. These remedial actions must be conducted in accordance with WAC 173-340.

A. Supplemental RI/FS Work Plan. The EO PLPs shall prepare and submit to Ecology for review and approval a work plan to implement a Supplemental Remedial Investigation (RI) and complete an update to the Feasibility Study (FS) in accordance with WAC 173-340-350. The EO PLPs shall submit the draft RI/FS work plan to Ecology within 60 days of the effective date of this Order. The EO PLPs shall also submit the final RI/FS work plan incorporating Ecology's comments within 30 days of receiving Ecology's comments on the draft RI/FS work plan. Once approved by Ecology, the RI/FS work plan shall become an integral and enforceable part of this Order. The EO PLPs may consult with Ecology prior to writing the RI/FS Work Plan, to discuss scope of the work and outline for the work plan. At a minimum, the RI/FS work plan shall include the items below.

- Investigate soils impacted with total petroleum hydrocarbons (TPH) as diesel- and oil-range organics (DRO/ORO), total polycyclic aromatic hydrocarbons (cPAHs), and/or total naphthalenes above site preliminary soil cleanup levels (CULs) which are located at depths between 20 and 32 feet below ground surface in the vicinity of the City of Tacoma East 18th St Right of Way and the former Simpson Property, and provide alternatives for addressing these contaminants in an update to the June 22, 2018 FS for the Site.
- Investigate soil beneath the former 450,000-gallon above-ground storage tank (AST) and northeast of that area (towards the Puyallup River) and provide alternatives for addressing these contaminants in the update to the FS for the Site.
- Investigate groundwater beneath the site in the area of City of Tacoma right-of-way and in the northeast portion of the site which is impacted by DRO/ORO, total cPAHs, and total naphthalenes and provide alternatives for addressing these contaminants in an updated FS for the Site.

B. Supplemental RI Field Work. The EO PLPs shall perform a supplemental remedial investigation that meets the requirements of 173-340-350 and implements the approved work plan. The EO PLPs shall begin remedial investigation field work within 30 days of receiving Ecology's approval of the final RI/FS Work Plan.

C. Laboratory and field screening results. The EO PLPs shall submit laboratory and field screening results from the remedial investigation field work to Ecology. The EO PLPs shall submit laboratory results to the Ecology project manager within 15 days following the EO PLPs receipt of data from the laboratory(ies). The EO PLPs shall submit field screening results to the Ecology project manager within 15 days of performing field screening.

D. Electronic Data Submittal. In accordance with Section VIII.E (Sampling, Data Submittal and Availability) of this Order, the EO PLPs shall submit all data generated for the supplemental RI to Ecology's EIM database. The EO PLPs may coordinate with Ecology's project manager before uploading data to the EIM database. The EO PLPs shall submit data to EIM database within 30 days from completion of the data validation.

E. Draft Supplemental RI Report. The EO PLPs shall prepare and submit to Ecology for review and approval a draft Supplemental RI report documenting the findings of the Supplemental RI that meets the requirements of WAC 173-340-350. The EO PLPs may consult

with Ecology prior to writing the Draft Supplemental RI Report, to discuss the report outline. The Draft Supplemental RI Report shall incorporate relevant data from previous reports and studies, and those data shall be incorporated in the maps and tables of the Supplemental RI Report along with data from the RI field work. After making revisions based on Ecology's comments on an Agency Review Draft Supplemental RI Report, the EO PLPs shall submit a Public Review Draft Supplemental RI Report. The EO PLPs shall submit the Agency Review Draft Supplemental RI Report to Ecology no longer than 60 days from completion of the field work. The EO PLPs shall submit the Public Review Draft Supplemental RI Report that incorporates Ecology's comments within 30 days of receiving Ecology's comments on the Agency Review Draft Supplemental RI Report.

F. Updated FS. The EO PLPs shall prepare and submit to Ecology for review and approval a draft update to the June 22, 2018 FS (Updated FS) that meets the requirements of WAC 173-340-350. The EO PLPs may consult with Ecology prior to writing the Draft Updated FS, to discuss the report outline. The Draft Updated FS shall incorporate the relevant data from the supplemental RI and the June 22, 2018 Revised Draft RI/FS, and include alternatives that address all contaminants on the Site. After making revisions based on Ecology's comments on an Agency Review Draft Updated FS, the EO PLPs shall submit a Public Review Draft Updated FS. The EO PLPs shall submit the Agency Review Draft Updated FS to Ecology no longer than 60 days from completion of the Supplemental RI Report. The EO PLPs shall submit the Public Review Draft Updated FS that incorporates Ecology's comments within 30 days of receiving Ecology's comments on the Agency Review Draft Updated FS.

G. The Public Review Draft Supplemental RI Report and Updated FS will be subject to public notice and opportunity to comment before final approval by Ecology, in accordance with WAC 173-340-600(13)(c).

F. The following naming following naming conventions shall be used for documents submitted under this Order: Agency Review Draft (designation for the first time Ecology receives

a document); Public Review Draft (designates a document ready for public comment); and Final (designation for a document after public comment and Ecology approval).

G. If an EO PLP(s) learns of a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in soil and/or groundwater, the EO PLP(s), within seven (7) days of learning of the change in condition, shall notify Ecology in writing of said change and provide Ecology with any reports or records (including field monitoring data, laboratory analyses, sampling results) relating to the change in conditions.

H. Progress Reports and Communications with Ecology. Unless otherwise directed by Ecology, the EO PLPs shall submit to Ecology written monthly Progress Reports that describe the actions taken during the previous month to implement the requirements of this Order. All Progress Reports shall be submitted by the tenth (10th) day of the month in which they are due after the effective date of this Order. Unless otherwise specified by Ecology, Progress Reports and any other documents submitted pursuant to this Order shall be sent by certified mail, return receipt requested, to Ecology's project coordinator. The Progress Reports shall include the following:

1. A list of on-site activities that have taken place during the month.
2. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests.
3. Description of all deviations from the Schedule (Exhibit C) during the current month and any planned deviations in the upcoming month.
4. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.
5. All raw data (including laboratory analyses) received during the previous quarter (if not previously submitted to Ecology), together with a detailed description of the underlying samples collected.
6. A list of deliverables and planned activities for the upcoming month.

I. All plans or other deliverables submitted by the EO PLPs for Ecology's review and approval under the Schedule (Exhibit C) shall, upon Ecology's approval, become integral and enforceable parts of this Order.

H. If Ecology determines that the EO PLPs have failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to the EO PLPs, perform any or all portions of the remedial action or at Ecology's discretion allow the EO PLPs opportunity to correct. In an emergency, Ecology is not required to provide notice to the EO PLPs, or an opportunity for dispute resolution. The EO PLPs shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.B (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

I. Except where necessary to abate an emergency situation or where required by law, the EO PLPs shall not perform any remedial actions at the Site outside those remedial actions required by this Order to address the contamination that is the subject of this Order, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section VIII.J. (Amendment of Order). In the event of an emergency, or where actions are taken as required by law, the EO PLPs must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

VIII. TERMS AND CONDITIONS

A. Remedial Action Costs

The EO PLPs shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for or on the Site under RCW 70.105D, including remedial actions and Order preparation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). For all Ecology costs incurred, the EO PLPs shall pay the required amount within thirty (30) 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 statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70.105D.055, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

B. Designated Project Coordinators

The project coordinator for Ecology is:

Andrew Smith, PE
Department of Ecology Toxics Cleanup Program
P.O. Box 47775
Olympia, WA 98504
(360) 407-6247
E-mail: ansm461@ecy.wa.gov

The project coordinator for Sussman Estate is:

Peter Bannister, P.E.
Aspect Consulting LLC
350 Madison Avenue N.
Bainbridge Island, WA 98110-1810
206-780-7728
E-mail: pbannister@aspectconsulting.com

The project coordinator for Tacoma Metals is:

Thomas Morin, L.G.
Environmental Partners Inc.
1180 NW Maple Street, Suite 310
Issaquah, WA 98027
425-395-0010
E-mail: thomm@epi-wa.com

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the EO PLPs, 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 coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

C. Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct supervision of an engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43 and 18.220.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

The EO PLPs shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

D. Access

RCW 70.105D.030(1)(a) authorizes Ecology or any Ecology authorized representative to enter all property at the Site that the EO PLPs either own, control, or have access rights to, after

reasonable notice unless an emergency prevents such notice. The EO PLPs shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the EO PLPs where remedial activities or investigations will be performed pursuant to this Order.

E. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the EO PLPs shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, the EO PLPs shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the EO PLPs pursuant to the implementation of this Order. The EO PLPs shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the EO PLPs and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.E (Access), Ecology shall notify the EO PLPs prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be conducted, unless otherwise approved by Ecology.

F. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of the work performed pursuant to this Order, the EO PLPs shall preserve all records, reports,

documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, the EO PLPs shall make all such records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right the EO PLPs may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If the EO PLPs withhold any requested records based on an assertion of privilege, the EO PLPs shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

G. Resolution of Disputes

1. In the event that the EO PLPs elect to invoke dispute resolution, the EO PLPs must utilize the procedure set forth below.

a. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), the EO PLPs have fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision (Informal Dispute Decision) stating: the nature of the dispute; the EO PLPs' position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

c. The EO PLPs may then request regional management review of the dispute. This request (Formal Dispute Notice) must be submitted in writing to the Southwest Region

Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

d. The Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar days of receipt of the Formal Dispute Notice. The Decision on Dispute shall be Ecology's final decision on the disputed matter.

2. The Parties shall only utilize the dispute resolution process in good faith and shall expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

4. In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section VII.E (Work to be Performed) or initiating enforcement under Section X (Enforcement).

H. Extension of Schedule

1. The EO PLPs request for an extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and when good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended.
- b. The length of the extension sought.
- c. The reason(s) for the extension.

d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on the EO PLPs to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. The existence of good cause shall be determined by Ecology in its sole discretion. Good cause may include, but may not be limited to:

a. Circumstances beyond the reasonable control and despite the due diligence of the EO PLPs including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the EO PLPs.

b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty.

c. Endangerment as described in Section VIII.J (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of the EO PLPs.

3. Ecology shall act upon any the EO PLPs' written request for extension in a timely fashion. Ecology shall give the EO PLPs written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved in writing by Ecology.

4. At the EO PLPs' request, an extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of one of the following:

a. Delays in the issuance of a necessary permit which was applied for in a timely manner.

b. Other circumstances deemed exceptional or extraordinary by Ecology.

c. Endangerment as described in Section VIII.J (Endangerment).

I. Endangerment

In the event Ecology determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct the EO PLPs to cease such activities for such period of time as it deems necessary to abate the danger. The EO PLPs shall immediately comply with such direction.

In the event the EO PLPs determine that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment, the EO PLPs may cease such activities. The EO PLPs shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction, the EO PLPs shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the EO PLPs' cessation of activities, it may direct the EO PLPs to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, the EO PLPs' obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.I (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

J. Reservation of Rights

Ecology reserves its rights under RCW 70.105D, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health or the environment, and to issue orders requiring such remedial actions. Ecology also

reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

K. Transfer of Interest in Property

Before any voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by an EO PLP(s), the EO PLP(s) 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.

Further, prior to the EO PLPs' transfer of any interest in all or any portion of the Site, the EO PLPs shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and at least thirty (30) days prior to any transfer, the EO PLPs shall notify Ecology of said transfer. Upon transfer of any interest, the EO PLPs shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

L. Compliance with Applicable Laws

1. *Applicable Law.* All actions carried out by the EO PLPs pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. The permits or specific federal, state, or local requirements that the agency has determined are applicable and that are known at the time of the execution of this Order have been identified in Exhibit D. The EO PLPs have a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or the EO PLPs, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and the EO PLPs must implement those requirements.

2. *Relevant and Appropriate Requirements.* All actions carried out by the EO PLPs pursuant to this Order shall be done in accordance with relevant and appropriate requirements

identified by Ecology. The relevant and appropriate requirements that Ecology has determined apply have been identified in Exhibit D. If additional relevant and appropriate requirements are identified by Ecology or the EO PLPs, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and the EO PLPs must implement those requirements.

3. Pursuant to RCW 70.105D.090(1), the EO PLPs may be exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, the EO PLPs shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70.105D.090(1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Order to enforce those local government permits and/or approvals.

4. The EO PLPs have a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the EO PLPs determine that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or the EO PLPs shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the EO PLPs shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the EO PLPs and on how the EO PLPs must meet those requirements. Ecology shall inform the EO PLPs in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The EO PLPs shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

5. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for the state to administer any federal law, the exemption shall not apply and the EO PLPs shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon the EO PLPs' receipt of written notification from Ecology that the EO PLPs have completed the remedial activity required by this Order, and that the EO PLPs have complied with all other provisions of this Enforcement Order.

X. ENFORCEMENT

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. A liable party, who refuses without sufficient cause, to comply with any term of this Order will be liable for:

1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply.

2. Civil penalties of up to twenty-five thousand dollars (\$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: _____

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Rebecca S. Lawson, P.E., LHG
Section Manager
Toxics Cleanup Program
Southwest Regional Office
360-407-6241