

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

STATE OF OREGON, ex rel.  
STEPHANIE HALLOCK, DIRECTOR  
DEPARTMENT OF ENVIRONMENTAL  
QUALITY

Plaintiff,

v.

North Portland Road, LLC

Defendant.

Case No. \_\_\_\_\_

STIPULATION AND CONSENT JUDGMENT

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1. Purpose

This Stipulation and Consent Judgment is filed simultaneously with and for the purpose of resolving the underlying complaint by the State of Oregon. Plaintiff is the State of Oregon *ex rel* the Director of the Oregon Department of Environmental Quality (“DEQ”), and Defendant, is North Portland Road, LLC , an Oregon limited liability company (“North Portland Road”). North Portland Road desires to resolve this action without litigation and has agreed to entry of the Consent Judgment without admission or adjudication of any issue of fact or law.

The mutual objective of the DEQ and North Portland Road (collectively “the parties”) is to protect public health, safety, and welfare and the environment by entry into a prospective purchaser agreement (an agreement to release a party from potential liability to the State to facilitate cleanup and reuse of property) in accordance with ORS 465.327. ORS 465.327(3)

expressly provides that such prospective purchaser agreements may be included in or set forth in a judicial consent judgment entered in accordance with ORS 465.325.

2. Stipulations

A. North Portland Road stipulates

(1) To entry of this Consent Judgment;

(2) To perform and comply with all applicable provisions of this Consent Judgment;

(3) In any proceeding brought by the DEQ to enforce this Consent Judgment , not to litigate this Court’s jurisdiction over this matter or the validity of the Consent Judgment; and,

(4) To waive any right North Portland Road might have under ORS 465.260(7) or 465.325(2) to seek reimbursement or financial assistance for the costs incurred under this Consent Judgment.

B. DEQ and North Portland Road stipulate:

(1) North Portland Road is a limited liability corporation organized under the laws of the State of Oregon.

(2) The subject property (Property) is an approximately 15 acre parcel located at 10145 North Portland Road, Portland, Oregon. The site is located approximately 500 feet south of the Columbia Slough and approximately 0.5 miles south of Smith Lake. The legal description of the Property is set forth in Attachment A to this Agreement. The Property is known as the “Larsen South” property and is separated from the Columbia Slough by the so-called “Larsen North – City of Portland” property (North Larsen – COP site). Both the north and south parcels were owned by the Larsen family until July 2001 when the City of Portland acquired the north parcel through the exercise of eminent domain. The Property is currently held by Karen Laudenslager as Trustee of the Louis F. Larsen, Marital Trust B as to an undivided ½ interest and Karen J. Laudenslager, Personal Representative of the Estate of Karen Larsen as to an undivided ½ interest.

(3) This site was used variously for agricultural and nursery operations. In 1964, the site was redeveloped for use as a trucking facility. Operations included maintenance and tanker truck washing activities. Wastewater from the tank cleaning facility was discharged into natural ponds located on what is now the North Larsen – COP site. Other facility features included truck fueling stations with underground fuel storage tanks, truck parking areas, a truck maintenance shop and truck washpad equipped with an oil/water separator, a railroad spur, muriatic acid/water tanks, truck scales, a water supply well, and a storm sewer system equipped with two catch basins.

(6) Prior operations at the site including past waste disposal, spills, leaks and other releases, have caused soil and groundwater contamination at the Property and may have also caused such contamination at adjacent properties. The Property and other areas to which contamination originating on the Property has come to be located are referred to collectively herein as the “Site.” As used herein, the term “on-site” refers to an area on the Property.

(7) Contaminants identified at the Property include volatile organic compounds, petroleum hydrocarbons, polycyclic aromatic hydrocarbons, organ chlorine pesticides, and polychlorinated biphenols. These contaminants are “hazardous substances” within the meaning of ORS 465.200(16). The presence of hazardous substances at the Property constitutes a “release” of hazardous substances within the meaning of ORS 465.200(22), and the Property is a “facility” within the meaning of ORS 465.200(13).

(8) Several investigations, including work performed by North Portland Road, have been conducted to assess the nature and extent of contamination at the Site. Based on the results of those investigations, DEQ has approved removal actions for the on-site portion of the site, which consists of the Property. Those actions are described in the Scope of Work attached to this Consent Judgment as Attachment D and incorporated herein by reference.

(9) Pursuant to ORS 465.255(1)(b), North Portland Road could become strictly liable for the releases of hazardous substances at or from the Property simply by acquiring the Property with actual or constructive knowledge of the releases. Pursuant to the

authority set forth in ORS 465.325 and ORS 465.327, this Consent Judgment is entered for the purpose of resolving North Portland Road's liability to the State of Oregon and to third parties for releases of hazardous substances at or from the Property as described herein.

(19) Pursuant to the Parties' agreement, as set forth in this Consent Judgment, North Portland Road agrees to perform the activities described in this Consent Judgment at its own expense. North Portland Road's goal is to remediate certain remaining contamination at the Property and for North Portland Road to make full use of the Property for its business purposes.

(11) Pursuant to 465.327(1):

(i) North Portland Road is a limited liability company organized under the laws of Oregon and constitutes a "person" within the meaning of ORS 465.200(21);

(ii) North Portland Road is not currently liable under ORS 465.255 for the existing release of hazardous substances at or from the Property;

(iii) removal or remedial action is necessary at the Property to protect human health or the environment;

(iv) North Portland Road's Removal Action Work and its proposed redevelopment or reuse of the Property will not cause, contribute to or exacerbate the existing contamination, increase health risks or interfere with remedial measures necessary at the Property; and

(v) a substantial public benefit will result from North Portland Road's Removal Action Work at the Property under ORS 465.327(1)(d).

(12) In determining whether to enter into this Consent Judgment, DEQ has consulted with the City of Portland and has considered reasonably anticipated future land uses at the Property and surrounding properties.

(13) North Portland Road recognizes that implementation of remedial measures at the Property in the future might interfere with North Portland Road's use of the Property.

(14) On November 1, 2005, DEQ published notice of this proposed Consent Judgment and provided opportunity for public comment in accordance with ORS 465.325(4)(d). In accordance with ORS 465.325(4)(d) and 465.320(1), the notice was published in the *Secretary of State's Bulletin* and in *The Oregonian* newspaper. Further, DEQ mailed notice to certain interested individuals and entities. The comment period ended November 30, 2005.. Comments were received from DEQ considered all public comments.

Based on the above Stipulations, the parties agree to entry of the following Consent Judgment:

#### CONSENT JUDGMENT

### 3. Work to be Performed

#### A. Remedial Design and Remedial Action

(1) Within 30 days of closing on the purchase of the Property, North Portland Road shall pay to DEQ the amount of \$60,000 for investigation and removal and remedial actions in the Columbia Slough. These funds shall be paid by check to "Department of Environmental Quality, Hazardous Substances Remedial Action Fund", and mailed to DEQ at 811 SW Sixth Avenue, Portland, Oregon 97204. DEQ shall deposit these funds in a site specific account in DEQ's Hazardous Substances Remedial Action Fund established for the Columbia Slough.

(2) North Portland Road shall perform all actions described in the Scope of Work. North Portland Road agrees it will begin implementing the SOW within 30 days of DEQ's approval of a reasonable schedule for implementation of the Work, which schedule will be submitted to DEQ no later than 30 days after closing of escrow for the Property transaction. North Portland Road agrees it will complete the SOW in accord with that approved schedule.

(3) Upon completion of the SOW, DEQ will determine whether institutional or engineering controls are required at the property to protect human health and the environment. If DEQ determines the such use restrictions are necessary, North Portland Road as grantor shall enter into and record an Easement and Equitable Servitude in the form of the EES attached to this Consent Judgment as Attachment E, restricting use of the Property as determined by DEQ. The restrictions in the EES, pursuant to ORS 465.327(5), shall run with the land. The work identified in the Scope of Work and the associated engineering and institutional controls are identified hereinafter as the Removal Action Work.

(4) If an EES is required, North Portland Road agrees to comply with all terms and conditions of the EES, any amendments thereto, any other site restrictions, and any ongoing obligations related to maintenance and monitoring of the remedy. Any development, construction, or other use of the Property must be consistent with this Consent Judgment, the EES, and removal activities at the Property. North Portland Road shall require all tenants, employees, authorized and regular users, and other occupants of the Property who perform activities on the Property that might affect the soils, groundwater, other contaminated media, or affect necessary investigation and/or remedial measures, to also comply with the provisions of this Consent Judgment and the EES.

(5) To ensure consistency with the EES and remedial measures, and prevent exacerbation of existing contamination at or from the Property, North Portland Road must notify DEQ before any material physical changes or disturbances are made to any area of the Property that is subject to use restrictions. At DEQ's request, North Portland Road must submit for DEQ review and approval any development, use, and building plans, or other similar and adequate documentation, for the proposed activities. North Portland Road shall require all tenants, employees, authorized and regular users, and other occupants of the Property who perform activities on the Property that might affect the soils, groundwater, other contaminated media, or

affect necessary investigation and/or remedial measures, to also submit development and/or construction plans to North Portland Road for review by DEQ pursuant to Subsection 3.A.(4) of this Consent Judgment.

(6) Property subject to the EES may be freely alienated at any time after recording; provided, the deed or other instrument of conveyance from North Portland Road shall refer to or incorporate the Easement and Equitable Servitude.

(7) Any deed, title, or other instrument of conveyance regarding real property owned by North Portland Road within the Site must reserve such access (by easement, right-of-way, or otherwise) as might be necessary to carry out North Portland Road's obligations under this Consent Judgment.

B. Redevelopment and Reuse

Any subsequent development, construction, or other use of the Property by North Portland Road shall be consistent with this Consent Judgment, the SOW and the EES, and shall not interfere with investigative or remedial activities necessary at the Site.

4. General Provisions

A. Supervising Contractor

(1) All aspects of the Removal Action Work to be performed by North Portland Road pursuant to this Consent Judgment shall be performed under the direction and supervision of a qualified contractor or contractors having experience in hazardous substance remediation and knowledge of applicable state and federal laws, regulations, and guidance.

(2) Before initiation of work under this Consent Judgment, North Portland Road shall notify DEQ in writing of the name, title, and qualifications of any proposed supervising contractor. DEQ may for good cause disapprove the proposed contractor. In the event of such disapproval, DEQ within 14 days of receipt of the initial notice from North Portland Road shall notify North Portland Road in writing of the reasons for its disapproval. North Portland Road, within 14 days of receiving DEQ's notice of disapproval, shall notify DEQ



of the name, title, and qualifications of an alternate supervising contractor, subject to DEQ's right to disapprove under the terms and schedule specified above. Any delay caused by DEQ disapproval of a contractor or contractors shall extend the work schedule by a corresponding amount of time but not to exceed 60 days from the date of DEQ's initial or subsequent disapproval.

(3) If, during the course of Removal Action Work required under this Consent Judgment, North Portland Road proposes to change its supervising contractor, North Portland Road shall notify DEQ in accordance with the provisions of the preceding paragraph. DEQ may disapprove such contractor, under the terms and schedule specified in the preceding paragraph.

B. Financial Assurance

DEQ reserves the right to require financial assurance for the Removal Action Work from North Portland Road in the future, if DEQ reasonably determines that circumstances warrant.

C. DEQ Access

(1) North Portland Road shall allow DEQ to enter all portions of the Property under its ownership and or control at all reasonable times for the purposes, among others, of inspecting records relating to work under this Consent Judgment; observing North Portland Road's progress in implementing the work required by this Consent Judgment; conducting such tests and taking such samples as DEQ deems necessary; verifying data submitted to DEQ by North Portland Road; conducting periodic review; and, using camera, sound recording, or other recording equipment. Upon request by North Portland Road, DEQ shall make available to North Portland Road a split or duplicate of any sample taken in connection with this Consent Judgment and provide the North Portland Road with copies of all analytical data for such samples. DEQ shall also make available to North Portland Road, upon their request, any photographs or recorded or videotaped material taken. DEQ shall be responsible for the health and safety of its employees, contractors, and agents entering or moving about the Property, and, to the extent required by Paragraph 4.P.(2) of this Consent Judgment, shall indemnify and hold North Portland

Road harmless from and against any and all claims arising out of the acts or omissions of such employees, contractors, and agents when entering or moving about the Property.

(2) Notwithstanding their obligations in 4.C.(1) above, North Portland Road shall not be required to permit DEQ inspection or copying of items subject to the attorney-client privilege, attorney work product privilege, or any applicable public records exemption. In the event that North Portland Road asserts such a privilege or exemption, North Portland Road shall identify to DEQ (by addressor-addressee, date, general subject matter, and distribution) any document, record, or item withheld from DEQ on the basis of attorney-client privilege, attorney work product privilege, or public records exemption, except to the extent that such identifying information is itself subject to a privilege. DEQ reserves its rights under law to seek to obtain documents DEQ asserts are improperly withheld by North Portland Road. Attorney-client privilege, work product privilege, and public records exemptions may not be asserted with respect to any records required under Paragraph 4.G.(1) of this Consent Judgment.

D. Project Managers

(1) To the extent possible, all reports, notices, and other communications required under or relating to this Consent Judgment shall be directed to:

For DEQ:

Anna Coates  
Oregon DEQ  
2020 SW 4<sup>th</sup> Avenue, #400  
Portland, Oregon 97201  
Tel: (503)229-5213  
Fax: (503) 229-6945

For North Portland Road:

Gerald Breunig  
609 NE Repass Road  
Vancouver, Washington 98655  
Tel: (360) 750-5502

(2) The Project Managers shall be available and have the authority to make day-to-day decisions necessary to complete the SOW.

E. Notice and Samples

(1) North Portland Road shall make every reasonable effort to notify DEQ of

any new excavation, drilling, sampling, or other Removal Action Work to be conducted under this Consent Judgment, at least five working days before such activity, but in no event less than 24 hours before such activity. Upon DEQ's verbal request, North Portland Road shall make available to DEQ a split or duplicate of any sample taken pursuant to this Consent Judgment. DEQ will provide North Portland Road with copies of all analytical data from such samples as soon as practicable.

(2) In the event DEQ conducts any sampling or analysis in connection with this Consent Judgment, DEQ shall make every reasonable effort to notify North Portland Road of any excavation, drilling, or sampling, at least five working days before such activity, but in no event less than 24 hours before such activity. Upon North Portland Road's verbal request, DEQ shall make available to North Portland Road a split or duplicate of any sample taken in connection with this Consent Judgment and provide North Portland Road with copies of all analytical data for such samples. North Portland Road shall provide DEQ with copies of all analytical data from such samples as soon as practicable.

F. Quality Assurance

(1) North Portland Road shall conduct all sampling, sample transport, and sample analysis in accordance with the Quality Assurance/Quality Control ("QA/QC") provisions approved by DEQ for the Property. Subject to such provisions, all plans prepared and work conducted under this Consent Judgment shall be consistent with DEQ's "Environmental Cleanup Program Quality Assurance Policy No. 760.000" and North Portland Road shall make every reasonable effort to ensure that the laboratory used by North Portland Road to perform such analyses in accord with that policy.

(2) In the event DEQ conducts sampling or analysis in connection with this Consent Judgment, DEQ shall conduct sampling, sample transport, and sample analysis in accordance with the QA/QC provisions of the approved work plan. Upon written request, DEQ will provide North Portland Road with copies of DEQ's records regarding such sampling, transport, and analysis.

G. Records

(1) In addition to those reports and documents specifically required under this Consent Judgment, North Portland Road shall cause its project manager to provide to DEQ, within 10 days of DEQ's written request, copies of QA/QC memoranda and audits, raw data, task memoranda, field notes (not made by or at the direction of North Portland Road's attorney), and laboratory analytical reports relating to the Removal Action Work to be performed under this Consent Judgment.

(2) North Portland Road shall preserve and allow DEQ to inspect and copy all records in its possession or control relating to measures undertaken at the Property under this Consent Judgment. North Portland Road shall preserve all such records for six (6) years after the effective date of this Consent Judgment, and, after such six-year period, shall provide DEQ with sixty (60) days' notice before destruction or other disposal of such records and make the records available for inspection and copying.

(3) North Portland Road may assert a claim of confidentiality regarding any records submitted to or copied by DEQ pursuant to this Consent Judgment. DEQ shall treat documents and records for which a claim of confidentiality has been made in accordance with ORS 192.410 to 192.505. If North Portland Road does not make a claim of confidentiality at the time the records are first submitted to or copied by DEQ, the records may be made available to the public without notice to North Portland Road. DEQ reserves any rights to obtain documents withheld from DEQ as privileged.

H. Progress Reports

During each calendar quarter following entry of this Consent Judgment, North Portland Road shall deliver to DEQ, on or before the tenth working day of each quarter, a progress report containing:

(1) Actions taken by North Portland Road under this Consent Judgment during the previous three months;

(2) Actions scheduled to be taken by North Portland Road in the next three

months;

(3) A summary of sampling, test results, and any other data generated by North Portland Road during the previous three months; and

(4) A description of any problems experienced by North Portland Road during the previous three months.

DEQ may approve less frequent reporting by North Portland Road, if warranted. Progress reports may be submitted in electronic form. If submitted in hard-copy written form, two copies shall be provided to DEQ.

I. Other Applicable Laws

(1) Subject to ORS 465.315(3), all activities under this Consent Judgment shall be performed in accordance with applicable Federal, State, and local laws and regulations.

(2) Without limiting the foregoing, all action under this Consent Judgment shall be performed in accordance with any applicable federal, state and local laws and regulations related to archeological objects and sites and protection thereof. If archeological objects or human remains are discovered during any investigation, removal or remedial activities at the Property, North Portland Road shall, at a minimum:

- (a) stop work immediately in the vicinity of the find,
- (b) provide any notifications required by ORS 97.745 and ORS 358.920,
- (c) notify the DEQ Project Manager within 24 hours of the discovery, and
- (d) use best efforts to ensure that North Portland Road and its employees, contractors, counsel and consultants keep the discovery confidential, including but not limited to, refraining from contacting the media or any third party or otherwise sharing information regarding the discovery with any member of the public.

Any project delays caused by the discovery of archeological object or human remains shall be considered a Force Majeure under Paragraph 4.K of this Consent Judgment.

J. Reimbursement of DEQ Oversight Costs

(1) After approval of this Consent Judgment by the Court, DEQ shall submit

to North Portland Road monthly invoices of costs actually and reasonably incurred by DEQ or the State of Oregon after approval of this Consent Judgment in connection with any activities related to the SOW, oversight of North Portland Road's implementation of this Consent Judgment, and periodic review. Each invoice will include a summary of costs billed to date.

(2) DEQ costs payable by North Portland Road will include direct and indirect costs. Direct costs include site-specific expenses, DEQ contractor and DEQ legal costs. DEQ's direct cost summary will include a direct labor summary showing the persons charging time, the number of hours, and the nature of work performed. Indirect costs include those general management and support costs of DEQ and of the Land Quality Division ("LQD") allocable to DEQ oversight of this Consent Judgment and not charged as direct, site-specific costs. Indirect charges are based on actual costs and applied as a percentage of direct personal services costs. DEQ will maintain work logs, payroll records, receipts, and other documents to document work performed and expenses incurred under this Consent Judgment and, upon request, will provide copies of such records to North Portland Road during the term of this Consent Judgment and for at least six (6) years thereafter. After such six (6) year period, DEQ will provide North Portland Road sixty (60) days' notice before destruction or other disposal of such records or documents and make the records available for inspection and copying.

(4) Within 30 days of receipt of a DEQ invoice, North Portland Road shall pay the amount of costs billed by check payable to the "State of Oregon, Hazardous Substance Remedial Action Fund," or invoke dispute resolution under Subsection 4.M. of this Consent Judgment.

(5) North Portland Road shall pay 9% simple interest on the unpaid balance of any DEQ oversight costs, which interest shall begin to accrue 30-days after the date of invoice. Interest on any amount disputed under Subsection 4.M. shall begin to accrue 30 days from final resolution of any such dispute. Any unpaid amounts are a liquidated debt collectible under ORS 293.250 and other applicable laws.

K. Force Majeure

(1) If any event occurs that is beyond North Portland Road's reasonable control and that causes or might cause a delay or deviation in performance of the requirements of this Consent Judgment despite North Portland Road's due diligence ("force majeure"), North Portland Road shall promptly, upon learning of the event, notify DEQ's Project Manager verbally of the cause of the delay or deviation, its anticipated duration, the measures that have been or will be taken to prevent or minimize the delay or deviation, and the timetable by which North Portland Road proposes to carry out such measures. North Portland Road shall confirm in writing this information within five working days of the verbal notification.

(2) If North Portland Road demonstrates to DEQ's reasonable satisfaction that the delay or deviation has been or will be caused by force majeure, DEQ will extend times for performance of related activities under this Consent Judgment as appropriate. Circumstances or events constituting force majeure might include but not be limited to acts of God, unforeseen strikes or work stoppages, delays in receiving a governmental approval or permit, fire, explosion, riot, sabotage, or war. Increased cost of performance or changed business or economic circumstances shall not be considered force majeure.

L. DEQ Approvals

(1) Where DEQ's review and approval is required for any plan or activity under this Consent Judgment, North Portland Road shall not proceed to implement the plan or activity until DEQ approval is received. Any DEQ delay in granting or denying approval shall correspondingly extend the time for completion by North Portland Road. Prior approval shall not be required in emergencies; provided, North Portland Road shall notify DEQ immediately after the emergency and evaluate the impact of its actions on the work required under this Consent Judgment.

(2) After review of any plan, report, or other item required to be submitted for DEQ approval under this Consent Judgment, DEQ shall:

(a) Approve the submission in whole or in part; or

(b) Disapprove the submission in whole or in part, and notify North Portland Road of the submission's deficiencies and/or request modifications to cure the deficiencies.

(3) In the event of two deficient submittals of the same deliverable that are deficient for the same reasons due to North Portland Road's failure in good faith to cure the original deficiency, DEQ may modify the submission to cure the deficiency.

(4) DEQ approvals, rejections, or identification of deficiencies will be given as soon as practicable in writing, and state DEQ's reasons with reasonable specificity.

(5) In the event of approval or modification of a submission by DEQ, North Portland Road shall implement the actions required by the plan, report, or other item, as so approved or modified.

(6) In the event of DEQ disapproval or request for modification of a submission, North Portland Road shall, within 30 days of receipt of the DEQ notice or such longer time as may be specified in the notice, either correct the deficiencies and resubmit the revised report or other item for approval, or institute dispute resolution under Subsection 4.M. of this Consent Judgment.

M. Dispute Resolution

(1) In the event of any disagreement between DEQ and North Portland Road regarding implementation of this Consent Judgment, including but not limited to review and approval of a plan or activity or DEQ costs, DEQ and North Portland Road shall, in the following order:

(a) Make a good faith effort to resolve the dispute between project managers;

(b) If necessary, refer the dispute for resolution by the immediate supervisors of the project managers; and,

(c) If necessary, provide to each other their respective positions in writing and refer the dispute for resolution by DEQ's Administrator of the Land Quality Division or Northwest Regional Division Administrator, and North Portland Road's President.



(2) In the event the efforts described above fail to result in a mutually agreeable resolution, DEQ's final decision after such dialogue shall be enforceable in accordance with this Consent Judgment.

N. Enforcement of Consent Judgment and Reservation of Rights

(1) In addition to seeking enforcement of this Consent Judgment through the imposition of administrative civil penalties under ORS 465.900, DEQ may seek enforcement of this Consent Judgment by this Court. If DEQ seeks enforcement of this Consent Judgment by this Court, DEQ may seek monetary sanctions, such as civil penalties, only if DEQ has not assessed and collected any administrative civil penalties under ORS 465.900 regarding the same violation.

(2) North Portland Road does not admit any liability, violation of law, or factual or legal findings, conclusions, or determinations made by DEQ under this Consent Judgment. North Portland Road reserves any defenses and counter-claims they may have in any such action pursued by DEQ.

(3) Nothing in this Consent Judgment is intended to create any cause of action in favor of any person not a party to this Consent Judgment.

(4) Neither this Consent Judgment nor any judgment enforcing this Consent Judgment shall be admissible in any judicial or administrative proceeding, except for proceedings by DEQ to enforce this Consent Judgment, resolution of disputes under this Consent Judgment, imposition or mitigation of sanctions for violation of this Consent Judgment, in response to a citizen suit, or when offered by North Portland Road for admission in any proceeding.

(5) Subject to Paragraph 2.A.(4) of this Consent Judgment, nothing in this Consent Judgment shall prevent North Portland Road from exercising any rights of contribution or indemnification North Portland Road might have against any person regarding activities under this Consent Judgment.

(6) Unless specified otherwise, the use of the term “days” in this Consent Judgment means calendar days.

O. Waivers

(1) North Portland Road waives any claim or cause of action it might have against the State of Oregon arising from contamination at or from the Property existing as of the date of North Portland Road’s acquisition of ownership or operation of the Property.

(2) North Portland Road waives any right it might have under ORS 465.260(7) and 465.325(2) to seek reimbursement from the Hazardous Substance Remedial Action Fund or the Orphan Site Account for costs incurred under this Consent Judgment or related to the Property.

P. Indemnification and Insurance

(1) North Portland Road shall save and hold harmless the state of Oregon and its commissions, agencies, officers, employees, contractors, agents, and authorized representatives, and indemnify the foregoing, from and against any and all claims arising from acts or omissions related to this Consent Judgment of North Portland Road or their officers, employees, contractors, agents, receivers, trustees, or assigns. DEQ shall not be considered a party to any contract made by North Portland Road or their agents in carrying out activities under this Consent Judgment.

(2) To the extent permitted by Article XI, Section 7, of the Oregon Constitution and by the Oregon Tort Claims Act, the State of Oregon shall indemnify and hold harmless North Portland Road and its officers, employees, contractors, agents, and authorized representatives from and against any and all claims arising from acts or omissions related to this Consent Judgment of the State of Oregon or its commissions, agencies, officers, employees, contractors, agents, or assigns (excepting acts or omissions constituting DEQ approval of North Portland Road’s activities under this Consent Judgment). North Portland Road shall notify the State of Oregon of any such claims or actions as soon as practicable after receiving notice that such a claim or action is threatened or has been filed. The State of Oregon shall have the right to

participate fully at its own expense in the defense or settlement of such claims, including the right to promptly receive related correspondence with the claimant and the opportunity to participate in related meetings and telephone conferences with the claimant. North Portland Road will confer with the State of Oregon regarding litigation and settlement strategy and, to the extent practicable, will afford the State of Oregon the opportunity to review and comment on all pleadings and settlement documents before they are filed with the court or sent to the claimant. The State of Oregon shall have no obligations under this paragraph with respect to any claim settled or otherwise compromised without its having been provided the opportunity to participate in accordance with this paragraph. North Portland Road shall not be considered a party to any contract made by DEQ or its agents in carrying out activities under this Consent Judgment.

(3) Before commencing any onsite work under this Consent Judgment, North Portland Road shall obtain and maintain for the duration of this Consent Judgment comprehensive general liability and automobile insurance with limits of \$1 million, combined single limit per occurrence, naming as an additional insured the State of Oregon. If North Portland Road demonstrates by evidence satisfactory to DEQ that its contractor(s) or subcontractor(s) maintain equivalent coverage, or coverage for the same risks but in a lesser amount or for a lesser term, then North Portland Road may provide only that portion of the insurance that is not maintained by its contractor(s) or subcontractor(s).

Q. Parties Bound

(1) This Consent Judgment shall be binding on the parties and their respective commissions, agencies, officers, assigns, successors, employees, contractors, agents, and authorized representatives. The undersigned representative of each party certifies that he or she is fully authorized to execute and bind such party to this Consent Judgment. No change in ownership or corporate or partnership status relating to the Property shall in any way alter North Portland Road's obligations under this Consent Judgment, unless approved otherwise in writing by DEQ and the court.

(2) The benefits and burdens of this Consent Judgment shall run with the land;

however, the release from liability and covenant not to sue set forth in Subsection 5.A and the contribution protection set forth in Subsection 5.C. of this Consent Judgment shall limit or otherwise affect the liability only of persons who are not potentially liable under ORS 465.255 for a release of hazardous substances at the Property as of the date of that person's acquisition of ownership or operation of the Property and who assume, in writing, and are bound by the terms of this Consent Judgment applicable to the Property as of the date of their acquisition of ownership or operation of the Property.

R. Modification

DEQ and North Portland Road may modify this Consent Judgment only by written agreement, subject to approval by this Court. DEQ and North Portland Road may modify the SOW upon written agreement of the parties.

S. Recording

(1) Within thirty (30) days of the date North Portland Road acquires an ownership interest in the Property, North Portland Road shall record a copy or original of this Consent Judgment (whichever is required by the county) in the real property records of Multnomah County, state of Oregon. North Portland Road shall provide DEQ with written evidence of such recording within seven (7) days of recording.

(2) Upon any termination of this Consent Judgment, DEQ may record, or require North Portland Road to record, notice of such termination in the real property records of Multnomah County, State of Oregon.

T. Service

North Portland Road agrees to accept service of process by return receipt requested mail, to Mr. Jan Pedersen at the address in Paragraph 4.D.(1) above with respect to all matters arising under or relating to this Consent Judgment. North Portland Road waives any other service requirements set forth in the Oregon Rules of Civil Procedure or any local rules of this Court, including but not limited to service of a summons. DEQ and North Portland Road agree that North Portland Road need not file an answer to the complaint in this action unless or until the Court expressly declines to approve this Consent Judgment.

5. Release From Liability, Covenant Not to Sue and Contribution Protection

A. Subject to the satisfactory performance by North Portland Road of its obligations under this Consent Judgment, including compliance with ongoing obligations and institutional controls, North Portland Road shall not be liable to the State of Oregon under ORS 465.200 through 465.455 and 465.900 for any release of the hazardous substances described in Section 1 at the Property existing as of the date of North Portland Road's acquisition of its interest in or operation of the Property and the State of Oregon covenants not to sue or take any other action, including but not limited to judicial or administrative action against North Portland Road with regard to releases of hazardous substances from the Facility pursuant to ORS 465.200 through 465.255 and 42 USC § 9601, *et seq.* North Portland Road shall bear the burden of proving that any hazardous substance release existed before the date of acquisition of its interest in or operation of the Property.

B. The release from liability and covenant not to sue under Subsection 5.A of this Consent Judgment shall not apply to any liability regarding:

- (1) A release of hazardous substances at the Property after the date of North Portland Road's acquisition of an interest in or operation of the Property;
- (2) Contribution to or exacerbation of a release of hazardous substances;
- (3) Interference or failure to cooperate with DEQ, or with persons conducting remedial measures under DEQ's oversight at the Property;
- (4) Failure to exercise due care or take reasonable precautions with respect to

any hazardous substance at the Property;

(5) Disposal or management of hazardous substances removed from the Property by or on behalf of North Portland Road;

(6) Criminal liability;

(7) Violation of federal, state, or local law regarding hazardous substances;

(8) Any ownership, operation, or release of hazardous substances at the Property by North Portland Road before the effective date of this Consent Judgment;

(9) Any ownership, operation, or other ground of liability of North Portland Road for a release of hazardous substances at an off-site location affecting the Property; and,

(10) Any matters as to which the State of Oregon is owed indemnification under Subsection 4.P of this Consent Judgment;

(11) Failure by North Portland Road to meet any requirement of this Consent Judgment, including but not limited to completion of the work required by Subsection 3.A. of this Judgment and payment of all DEQ costs owed under Subsection 4.J.

C. The Director of DEQ has determined that the above covenant not to sue will expedite remedial action at the Property and is in the public interest, based on consideration of the factors set forth in ORS 465.325(7)(a) and (d).

D. North Portland Road shall not be liable for claims for contribution regarding matters addressed in this Consent Judgment, in accordance with ORS 465.325(6)(b) and 465.325(8)(e), and to the extent provided by 42 USC § 9613(f)(2). The “matters addressed” in this Consent Judgment means those matters for which North Portland Road has resolved its ~~their~~ actual or potential liability to the state of Oregon herein but do not include matters as to which DEQ has reserved its rights under this Consent Judgment, including without limitation those reservations in Subsections 5.B.

E. Except as provided in Subsection 5.A. above, and subject to Subsections 2.A.(4) and 4.P., nothing in this Consent Judgment shall prevent North Portland Road from exercising any right of contribution or indemnification it may have against any person relating to the Facility or this Consent Judgment.

F. Neither the release of liability in Subsection 5.A. and covenant not to sue in Section 5.A., nor the contribution protection in Subsection 5.D. nor any other provision of this Consent Judgment constitutes or shall be construed as an obligation by the State of Oregon, or any commission, agency, officer or employee thereof to indemnify, defend or hold harmless any person, including without limitation North Portland Road, for costs or expenses arising from or related in any way to the Property, a release of hazardous substances at, to, or from the Property, or this Consent Judgment.

6. Transfer of Interest

North Portland Road shall provide written notice to the DEQ project manager not less than (30) days before transfer of any fee interest in the Property, or a portion of the Property, from North Portland Road to another person or entity. This notice requirement shall remain in effect until DEQ issues an unconditional No Further Action determination or unconditional Certificate of Completion for the Property and North Portland Road completes all obligations required under this Consent Judgment.

7. Certification(s) of Completion.

A. Upon North Portland Road's completion of work in accordance with the SOW, North Portland Road shall submit a final closeout report to DEQ signed both by an Oregon-registered geologist or professional engineer and North Portland Road's Project Manager certifying that the Removal Action Work has been completed in accordance with this Consent Judgment. The report shall summarize the work performed and include all necessary supporting documentation. DEQ will preliminarily determine whether the Removal Action Work has been fully and satisfactorily performed in accordance with this Consent Judgment. Upon a preliminary determination that the Removal Action Work has been fully and satisfactorily

performed, DEQ will provide public notice and opportunity to comment on a proposed certification decision for the on-site operable unit in accordance with ORS 465.320 and 465.325(10)(b). After consideration of public comment, and within 90 days after receiving Defendant's closeout report, the Director of DEQ will issue a final certification decision for the on-site operable unit. The certification decision shall subsequently be submitted by DEQ to this Court.

B. This Court retains jurisdiction over both the subject matter of this Consent Judgment and the parties, regarding the surviving obligations hereunder.

IT IS SO ORDERED this day of DEC 23 2005.

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**DALE R. KOEN**

Circuit Court Judge, Multnomah County

STATE OF OREGON, DEPARTMENT OF ENVIRONMENTAL QUALITY

By:   
Administrator, Northwest Region

Date: 12/15/05

By:   
Larry Edelman, OSB No. 89158  
Assistant Attorney General  
Oregon Department of Justice  
1515 SW Fifth Avenue, Suite 410  
Portland, OR 97201  
Attorney for DEQ

Date: Dec. 20/05

North Portland Road, LLC., an Oregon corporation

By: 

Date: 12/12/05



By: Milton Jones  
Milton Jones, OSB No. 77240  
Perkins Coie LLP  
1120 NW Couch 10th Flr  
Portland OR 97209  
Attorney for Defendant

Date: 12/20/05