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**FILED**  
NOV 21 2019  
Circuit Court  
Multnomah County, Oregon

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

STATE OF OREGON, acting by and through  
the OREGON DEPARTMENT OF  
ENVIRONMENTAL QUALITY,

Plaintiff,

v.

NW METALS INC.,

Defendant.

Case No. 19CV49704

TEMPORARY RESTRAINING ORDER AND  
ORDER TO SHOW CAUSE

**ORS 20.140 - State fees deferred at filing**

This matter came before the Court on Plaintiff's motion for a temporary restraining order and order to show cause why a preliminary injunction should not issue. Based on Plaintiff's motion and arguments, the declarations in support of the motion and the court file and record, the court hereby

FINDS that:

A. On March 28, 2018, plaintiff the State of Oregon (the "State of Oregon"), acting by and through the Oregon Department of Environmental Quality ("DEQ") issued a Removal Action Order (the "Removal Action Order") to defendant NW Metals Inc. ("Defendant"). A true and correct copy of the Removal Action Order is attached as Exhibit 1 and is incorporated herein by reference.

B. Defendant is an Oregon corporation with its principal place of business at 7600 NE Killingsworth Street, Portland, Multnomah County, Oregon (the "Facility"). Defendant operates an auto-dismantler and scrapyard on the Facility. Defendant had notice of the Removal

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1 Action Order. Despite having notice of the Removal Action Order, the State of Oregon alleges  
2 that Defendant failed to comply with the Removal Action Order.

3 C. The State of Oregon, acting by and through DEQ, brought this action pursuant to  
4 ORS 459.376, ORS 465.260(5), ORS 466.210, and ORS 468.035(1)(k). The State of Oregon  
5 seeks a temporary restraining order requiring Defendant to immediately comply with the  
6 Removal Action Order. The State of Oregon also seeks a temporary restraining order enjoining  
7 Defendant's illegal conduct in violating DEQ's applicable rules and regulations and abating  
8 imminent and substantial danger to public health, safety and welfare with respect to the release  
9 of solid wastes and hazardous wastes where such wastes are likely to escape or be carried into  
10 the waters of the state by any means, in violation of ORS 468B.025(1)(a).

11 D. This Court has jurisdiction over Defendant pursuant to ORCP 4 A(3)-(4).  
12 Defendant is a corporation created under the laws of this State, is registered to do business in  
13 Oregon, and has its registered agent in the State.

14 E. The cause of action in this case arose in Multnomah County. Venue is proper  
15 pursuant to ORS 14.080(1).

16 F. The evidence and pleadings before the Court including the Complaint, the State of  
17 Oregon's Ex Parte Motion for Temporary Order and Order to Show Cause, the Declaration of  
18 Courtney Brown and supporting exhibits, and the materials in the Court's file establish that the  
19 State of Oregon is entitled to the relief demanded in the Complaint, and that such relief consists  
20 of restraining the commission or continuance of acts, the commission or continuance of which  
21 during the litigation would produce injury to the State of Oregon. ORCP 79 A(1)(a). It further  
22 appears that Defendant is violating the Removal Action Order and is threatening the waters of  
23 the state in violation of ORS 468B.025. ORCP 79 A(1)(b).

24 G. Specifically, the evidence and pleadings before Court, described above, establish  
25 that State of Oregon is likely to succeed on the merits in its claim that Defendant has failed to  
26 comply with the Remedial Action Order.

1 H. The evidence and pleadings before the Court also establish that the State of  
2 Oregon is likely to succeed on the merits of its claim that Defendant's conduct violates DEQ's  
3 applicable rules and that Defendant's conduct presents an imminent and substantial danger to  
4 public health, safety and welfare with respect to the release of solid wastes and hazardous wastes  
5 where such wastes are likely to escape or be carried into the waters of the state by any means, in  
6 violation of ORS 468B.025(1)(a).

7 I. The evidence and pleadings before the Court also establish that the State of  
8 Oregon is likely to suffer irreparable harm in the absence of preliminary relief, that the balance  
9 of equities tips in its favor, and that an injunction is in the public interest.

10 It appears that the State of Oregon is entitled to the relief set forth in its Complaint.

11 Now, therefore, it is hereby ORDERED that Defendant:

- 12 1) Comply with the Removal Action Order;
- 13 2) Submit a plan to DEQ within 10 days of entry of the Court's order demonstrating  
14 how Defendant will manage and contain storm water runoff at the Facility and demonstrating  
15 how Defendant will cease the exposure of its industrial activities to stormwater including all  
16 vehicle dismantling operations such as the removal, processing, storage of vehicle fluids;
- 17 3) Implement its storm water runoff plan within 30 days of DEQ approval,
- 18 4) Cease operation of all automobile shredders until a complete application for an  
19 Air Contaminant Discharge Permit has been submitted to DEQ and DEQ has issued permit  
20 coverage, and 
- 21 5) Take any other reasonable measures that DEQ determines necessary to facilitate  
22 compliance with the applicable water pollution statute and rules.

23 6) Defendant shall also appear in Multnomah County Circuit Court Courtroom  
24 \_\_\_\_\_ at the time of \_\_\_\_\_ on \_\_\_\_\_, 2019 for the purpose  
25 of determining whether a preliminary injunction should issue to continue the above restraints  
26 during the pendency of this action.

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1 7) Pursuant to ORS 22.010, Plaintiff is not required to post a bond or security in  
2 connection with this order.

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5 11-20-19



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8 Submitted by:

9 Timothy D. Smith, OSB # 914374  
10 Assistant Attorney General  
11 Oregon Department of Justice  
12 100 SW Market Street  
13 Portland, OR 97201  
Telephone: (503) 934-4400  
Fax: 503-373-7067  
tim.smith@doj.state.or.us  
Attorney for Plaintiff

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STATE OF OREGON  
DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:  
NW Metals Inc. Operator &  
FHA Holdings LLC, Property owner  
  
Respondent.

) REMOVAL ACTION  
) ORDER  
)  
) NO. OERS # 2018-0553

I. AUTHORITY

The Department of Environmental Quality (Department) hereby issues this Removal Action Order (Order) pursuant to Oregon Revised Statutes (ORS) 466.645 and ORS 465.260.

II. PURPOSE

The purpose of this Order is to protect public health, safety, welfare, and the environment by ordering the removal action related to a release of a hazardous substance.

III. FINDINGS OF FACT

1. On March 12, 2018, the Department received an Oregon Emergency Response System notification (OERS No. 2018-0553) of a fire involving waste fires and vehicles that contain various hazardous substances at the NW Metals Inc. facility located at 7600 NE Killingsworth Street in Portland. The cause of the fire remains under investigation at the time of this writing.
2. Portland Fire and Rescue responded to the scene to extinguish the fire and mitigate public safety hazards and established command and control over the facility during the crisis phase of the incident. Fire suppression efforts continued until the fire was extinguished on March 13, 2018. Portland Fire released the facility back to the Respondents at 8pm on that date.
3. The fire caused a large plume of noxious smoke that forced the initial evacuation of residents in a four-block radius of the site. The United States Environmental

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Protection Agency (US EPA) responded to the incident and provided real-time air quality monitoring and collected samples of fire suppression runoff water, during the course of and in the immediate aftermath of the fire. PM-10 monitoring showed unhealthy air quality through the evening of March 12<sup>th</sup> that resulted in expanding the evacuation zone for the Gully residential area. Residents were allowed to return to their homes on March 13<sup>th</sup> as air quality improved as the fire suppression reduced the intensity of the fire. The analytical results for samples of the fire suppression runoff water sampling are pending. Numerous used vehicles, tires and associated vehicle fluids and vehicle plastics were present on site at the time of the fire, many of which burned. The numbers of vehicles and tires that burned are not known to DEQ. The uncontrolled combustion process would have created and released a wide range of hazardous substances which spilled or were deposited to the ground after burning. These hazardous substances were washed across the property surface by fire suppression and rain water and drained to dry well (Underground Injection Control or UIC) facilities located on the property.

4. Respondent failed to immediately hire a qualified contractor to respond to and stop any continuing release and to manage the cleanup of hazardous materials released to the environment following Portland Fire and Rescue returning control of the site back to the owner/operator.
5. The Department's emergency response State On-Scene Coordinator coordinated with government officials at the scene. On March 14, 2018, representatives from the DEQ and EPA performed a site visit to NW Metals. The Manager of NW Metals Inc., Mr. Mo Anotta, confirmed the receipt of the DEQ's March 13, 2018 spill report request

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letter. DEQ requested that NW Metals retain a qualified contractor to characterize waste materials and investigate the dry wells to determine hazardous materials impacts and cleanup. DEQ requested the contractor be retained as soon as possible.

6. Used tires and vehicles are known to have been involved in the fire. Used vehicles and tires are known to contain hazardous substances. Tires contain oil products and associated plastics. Noxious fumes from the fire spread throughout the neighborhood. Fire suppression foam was applied to prevent the expansion of the fire and reduce intensity for response tactics to fully suppress the fire. Large volumes of water were applied to the fire throughout the incident. Fire suppression water pooled in the parking lot and drained to UIC Facilities located on-site with the potential to affect groundwater on and off the site. The significance and extent of surface deposition of soot containing hazardous substances in the affected Cully neighborhood, as well as impacts to groundwater through the UICs, and onsite is currently unknown.

IV. CONCLUSIONS OF LAW

Based upon the above-noted Findings of Fact, the Department concludes:

1. Respondents are "persons," as defined in ORS 465.200(21) and ORS 466.605(9).
2. The property where NW Metals is located is a "facility," as defined in ORS 465.200(13).
3. Respondent PHA Holdings LLC is an "owner," as defined in ORS 465.200(20) and NW Metals Inc. is an "operator," as defined in ORS 465.200(20).
4. Priority pollutant metals and polycyclic aromatic hydrocarbons and other uncontrolled combustion products are known to be associated both with smoke emissions and tire and vehicle combustion as described in Section III, paragraph [3]. These pollutants and combustion products are each a "hazardous substance" as defined in ORS 465.200(16).



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(3) Respondents shall incorporate corrections to the plan to address the deficiencies and resubmit the revised item for approval within one day of receipt of the Department notice or other such time as specified in the notice.

B. Access to Site

Respondents shall allow the Department to enter and move freely about the property at all reasonable times for the purposes, among other things, of inspecting records relating to work under this Order; observing Respondents' progress in implementing this Order; conducting such tests and taking such samples as the Department deems necessary; verifying data submitted to the Department by Respondents; and, using camera, sound recording, or other recording equipment.

C. Project Management and Communications

(1) All reports, notices, and other communication required under or relating to this Order shall be directed to the following until otherwise specified:

Mike Greenburg  
Oregon DEQ Northwest Region  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232-4100  
503-229-5153  
Email: [greenburg.michael@deq.state.or.us](mailto:greenburg.michael@deq.state.or.us)

(2) Within 2 days of notification of intent to comply under Subsection 1 of Section V of this Order, Respondents shall provide the Department with written designation of a project manager and contact information (address, phone and email) for purposes of this Order.

3. Work to be Performed

A. Fire Debris Removal

Within 7 days of receipt of this Order, Respondents shall select and designate a contractor to perform removal of fire debris from the site. Within 7

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days of notification of contractor selection Respondents shall submit a work plan to DEQ that describes how their contractor will sort and segregate materials involved in the fire for proper characterization and disposal or recycling of remaining waste material (metals, etc.) generated by the fire. The work plan shall include a Health and Safety Plan for site controls, and a waste staging and transportation plan for materials removed from the site for off-site recycling or disposal. Respondents shall provide DEQ with documentation of their hazardous waste determination and materials proposed for recycling prior to removing the materials from the site. Respondents shall implement the work plan within 5 days of DEQ approval and notice to proceed. Hazardous waste must be properly manifested and disposed at a permitted facility approved by DEQ. All waste receipts (for recycled materials, solid waste and Hazardous Waste) shall be provided to DEQ in the report identified under Item D below. The report shall include inventory and record of disposition of all tires, materials and wastes that were removed prior to receipt of this Order.

B. Characterization of Surficial Soils (onsite and offsite)

Within 30 days of receipt of this Order, Respondents shall prepare and submit for DEQ approval a surficial soil characterization work plan to assess the extent of hazardous substances released to soil on unpaved areas of the property affected by fire suppression fire runoff or soot deposition, and on adjacent residential properties to the facility. Surface soil samples shall be collected from soils present at the ground surface up to 3 inches below grade. Inert materials such as gravel cover, etc., should be moved aside prior to sample collection. Surface soil samples collected from on site shall be analyzed for semi-volatile organic compounds (SVOCs), Northwest Total Petroleum Hydrocarbons Diesel range (NWTPH-Dx), Priority Pollutant Metals (PPM-13) as Total metals,

1 polychlorinated biphenyls (PCBs), dioxin/furans, and perfluorinated compounds.  
2 Surface soil samples collected from the neighboring residential properties shall be  
3 analyzed for SVOCs and PPM-13 total metals. Respondent shall collect at least  
4 four discrete samples from each of the two residential lots that abut the property  
5 to the west that were affected by the fire and 5-10 composite samples from  
6 locations on-site as appropriate to characterize site conditions. Proposed soil  
7 sampling locations on-site and at the adjacent fire affected properties shall be  
8 shown on a map in the work plan. Respondents shall implement and complete the  
9 sampling and analysis plan within 10 working days of DEQ approval of the work  
10 plan.

11  
12 C. Dry Well (UIC), Subsurface Soil and Groundwater Assessment and Removal

- 13 1. Within 30 days of receipt of this Order, Respondent FHA Holdings LLC shall  
14 submit a work plan to DEQ for assessment and cleanup of two UICs present  
15 on site that received runoff from the fire. If deemed desirable and applicable,  
16 the work plan can be combined with the plan described immediately above in  
17 section B. Respondent shall implement and complete the work described in  
18 the work plan within 10 working days of DEQ approval of the work plan.
- 19 2. Sediment collected in these dry wells shall be sampled and analyzed for  
20 volatile organic compounds (VOCs), SVOCs, NWTPH-Dx, PPM 13 metals as  
21 Totals and by Synthetic Precipitation Leaching Procedure, PCBs,  
22 dioxin/furans, and perfluorinated compounds.
- 23 3. Following the collection of sediment samples from the UICs, within 2  
24 working days the UICs, affected catch basins, manholes and conveyance  
25 piping shall be thoroughly cleaned of all collected sediment and other  
26 materials. Removed sediment and materials shall be properly characterized  
27 and disposed of in accordance with appropriate State and federal regulations

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and supporting documentation included in the final Investigation Report (see section E below).

- 4. Soil adjacent of the two UICs shall be sampled using a direct push drill rig or other appropriate subsurface investigation apparatus, with one boring located immediately north of the outer annulus of each dry well. Soil samples shall be collected from each boring at the depth corresponding to the first increment below the bottom of the drywell in which native, recoverable soil is encountered. The boring soil samples shall be analyzed for VOCs, SVOCs, NWTPH-Dx, Total PPM-13 metals, PCBs, dioxin/furans, and perfluorinated compounds.
- 5. The borings will subsequently be advanced to the groundwater table, and groundwater samples shall be collected and analyzed for VOCs, SVOCs, NWTPH-Dx, PPM-13 metals (total and dissolved), PCBs, dioxin/furans, and perfluorinated compounds.

D. Investigation Report

Respondents shall submit a report to DEQ documenting the actions taken under this Order. A report describing the methods and results of investigation work shall be prepared and reported to DEQ within 60 days of receipt of final analytical data. The report shall include the comparison of analytical results for samples to applicable criteria (DEQ risk-based concentrations) based on land use. The Report shall be reviewed and stamped by a professional geologist and include recommendations for any additional work.

4. Satisfaction of Order

1 Upon completion of work under this Order, Respondent shall submit to the Department a  
2 written notice of completion. This Order shall be deemed satisfied and terminated upon the  
3 Department's written confirmation of completion of requirements in this Order.  
4

5 VI. FAILURE TO COMPLY

6 1. Pursuant to ORS 465.260(5) and ORS 465.900, upon Respondent's failure to  
7 comply with this Order, the Department may seek any available remedy to enforce this Order,  
8 including but not limited to civil penalties and injunctive relief.

9 2. Pursuant to ORS 465.260(8) and ORS 466.680, upon Respondent's failure to  
10 comply with this Order, Respondent may be held liable for any costs incurred by the State of  
11 Oregon in conducting the work required under this Order and for punitive damages of up to three  
12 times the amount of the state's costs.

13 3. Pursuant to ORS 465.260(6), Respondent may not seek an administrative appeal  
14 or judicial review of this Order.  
15

16 IT IS SO ORDERED:

17 March 28, 2018  
18 Date

17 Nina DeConcini  
18 Nina DeConcini, Administrator  
19 DEQ Northwest Region  
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**CERTIFICATE OF SERVICE AND CERTIFICATE OF READINESS**

I hereby certify that on November 19, 2019, I served the foregoing State of Oregon's Temporary Restraining Order and Order to Show Cause, upon the parties hereto by mailing, postage prepaid, a true, exact and full copy thereof to:

NW Metals Inc.	Mr. Adam Kimmell
c/o Moyata Anotta Registered Agent	Attorney at Law
7600 NE Killingsworth Street	2323 SE Tacoma St.
Portland, OR 97218.	Portland, OR 97202

This proposed order is ready for judicial signature because:

- 1. [ ] Each party affected by this order or judgment has stipulated to the order or judgment, as shown by each party's signature on the document being submitted.
- 2. [ ] Each party affected by this order or judgment has approved the order or judgment, as shown by each party's signature on the document being submitted or by written confirmation of approval sent to me.
- 3. [ ] I have served a copy of this order or judgment on each party entitled to service and provided written notice of the objection period, and:
  - a. [ ] No objection has been served on me as of the date below.
  - b. [ ] I received objections that I could not resolve with a party despite reasonable efforts to do so. I have filed with the court a copy of the objections I received and indicated which objections remain unresolved.
  - c. [ ] After conferring about objections, *[role and name of objecting party]* agreed to file any remaining objection with the court by *[date]*, which predated my submission.
- 4. [X] Service is not required pursuant to UTCR 5.100(3), or by statute, rule, or otherwise.
- 5. [ ] This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims' Assistance Section as required by UTCR 5.100(4).

Date November 19, 2019

  
 Timothy D. Smith #914374  
 Senior Assistant Attorney General  
 Oregon Dept. of Justice  
 1162 Court Street NE  
 Salem, OR 97301  
 Phone: (503) 934-4400  
 Fax: 503-373-7067  
 tim.smith@doj.state.or.us  
 Attorney for State of Oregon

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- 4.  Service is not required pursuant to UTCR 5.100(3), or by statute, rule, or otherwise.
- 5.  This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims' Assistance Section as required by UTCR 5.100(4).

Date November 19, 2019

  
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 Senior Assistant Attorney General  
 Oregon Dept. of Justice  
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 Phone: (503) 934-4400  
 Fax: 503-373-7067  
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