

BEFORE THE WASHINGTON UTILITIES
AND TRANSPORTATION COMMISSION

WASTE CONNECTIONS OF
WASHINGTON, INC.,

Complainant,

v.

ENVIRO/CON & TRUCKING, INC. a
Washington corporation; ENVIROCON, INC., a
corporation; and WASTE MANAGEMENT
DISPOSAL SERVICES OF OREGON, INC.,

Respondents.

Case No. TG-071194

DECLARATION OF
POLLY L. McNEILL

I, Polly L. McNeill, declare under penalty of perjury as follows:

1. I am a citizen of the United States and a resident of the State of Washington. I am over eighteen years of age and fully competent to make this declaration. I make this declaration based on my personal knowledge.

2. Attached as Exhibit 1 is a true and correct copy of the Fact Sheet for the Evergreen Aluminum Smelter Facility Cleanup Enforcement Order.

3. Attached as Exhibit 2 is a true and correct copy of the Enforcement Order (In the Matter of Remedial Action by Evergreen Aluminum LLC).

DATED this 3rd day of March, 2008, at Seattle, Washington.

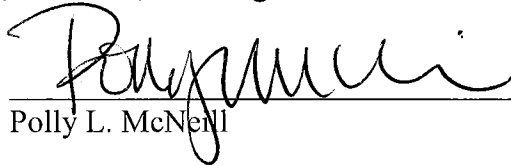

Polly L. McNeill

EXHIBIT 1

Evergreen Aluminum Smelter Facility Cleanup Enforcement Order



Enforcement Order Requires Interim Cleanup Action EVERGREEN ALUMINUM SMELTER - Vancouver, WA

Washington State Department of Ecology (Ecology) will issue an Enforcement Order requiring the owners to cleanup soil and water contaminants at the EVERGREEN ALUMINUM smelter. The smelter stands on a larger facility site, amid support buildings and other land owned by Alcoa, Inc.

Ecology's powers and duties, defined by the Model Toxics Control Act ("MTCA"—say **modt-kuh**— in Chapter 70.105D RCW), compel this Order to restore environmental health and protect human health.

EVERGREEN's smelter operations—since 2002—added to existing soil and water contamination on the larger site. Both owners of the combined properties, known previously as "Alcoa Vancouver," and as "VANALCO," want to sell the property during year 2008, to the Port of Vancouver.

This fact sheet describes the remedial action EVERGREEN must perform on its portion of the greater property site, in Vancouver.

What is an Enforcement Order?

The Enforcement Order directs the property owner to investigate past practices, locate and assess the extent of contamination, then plan and complete approved environmental cleanup actions at the site.

This Order requires EVERGREEN to: (a) find, map, and list contaminants of concern at the smelter; (b) design a site sampling strategy for those contaminants--sample density and depth, sampling protocols, and project QA/QC procedures; (c) identify applicable cleanup standards for the contaminants; and (d) develop a feasibility study informed by the sampling effort; (e) then, after agency approval, perform those interim actions

needed to ensure the property complies with our soil and water quality cleanup standards.

Under this Order EVERGREEN ALUMINUM must treat, remove /replace, or contain and cap (isolate) contaminated soil or water, and must prevent the release or threatened release of any hazardous substance onto or from its smelter site.

Administrative advantage

Issuing an Enforcement Order, rather than negotiating an Agreed Order, hastens the MTCA cleanup process-- allowing faster redevelopment to publicly-owned property.

Ecology's Enforcement Order compels the owner to perform work needed to ensure the site's condition complies with well established standards for the proposed use. The owner will demonstrate the site complies through both scheduled and unscheduled site inspections, and through tests, monitoring, and data reports. If EVERGREEN should fail to fulfill the Order, the owner would accrue on-going penalty fines and continued legal liability.

The timing of this Enforcement Order serves community plans. Three areas of the property remain to be cleaned up: the original aluminum smelter (EVERGREEN) site; and a waste oil lagoon known as "the Columbia Marine Lines Site," and the PCB-contaminated sediments (in the Columbia River) adjacent to the smelter.

The cleanup of the combined properties will allow ownership pass to the Port of Vancouver in 2008.

August 2007

PUBLIC COMMENT PERIOD FOR ENFORCEMENT ORDER

August 6, 2007 through
Friday, September 5,
2007

SEND WRITTEN COMMENTS TO:

PAUL SKYLLINGSTAD
DEPARTMENT OF ECOLOGY
INDUSTRIAL SECTION
PO Box 47706
OLYMPIA, WA 98504-7600
(360) 407-6949 (phone)
(360) 407-6903 (fax)
psky461@ecy.wa.gov

PUBLIC MEETING

7:00 PM Wednesday
August 22, 2007
Clark College Campus
Foster Auditorium
1800 E McLoughlin Blvd.
Vancouver, WA 98663

INFORMATION REPOSITORIES

Read a printed copy of the
Enforcement Order at either of
the following locations:

Industrial Section
Department of Ecology
300 Desmond Drive
Lacey, WA 98503
Phone: 360/407-6916

Fort Vancouver
Regional Library
1007 East Mill Plain Blvd
Vancouver, WA
Phone: 360/695-1566

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Ecology scheduled only one comment period for the Evergreen property. We welcome your questions and comments about the sampling and cleanup methods. Please send your comments at any time through September 5, 2007. (The box on the front page shows where to read copies of the documents, and gives the time and location of the public meeting.) The mapping and interim cleanup actions performed under the Enforcement Order should satisfy EVERGREEN's responsibility for its portion of the larger site.

Site background

Alcoa, Inc. owned and operated the full smelter complex from the late 1940's until 1986. From the early 1950's through the mid 1980's Alcoa's complex included the aluminum smelter and a series of fabrication plants. In those buildings, Alcoa used its aluminum metal to form finished goods such as wire, rods, and extruded channels.

In 1987 Alcoa sold the smelting operation to VANALCO, but retained title to the manufacturing buildings and surrounding land. In 2000 VANALCO closed the smelter and in 2002 sold it to EVERGREEN ALUMINUM Company. EVERGREEN operated the smelter from 2002.

In 1987 Alcoa also began closing and selling portions of the remaining manufacturing buildings and surrounding property, while VANALCO and EVERGREEN each operated the aluminum smelter.

What's been done?

EVERGREEN ALUMINUM reviewed the site's land use history and identified areas of confirmed and suspected releases. The Enforcement Order required the smelter operators to submit a sampling plan for investigating certain areas of the smelter. Those areas include: carbon storage and green mill (PAH contamination), bone yard south of smelter potlines (metals contamination), the rectifier and transformer yard (oil and PCB contamination), site electrical grid (PCB contamination), carbon anode bake ovens (fluoride ground water contamination), and closed bake oven wet scrubber sludge lagoon (PAH contamination). EVERGREEN will characterize any new contamination found during the smelter building's demolition.

After Ecology approves the sampling plan EVERGREEN will submit its remedial investigation and feasibility study for the facility. The Feasibility Study will include a list of interim actions that are complete or in progress during the smelter building demolition. The study will also detail a list of remedial technologies EVERGREEN initially screened, and a focused list of alternative cleanup actions. Those alternatives will at a minimum include:

- no remediation, and long-term monitoring;
- completely remove areas showing contamination in concentrations higher than a cleanup threshold, and ground water monitoring;
- remove contaminant source areas from the site, at capping (placing an impermeable material over the area to prevent leaching and migration);
- limited source area removal, pumping and treating groundwater, and capping the area.

Prior to starting the smelter cleanup EVERGREEN will complete and report the results of investigating and soil and water sampling, will establish an approved protocol for conformational sampling, and will identify the correct cleanup standards for the smelter site's contaminates of concern.

What happens next?

The Enforcement Order will take effect before the comment period ends. But we will weigh the merits of each comment. If any comment persuades Ecology that the site requires more cleanup, we will revise the final cleanup action for the EVERGREEN Alcoa site, and we will conduct it later, under terms of a Consent Decree.

Ecology invites you to visit an information repository at the Fort Vancouver library. Read and comment on the proposed Enforcement Order and on EVERGREEN ALUMINUM's proposed interim remedial actions. Convey your ideas to Ecology's decision-makers. And participate in the Public Meeting at Clark College - Foster Auditorium at 7:00 o'clock on August 22. Come learn about, discuss, and comment on the proposed interim cleanup action.

Submit written comments by September 5, 2007, to Paul Skyllingstad. Ecology will provide updates of site activities to those who submit comments or who ask for inclusion on the site mailing list.

*If you need this publication in an alternate format, please phone Kathy Vermillion in Lacey at 360/407-6916.
Persons with hearing loss may press 711 to connect with the Washington Relay Service.
Persons with speech disability may phone 877/833-6341 for assistance.*

EXHIBIT 2

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

Evergreen Aluminum LLC

ENFORCEMENT ORDER

No. 4931

TO: Mr. Larry McLellan
Evergreen Aluminum LLC
5701 Lower River Road
P.O. Box 9805
Vancouver, WA 98666

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EXHIBIT A. Site Diagram

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. This Order requires Evergreen Aluminum LLC (Evergreen Aluminum) to: 1) develop a list of contaminants of concern for the site, 2) determine a sampling strategy including sampling density and depth, protocol, and QA/QC procedures for those contaminants of concern, 3) develop contaminants of concern cleanup standards for the site, 4) design from the sampling effort a cleanup scenario feasibility study which involves contaminated soil and water remediation with conformational sampling, 5) after approval of the feasibility study complete an interim cleanup and enter into consent decree negotiations for the final cleanup of the combined Alcoa and Evergreen aluminum smelter site.

II. JURISDICTION

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

III. PLP BOUND

This Enforcement Order shall apply to and be binding upon Evergreen Aluminum LLC. To the extent allowed by law, changes in ownership or corporate status shall not alter Evergreen Aluminum's responsibility under this Order. Evergreen Aluminum LLC 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 Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms in this Order.

A. Site

The Site is referred to as Evergreen Smelter and is generally located at 5701 Lower River Road, Vancouver, Washington. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. The Site is more particularly described in Site Diagram (Exhibit A) . The Site constitutes a Facility under RCW 70.105D.020(4).

B. Potentially Liable Person Evergreen Aluminum LLC Site

Potentially liable persons refer to Evergreen Aluminum.

C. Enforcement Order or Order

“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. The terms “Enforcement Order” or “Order” shall include all exhibits to this Order.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by Evergreen Aluminum LLC:

A. Aluminum Company of America (Alcoa) is a Pennsylvania corporation which started aluminum smelting operations in Vancouver during the early 1940s. Alcoa completed construction of the aluminum manufacturing facility at the Site in 1940. Alcoa filled the eastern portion of the smelter site with dredge sands from the Columbia River and constructed the smelter during World War II. From 1940 to 1970 they added a number of fabrication operations to the facility. By 1970, the facility contained an aluminum smelter and a series of fabrication plants to form the metal into finished goods such as wire, rod, and extruded channel. Alcoa operated the entire facility for approximately 45 years, until 1986.

B. In 1986 Alcoa closed the aluminum smelter and adjacent manufacturing facilities. Alcoa began to remediate, close, and sell individual land parcels associated with the aluminum manufacturing facility. In 1985, the cable mill operation was sold to ACPC, Inc. who leased the property from Alcoa until 1997. In 1987, Alcoa sold the aluminum smelter to VANALCO, Inc.

and retained title to the extrusion section of the property known as VANEXCO. Alcoa operated VANEXCO until 1991 when it closed. In 1994, Alcoa sold a parcel of property known as the North Parcel to the Clark County Public Utility for construction of a cogeneration plant. In 1997, Alcoa conducted a cleanup on a parcel known as the Northeast Parcel and sold the property to Clark County as a jail site. Glencore purchased the smelter from VANALCO in 2002. Glencore named the new business entity Evergreen Aluminum LLC.

C. The Site is situated on the flood plain of the nearby Columbia River. Alcoa characterized the hydrogeology of the area by extracting and analyzing numerous soil cores in the vicinity of smelter. The ground water system in the area can be divided into four general hydrogeologic units: the shallow zone, the intermediate zone, the deep zone, and the aquifer zone. The predominant ground water flow direction beneath the Site is toward the Columbia River in the deeper hydrogeologic units. The shallow zone consists of dredged sand placed on the Site during the late 1940s and early 1950s. A perched water table is located in the shallow zone during the wetter months of the year. The direction of the movement of water in the saturated portions of the shallow zone beneath the Site is unknown. Information from monitoring wells located at the NPL Site indicate that the shallow zone is approximately 10 feet thick and has a horizontal hydraulic conductivity of 10^{-3} to 10^{-4} cm/sec. Materials directly beneath the dredged sand are the intermediate zone silty clays and clayey silts that were deposited in relatively low energy flood plain environments. This zone is composed of relatively low energy flood plain deposits and is saturated. Water moves predominantly downward in the intermediate zone due to a high vertical hydraulic gradient. The intermediate zone silts and clays are approximately 30 to 40 feet thick and have a horizontal conductivity of 10^{-4} to 10^{-6} cm/sec. Laboratory testing of the intermediate silts indicates that the vertical conductivities of the material is often considerably less than the horizontal values. The results of the testing show values in the range of 10^{-7} to 10^{-8} cm/sec.

D. Evergreen Aluminum has entered into negotiations with the Port of Vancouver to develop the Site into a port. The Port of Vancouver would like to receive a Site free from contamination.

E. Evergreen Aluminum conducted a preliminary historical site review at the Site and identified areas where they confirmed releases to soil and areas where they suspect that contamination exists. These areas include:

- Buildings 52 and 54 Carbon Storage and Green Mill – Probable PAH contamination.
- Boneyard South of Building 59 - Preliminary soil sampling indicates metals contamination.
- Rectifier – Transformer Yard - Probable low level PCB and mineral oil contamination.
- Site Electrical System - Probable small areas of PCB contamination from single transformers found in various spots around the Site.
- Buildings 58, 60, and 64 Carbon Anode Bake Ovens – Possible contamination in the soils and groundwater because the base of the bake ovens is below or near the top of the shallow groundwater table. Evergreen suspects that soil and groundwater in the area could be contaminated from the oven dewatering system. Fluoride is suspected in ground water.
- Old Carbon Bake Oven Wet Scrubber Settling Ponds – Probable soil contamination with unknown chemicals. Two old settling ponds are located under the existing A398 bag houses. Evergreen will conduct a subsurface investigation to determine contaminants of concern in the buried ponds.

Evergreen Aluminum will characterize and remediate any new contamination discovered during building demolition.

F. During initial site sampling, Evergreen Aluminum discovered levels of fluoride above MTCA ground water standards and PAHs, petroleum hydrocarbons, fluoride, and PCBs above MTCA soil cleanup standards.

VI. ECOLOGY DETERMINATIONS

A. The Site which has an address of 5701 N.W. River Road, Vancouver, WA is known as the Evergreen Aluminum Smelter LLC. Evergreen Aluminum is an “owner and operator” as defined in RCW 70.105D.020(12) of a “facility” as defined in RCW 70.105D.020(4).

B. Fluoride, cyanide, and polynuclear aromatic hydrocarbons (PAHs) found at the Site as described above are “hazardous substances” as defined at RCW 70.105D.020(7).

C. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(20) and RCW 70.105D.020(7), respectively, has occurred at the Site.

D. Based upon credible evidence, Ecology issued a PLP status letter to Evergreen Aluminum dated July 19, 2007 pursuant to RCW 70.105D.040, -.020(16) 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 a determination that Evergreen Aluminum is a PLP under RCW 70.105D.040 and notified Evergreen Aluminum of this determination by letter dated in August 2007.

E. 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.

F. 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. The interim remedial action will allow development of the property in a quick and effective manner.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that Evergreen Aluminum take the following interim remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

A. General Work Requirements

1. Prepare a Site health and safety plan for work on the Site in accordance with the most recent OSHA, WISHA rules and their implementing regulations.
2. Obtain any and all state, federal, or local permits required by applicable law before work on the Site can begin.

B. Sampling Plan

Within thirty (30) days of the effective date of this Order, Evergreen Aluminum shall submit a Sampling Plan to Ecology that initiates further soil and water investigations at the Site. The Sampling Plan shall follow WAC 173-340-820 and when completed: a) include the development of a set of contaminants of concern for the Site, b) complete the characterization of the location, quantity, aerial and vertical extent of the contaminants of concern in soils and ground water, and c) determine soil and ground water cleanup standards for the Site contaminants of concern.

C. Remedial Investigation and Feasibility Study

Within 120 days of Ecology's approval of the Sampling Plan, Evergreen Aluminum shall submit a Remedial Investigation and Feasibility Study for the Site. The Remedial Investigation (RI) shall present the contaminant data collected using the approved Sampling Plan in accordance with requirements of WAC 173-340-350(7). The Feasibility Study (FS) shall include an analysis of the alternative cleanup actions that are protective of human health and the environment in accordance with the requirements of WAC 173-340-350 and WAC 173-340-360. The FS shall include a list of interim actions already complete or in progress, an initial screening of remedial technologies, and a detailed evaluation of a focused list of alternative cleanup actions. At a minimum, the FS shall include the following alternative cleanup actions: no remediation and long term monitoring; complete removal of contaminated areas found on site above cleanup standards and ground water monitoring if necessary; removal of source areas from the site and capping; and limited source area removal, pumping and treating contaminated groundwater, and capping. The cleanup actions described in the FS shall use permanent

solutions to the maximum extent possible and each of the different alternatives shall be compared using a disproportionate cost analysis. The FS shall determine if each proposed cleanup action provides for a reasonable restoration time frame under the Model Toxics Control Act. The FS shall determine the preferred cleanup action for the site.

Prior to the start of any interim cleanup actions, Evergreen Aluminum, LLC shall have completed and reported results of any RI soil sampling, established an approved protocol for confirmational sampling, and determined cleanup standards for the Contaminants of Concern.

D. Confirmational Sampling and Analysis Plan

Within 30 days of the approval of the Sampling Plan, Evergreen Aluminum LLC shall develop for approval, a confirmational soil and water sampling and analysis plan that meets the requirements of WAC 173-304-820 for any interim remedial actions which occur on site. The Confirmational Sampling and Analysis Plan (CSAP) shall describe the methods and analytical procedures to analyze soil samples and shall include justification for the location and frequency of sampling to determine compliance with cleanup standards. The CSAP shall specify procedures that ensure sample collection, handling, and analysis will result in data of sufficient quality to plan and evaluate the scope and nature of the interim remedial actions at the Site. Samples collected following the CSAP shall be used to determine if the cleanup action meets the cleanup standards approved for the Site.

E. Interim Actions.

Within 180 days of the approval of the preferred cleanup option in the FS, Evergreen Aluminum shall begin interim cleanup actions.

E. Final Completion Report

Evergreen Aluminum shall submit to Ecology for approval a project completion report for any interim remedial cleanup actions that occurred on the site. The project completion report shall include final “as built” drawings for each interim cleanup action showing whether or not

cleanup standards have been met. Evergreen shall submit the report 180 days after completion of the last interim cleanup remedial action.

F. Cleanup Progress at Site

If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this Section, Ecology may complete and issue the final deliverable.

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notice

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that this Order is inadequate or improper in any respect.

B. Remedial Action Costs

Evergreen Aluminum 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 Chapter 70.105D RCW, 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). Evergreen Aluminum shall pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, 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.

Pursuant to RCW 70.105D.055, Ecology has authority to recover unreimbursed remedial action costs by filing a lien against real property subject to the remedial actions.

C. Implementation of Remedial Action

If Ecology determines that Evergreen Aluminum has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to Evergreen Aluminum perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of Evergreen Aluminum's failure to comply with its obligations under this Order, Evergreen Aluminum shall reimburse Ecology for the costs of doing such work in accordance with Section VIII (Remedial Action Costs), provided that Evergreen Aluminum is not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

Except where necessary to abate an emergency situation, Evergreen Aluminum shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

D. Designated Project Coordinators

The project coordinator for Ecology is:

Name: Paul Skyllingstad
Address: Industrial Section
Department of Ecology
P.O. Box 47706
Olympia, WA 98504-7706

The project coordinator for Evergreen Aluminum LLC is:

Name: Mr. Larry McLellan
Evergreen Aluminum LLC
5701 Lower River Road
P.O. Box 9805
Vancouver, WA 98666

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 Evergreen Aluminum, 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 Decree.

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.

E. Performance

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

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered in 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 in 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 Chapter 18.220 RCW or RCW 18.43.130.

Evergreen Aluminum 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.

F. Access

RCW 70.105D.030(1)(a) authorizes Ecology or any Ecology authorized representative to enter all property at the Site that Evergreen Aluminum either owns, controls, or has access rights to, after reasonable notice unless an emergency prevents such notice. Evergreen Aluminum shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by Evergreen Aluminum where remedial activities or investigations will be performed pursuant to this Order.

G. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, Evergreen Aluminum 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, 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, Evergreen Aluminum shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by Evergreen Aluminum pursuant to the implementation of this Order. Evergreen Aluminum shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow Evergreen Aluminum 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 (Access), Ecology shall notify Evergreen Aluminum 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 Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

H. 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, Evergreen Aluminum 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, Evergreen Aluminum shall make all such records available to Ecology and allow access for review within a reasonable time.

I. Resolution of Disputes

Evergreen Aluminum may request Ecology to resolve factual or technical disputes which may arise during the implementation of this Order. Such request shall be in writing and directed to the signatory or his/her successor(s), of this Order. Ecology resolution of the dispute shall be binding and final. Evergreen Aluminum is not relieved of any requirement of this Order during the pendency of the dispute and remains responsible for timely compliance with the terms of this Order unless otherwise provided by Ecology in writing.

J. Extension of Schedule

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

2. The burden shall be on Evergreen Aluminum 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 Evergreen Aluminum 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 Evergreen Aluminum;

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

c. Endangerment as described in Section VIII (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 Evergreen Aluminum.

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

4. 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:

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; or

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

K. Endangerment

In the event Ecology determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct Evergreen Aluminum to cease such activities for such period of time as

it deems necessary to abate the danger. Evergreen Aluminum shall immediately comply with such direction.

In the event Evergreen Aluminum determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, Evergreen Aluminum LLC may cease such activities. Evergreen Aluminum 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 Evergreen Aluminum shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Evergreen Aluminum cessation of activities, it may direct Evergreen Aluminum to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to Section VIII. (Endangerment), Evergreen Aluminum 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. (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.

L. Reservation of Rights

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

M. 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 Evergreen Aluminum, Evergreen

Aluminum 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 Evergreen Aluminum's transfer of any interest in all or any portion of the Site, Evergreen Aluminum 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, Evergreen Aluminum shall notify Ecology of said transfer. Upon transfer of any interest, Evergreen Aluminum shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

N. Compliance With Applicable Laws

1. All actions carried out by Evergreen Aluminum 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. At this time, no federal, state or local requirements have been identified as being applicable to the actions required by this Order.

2. Pursuant to RCW 70.105D.090(1), Evergreen Aluminum is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, Evergreen Aluminum shall comply with the substantive requirements of such permits or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this Section.

Evergreen Aluminum has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or Evergreen Aluminum determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or Evergreen Aluminum shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires,

Evergreen Aluminum 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 Evergreen Aluminum and on how Evergreen Aluminum must meet those requirements. Ecology shall inform Evergreen Aluminum in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Evergreen Aluminum shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

3. 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 Evergreen Aluminum 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.

O. Land Use Restrictions

If Evergreen Aluminum chooses to use Industrial Cleanup Standards for soil and ground water then Evergreen Aluminum shall record a Restrictive Covenant (Exhibit B) with the office of the Clark County Auditor within thirty (30) days of the completion of the remedial action. The Restrictive Covenant shall restrict future uses of the Site. Evergreen Aluminum shall provide Ecology with a copy of the recorded Restrictive Covenant within thirty (30) days of the recording date.

P. Financial Assurances

Pursuant to WAC 173-340-440(11), Evergreen Aluminum shall maintain sufficient and adequate financial assurance mechanisms to cover all costs associated with the operation and maintenance of the remedial action at the Site, including institutional controls, compliance monitoring, and corrective measures.

Within sixty (60) days of the effective date of this Order, Evergreen Aluminum shall submit to Ecology for review and approval an estimate of the costs that it will incur in carrying out the terms of this Order, including operation and maintenance, and compliance monitoring. Within sixty (60) days after Ecology approves the aforementioned cost estimate, Evergreen Aluminum shall provide proof of financial assurances sufficient to cover all such costs in a form acceptable to Ecology.

Evergreen Aluminum shall adjust the financial assurance coverage and provide Ecology's project coordinator with documentation of the updated financial assurance for:

1. Inflation, annually, within thirty (30) days of the anniversary date of the entry of this Order; or if applicable, the modified anniversary date established in accordance with this Section, or if applicable, ninety (90) days after the close of Evergreen Aluminum fiscal year if the financial test or corporate guarantee is used; and

2. Changes in cost estimates, within thirty (30) days of issuance of Ecology's approval of a modification or revision to the cleanup action plan (CAP) that result in increases to the cost or expected duration of remedial actions. Any adjustments for inflation since the most recent preceding anniversary date shall be made concurrent with adjustments for changes in cost estimates. The issuance of Ecology's approval of a revised or modified CAP will revise the anniversary date established under this Section to become the date of issuance of such revised or modified CAP.

Q. Periodic Review

As remedial action, including groundwater monitoring, continues at the Site, Ecology shall review the progress of remedial action at the Site, and shall also review the data accumulated as a result of monitoring the Site as often as is necessary and appropriate under the circumstances. At least every five (5) years after the initiation of cleanup action at the Site, Evergreen Aluminum shall meet with Ecology at Ecology's request and shall discuss the status of the Site and the need, if any, for further remedial action at the Site. Ecology reserves the right

to require further remedial action at the Site under appropriate circumstances. This provision shall remain in effect for the duration of this Order.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon Evergreen Aluminum receipt of written notification from Ecology that Evergreen Aluminum has completed the remedial activity required by this Order, and that Evergreen Aluminum has 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.** In the event Evergreen Aluminum refuses, without sufficient cause, to comply with any term of this Order, Evergreen Aluminum 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; and
 - 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**

Merley McCall
Industrial Section Manager
Solid Waste and Financial Assistance Program