

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF:)	
Taylor Lumber & Treating Site)	Docket CERCLA-10-2002-0034
)	
)	
)	
Under the Authority of the)	AMENDMENT TO
Comprehensive Environmental)	AGREEMENT AND
Response, Compensation, and)	COVENANT NOT TO SUE
Liability Act of 1980,)	Pacific Wood Preserving of Oregon
42 U.S.C. § 9601, <i>et seq.</i> , as amended)	

This Amendment to Agreement and Covenant Not to Sue (“Amendment”) amends the Agreement and Covenant Not To Sue, Docket CERCLA-10-2002-0034 (“Original Agreement”), entered into by and between the United States on behalf of the Environmental Protection Agency and Pacific Wood Preserving of Oregon (“PWPO”). Except as explicitly provided in this Amendment, the terms and conditions of the Original Agreement shall remain in full force and effect.

Paragraph 8 of the Original Agreement is modified to include the following additional provisions:

d. "Property" shall mean that portion of the Site purchased by Settling Respondent, comprising approximately 34 acres and generally described in Exhibit 1 of the Original Agreement, as specifically revised by the property survey to be conducted in accordance with Paragraph 14.

h. “Future Oversight Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Agreement, verifying the work to be performed pursuant to

Paragraph 14, or otherwise implementing, overseeing, or enforcing this Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, and Agency for Toxic Substances and Disease Registry (“ATSDR”). Future Oversight Costs shall also include all Interim Oversight Costs. Future Oversight Costs shall not include reimbursement of response costs pursuant to Section 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), with respect to the Existing Contamination or with respect to future releases, if any.

i. “Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

j. “Interim Oversight Costs” shall mean all costs, including direct and indirect costs, (a) paid by the United States in connection with the Site between July 1, 2010, and the Amendment Effective Date, or (b) incurred prior to the Amendment Effective Date, but paid after that date.

k. “Record of Decision” or “ROD” shall mean the Record of Decision issued by EPA on September 30, 2005.

The following additional provisions are inserted in Section III of the Original Agreement:

12-a. EPA and Settling Respondent entered into an Agreement and Covenant Not to Sue (“Original Agreement”), which became effective on June 3, 2002.

12-b. Since 2002, when PWPO began operations at the Site, EPA has conducted a Fund-lead Remedial Investigation/Feasibility Study, selected a final Remedial Action and documented that decision in a Record of Decision dated September 30, 2005, and completed the Remedial Action at the Site as documented in a Final Remedial Action Report dated March 11, 2010. EPA’s cleanup actions included placing a low-permeability MatCon asphalt cap over

the existing underground barrier wall (which was installed by EPA as a pre-ROD removal action) and excavating and properly disposing of contaminated soils that had been stored on-site.

12-c. The Original Agreement required, among other things, that PWPO not treat wood with solutions containing ACZA, CCA, pentachlorophenol, creosote, or any arsenical wood-preserving compounds. It also required PWPO to operate and maintain a groundwater extraction and treatment system until January 31, 2022, to maintain the existing asphalt cap, and to maintain the then-existing contaminated storage cells.

12-d. PWPO represents that it has complied with the requirements of the Original Agreement with respect to the limitations on the use of certain wood-preserving compounds and the operation and maintenance activities. EPA's completion of the remedial action at the Site, however, necessitates changes to PWPO's operation and maintenance activities, as described in Exhibit 3 of the Original Agreement. Further, changes in the wood-preserving industry are threatening PWPO's ability to continue to operate under the current limitation on pentachlorophenol use. In recognition of the changed circumstances since 2002, the Parties have agreed to amend the Original Agreement as described in this Amendment.

The following additional provisions are inserted in Section IV of the Original Agreement:

13-a. In addition to payment already made by PWPO under the Original Agreement, Settling Respondent shall pay to EPA all Future Oversight Costs not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. §300 et seq. ("NCP"). On a periodic basis, EPA will send Settling Respondent a bill requiring payment that includes a Superfund Cost Recovery Package Imaging and Online System ("SCORPIOS") Cost Summary Report or other similarly certified summary. Settling Respondent shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 13-c of this Amendment. Payment shall be made to EPA by Electronic

Funds Transfer (“EFT”) in accordance with current EFT procedures to be provided to Settling Respondent by EPA Region 10 and shall be accompanied by a statement identifying the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number 10KB, and the EPA docket number 10-2002-0034. At the time of payment, Settling Respondent shall send notice that payment has been made as provided in Paragraph 35 and to US Environmental Protection Agency, Cincinnati Finance Center, MS-NWD, Cincinnati, OH 45268.

13-b. The total amount to be paid by Settling Respondent pursuant to Paragraph 13-a shall be deposited in the Taylor Lumber and Treating Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

13-c. If a bill described in Paragraph 13-a exceeds \$250,000 for a twelve-month period, and if Settling Respondent makes a request for payment over time in writing, Settling Respondent may pay the amount owed over 90 days. Settling Respondent shall pay Interest on the balance remaining unpaid after 30 days. If the amount owed, including Interest, is paid within 90 days, Settling Respondent shall not be found to be in violation of this Agreement and shall not be liable for payments of stipulated penalties pursuant to Section XXV. Except as provided above, if Settling Respondent does not pay Future Oversight Costs within 30 days of Settling Respondent’s receipt of a bill, Settling Respondent shall pay Interest on the unpaid balance. The Interest on unpaid Future Oversight Costs shall begin to accrue on the date of receipt of the bill and shall continue to accrue until the date of payment. If EPA receives a partial payment, Interest shall accrue on any unpaid balance. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Settling Respondent’s failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XXV. Settling Respondent shall make all payments required by this Paragraph in the manner

described in Paragraph 13-a.

13-d. Settling Respondent may contest payment of any Future Oversight Costs under Paragraph 13-a if Settling Respondent determines that EPA has made an accounting error or if Settling Respondent believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within 20 days of receipt of the bill and must be sent to the EPA Project Manager designated in Paragraph 35. Any such objection shall specifically identify the contested Future Oversight Costs and the basis for objection. In the event of an objection, Settling Respondent shall within the 30-day period pay all uncontested Future Oversight Costs to EPA in the manner described in Paragraph 13-a. Simultaneously, Settling Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Oregon and remit to that escrow account funds equivalent to the amount of the contested Future Oversight Costs. Settling Respondent shall send to the EPA Project Manager a copy of the transmittal letter and check, if any, paying the uncontested Future Oversight Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Settling Respondent shall initiate the Dispute Resolution procedures in Section XXIV (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, Settling Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 13-a. If Settling Respondent prevails concerning any aspect of the contested costs, Settling Respondent shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 13-a. Settling Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XXIV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Respondent's obligation to

reimburse EPA for its Future Oversight Costs.

Paragraph 14 of the Original Agreement is amended to read as follows:

14. In further consideration of and in exchange for the United States' Covenant Not to Sue in Section X herein and Removal of Lien in Section XXII herein, Settling Respondent shall collect and treat groundwater from inside the slurry wall, shall maintain the existing low-permeability MatCon asphalt cap, shall implement an EPA-approved plan for Best Management Practices, and shall submit to EPA annual environmental audit reports. These actions shall be performed by Settling Respondent until January 31, 2022, or for as long as Settling Respondent owns or operates on the Property, whichever is later. These actions shall be performed in accordance with the Revised Statement of Work attached to this Amendment as Exhibit 3A, which is hereby incorporated into this Agreement. Both the Revised Statement of Work and Best Management Practices Plan may be amended from time to time by written agreement of the Parties. Within 60 days of the Effective Date, Settling Respondent shall conduct a professional survey of the Property and shall provide to EPA an updated and revised metes and bounds description of the Property and an updated and revised accurate map of the Property showing property tax parcels.

Paragraph 15 of the Original Agreement is amended to read as follows:

15. In further consideration of and in exchange for the United States' Covenant Not to Sue in Section X herein and Removal of Lien in Section XXII herein, Settling Respondent agrees that, in conducting its wood-treating business, Settling Respondent shall not treat wood with solutions containing ACZA (ammoniacal copper zinc arsenate), CCA (copper chromated arsenate), creosote, or any arsenical wood-preserving compounds.

Paragraph 21 of the Original Agreement is amended to read as follows:

21. Subject to the Reservation of Rights in Section XI of this Agreement, and

conditioned upon performance of the work specified in Section V (Work to Be Performed) to the satisfaction of EPA, and upon compliance by Settling Respondent with its obligations under Section IV (Payment), Section VI (Limitations on Use of Property), Section VII (Access/Notice to Successors in Interest), and Section VIII (Due Care and Cooperation), the United States covenants not to sue or take any other civil or administrative action against Settling Respondent for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) with respect to the Existing Contamination.

Paragraph 35 of the Original Agreement is amended to read as follows:

35. Whenever, under the terms of this Agreement, written notice is required to be given or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided.

As to the United States:

Karen Keeley, Project Manager
EPA Region 10
1200 Sixth Ave, Suite 900
ECL-111
Seattle, WA 98101
206-553-2141

Jennifer Byrne, Asst. Regional Counsel
EPA Region 10
1200 Sixth Ave, Suite 900
ORC-158
Seattle, WA 98101
206-553-0050

As to Settling Defendant:

Elaina Jackson, Chief Operating Officer
Pacific Wood Preserving of Oregon
1601 New Stine Road
Suite #250
Bakersfield, CA 93309
661-617-6385

With a copy to:

Tom E. Lindley
Perkins Coie, LLP
1120 NW Couch Street, 10th Floor
Portland, Oregon 97209

Paragraph 36 of the Original Agreement is amended to read as follows:

36. The Effective Date of this Amendment to the Original Agreement shall be the date upon which EPA issues written notice to the Settling Respondent that EPA has fully executed the Amendment after review of and, where necessary, response to any public comment received pursuant to Paragraph 45.

Exhibit 1 to the Original Agreement is retained in this Amendment, but shall be replaced with a new metes and bounds description of the Property following Settling Respondent's completion of the survey described in Paragraph 14.

Exhibit 2 to the Original Agreement shall be replaced with Exhibit 2A, a revised map depicting the Site.

Exhibit 3 of the Original Agreement shall be replaced with Exhibit 3A, a revised Statement of Work.

Exhibit 4 to this Amendment shall be the Proposed Easement and Equitable Servitude.

This Amendment shall be subject to a 14-day public comment period, after which EPA may modify or withdraw its consent to this Amendment if comments received disclose facts or considerations which indicate that this Amendment is inappropriate, improper, or inadequate.

The Original Agreement is modified to include the following new sections:

XXIV. DISPUTE RESOLUTION

46. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising

under this Agreement. EPA and Settling Respondent shall attempt to resolve any disagreements concerning this Agreement expeditiously and informally. If EPA contends that Settling Respondent is in violation of this Agreement, EPA shall notify Settling Respondent in writing, setting forth the basis for its position. Settling Respondent may dispute EPA's position pursuant to Paragraph 47.

47. If Settling Respondent objects to any EPA action taken pursuant to this Agreement, including billings for Future Oversight Costs, it shall notify EPA in writing of its objection(s) within 20 days of such action, unless the objection(s) has/have been resolved informally. EPA and Settling Respondent shall have 30 days from EPA's receipt of Settling Respondent's written objection(s) to resolve the dispute (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Such extension may be granted verbally but must be confirmed in writing.

48. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by both Parties, be incorporated into and become an enforceable part of this Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, the Director of the EPA Region 10 Office of Environmental Cleanup will review the dispute on the basis of the parties' written statements of position and issue a written decision on the dispute. EPA's decision shall be incorporated into and become an enforceable part of this Agreement. Settling Respondent's obligations under this Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Settling Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XXV. STIPULATED PENALTIES

49. Settling Respondent shall be liable to EPA for stipulated penalties in the amount of \$500 per day per violation for failure to comply with any requirement of this Agreement.

“Compliance” by Settling Respondent shall include the timely completion of only those activities required or agreed to under this Agreement, including the Original Agreement, the Amendment, the Revised Statement of Work, and the approved Best Management Practices Plan. For purposes of this Section XXV, a violation of PWPO’s National Pollutant Discharge Elimination System permit for its stormwater treatment system shall not be deemed to be a violation of this Agreement. Failure to collect and deliver extracted groundwater to the stormwater treatment system shall be deemed to be a violation of this Agreement.

50. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

51. Following EPA’s determination that Settling Respondent has failed to comply with a requirement of this Agreement, EPA may give Settling Respondent written notification of the failure and describe the noncompliance. EPA may send Settling Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Settling Respondent of a violation.

52. All penalties accruing under this Section shall be shall be due and payable to EPA within 30 days of Settling Respondent’s receipt from EPA of a demand for payment of the penalties, unless Settling Respondent invokes the dispute resolution procedures under Section XXIV (Dispute Resolution). All payments to EPA under this Section shall be paid by Electronic Funds Transfer (“EFT”) in accordance with the directions specified in Paragraph 13-a, and shall include a statement indicating that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number 10KB, the EPA Docket Number 10-2002-0034, and the name and address of the party making payment. At the time of payment, Settling Respondent shall send notice to EPA that the payment has been made as provided in Paragraph 35, and to the Servicing Finance Office, EPA Finance Center, MS-NWD, Cincinnati, OH 45268.

53. The payment of penalties shall not alter in any way Settling Respondent's obligation to complete performance of the Work required under this Agreement.

54. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

55. If Settling Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Settling Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 51. Nothing in this Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Settling Respondent's violation of this Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Agreement. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Agreement.

XXVI. COMPLIANCE WITH APPLICABLE LAW

56. All activities undertaken by Settling Respondent pursuant to this Agreement shall be performed in accordance with the requirements of all applicable federal and state laws and regulations.

XXVII. FORCE MAJEURE

57. Respondent agrees to perform all requirements of this Agreement within the time limits approved by EPA, unless the performance is delayed by a *force majeure*. For purposes of this Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Settling Respondent, or of any entity controlled by Settling Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Agreement despite Settling Respondent's best efforts to fulfill the obligation. *Force majeure* does not include normal inclement weather, increased cost of performance, or changed business or economic circumstances.

58. If any event occurs that may delay the performance of any obligation under this Agreement, whether or not caused by a *force majeure* event, Settling Respondent shall promptly notify EPA orally. Within 5 days thereafter, Settling Respondent shall provide to EPA in writing an explanation and description of the cause of delay or deviation, its anticipated duration, the measures that have been or will be taken to prevent or minimize the delay or deviation, the timetable which Settling Respondent proposes to carry out such measures, and its rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Settling Respondent, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Failure to comply with these notice requirements precludes Settling Respondent from asserting force majeure for the event and for any additional delay caused by the event.

59. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Agreement that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Settling Respondent in writing of its decision. If EPA agrees

that the delay is attributable to a force majeure event, EPA will notify Settling Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

XXVIII. INSTITUTIONAL CONTROLS

60. Settling Respondent shall implement institutional controls at the Site by granting an Easement and Equitable Servitude to the State of Oregon acting by and through the Oregon Department of Environmental Quality and naming EPA as a third-party beneficiary. The Easement and Equitable Servitude shall place restrictions on groundwater use, land use, and asphalt cap use consistent with the institutional controls identified in the ROD. The Easement and Equitable Servitude shall be substantially similar in form and content to the proposed Easement and Equitable Servitude attached herein as Exhibit 4. The Easement and Equitable Servitude shall be recorded with the county recorder of Yamhill County within 30 days of EPA's acceptance of the property survey, description, and map required by Paragraph 14. Within 10 days of recording, Settling Respondent shall provide a copy of the recorded Easement and Equitable Servitude to DEQ and EPA.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

 4/20/11

Dennis J. McLerran
Regional Administrator
Region 10

Date

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY:

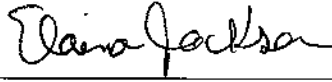


Ellen Mahan
Deputy Chief
Environment and Natural Resources Division

Date

IT IS SO AGREED:

BY:

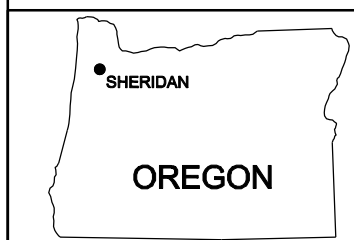
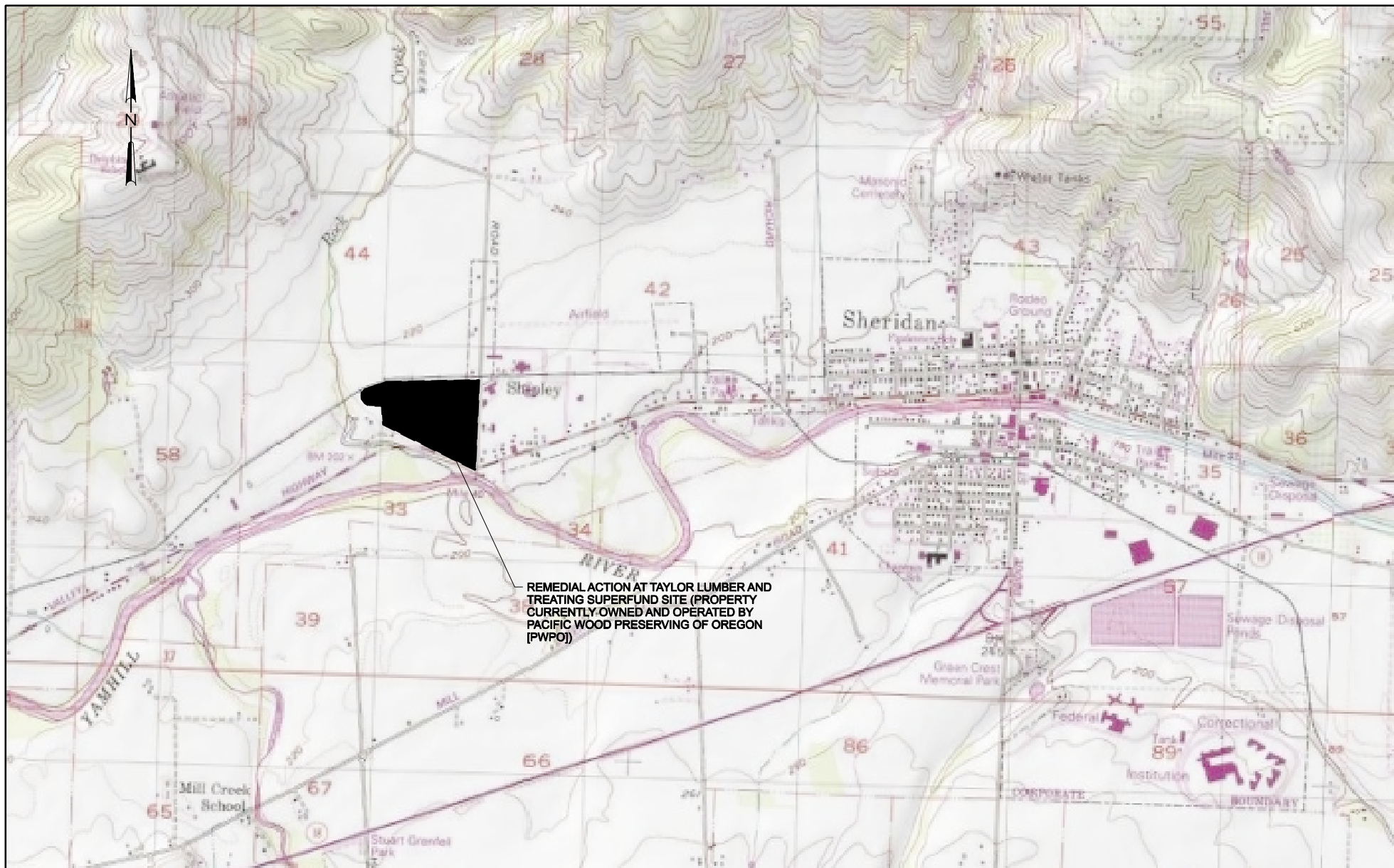


4-6-11

Elaina Jackson
Chief Operating Officer
Pacific Wood Preserving of Oregon

Date

Exhibit 2A



**FIGURE 1-1
SITE VICINITY MAP**

TAYLOR LUMBER AND TREATING SUPERFUND SITE
SHERIDAN, OREGON

Exhibit 3A

EXHIBIT 3A
REVISED STATEMENT OF WORK

Amendment to Agreement and Covenant Not to Sue
Docket CERCLA-10-2002-0034
Pacific Wood Preserving of Oregon

In the Matter of: Taylor Lumber and Treating (TLT) Site, Sheridan, Oregon

Definitions of terms used in this Revised Statement of Work (SOW) are:

“LPACOMP” means Low Permeability Asphalt Cap Operation and Maintenance Plan (Granite Construction Company, August 10, 2009).

“LPACMWW” means Low Permeability Asphalt Cap Materials and Workmanship Warranty (Wilder Construction Company, March 3, 2008).

“Major Repairs” means repairs of areas where more than 100 linear feet of cracks are noted within a 320 square foot area of the MatCon asphalt cap or where damages to the MatCon asphalt cap occurred because PWPO did not follow the operational limitations of the MatCon asphalt cap, as defined in the LPACOMP, or because PWPO breached or penetrated the cap due to utility repairs, or changes or modifications to facility structures, operations or activities.

“MatCon asphalt cap” means the low permeability asphalt cap constructed at the TLT Site above the area encompassed by the underground slurry wall.

“Minor Repairs” means repairs of areas where less than 100 linear feet of cracks are noted within a 320 square foot area of the MatCon asphalt cap or repairs needed as a result of normal wear and tear of the MatCon asphalt cap.

“OMP” means the Taylor Lumber and Treating Superfund Site Operation and Maintenance Plan (EPA October 2009).

“Warranty Period” means the five year period after the MatCon asphalt cap was installed (i.e., August 1, 2007 through August 1, 2012), as defined in the LPACMWW.

As part of this agreement, Pacific Wood Preserving of Oregon (PWPO) will perform the following work:

- A. MatCon Asphalt Cap Operation and Maintenance
- B. Groundwater Extraction System Operation and Maintenance
- C. Stormwater Collection and Treatment System Operation and Maintenance

- D. Implementation of Best Management Practices
- E. Annual Environmental Audit Reporting

Pursuant to Section V of the Agreement and Covenant Not to Sue and to the Amendment, to which this Revised Statement of Work (SOW) is appended, PWPO shall perform the work described in this SOW. This SOW supersedes all obligations set forth in the original Statement of Work (Exhibit 3).

PWPO shall perform this work either until January 31, 2022 or for as long as PWPO owns the Property, whichever is later.

The Taylor Lumber and Treating (TLT) Superfund Site Operation and Maintenance Plan (OMP, October 2009) describes the administrative, financial, and technical requirements for inspecting, monitoring, operating and maintaining the final remedy. The OMP incorporates by reference both the May 15, 2002 Covenant Not to Sue between PWPO and EPA and the February 5, 2002 Prospective Purchaser Agreement (PPA) between PWPO and Oregon Department of Environmental Quality (DEQ) (the Original Agreements), both of which set forth PWPO's obligations for inspection and operations and maintenance (O&M) of the asphalt cap and groundwater extraction system. Because the scope of the OMP is for the entire TLT Site remedy and broader than the scope of PWPO's obligations under the Original Agreements and this SOW, and because Site conditions have changed over time, this SOW incorporates, by direct reference, only those portions of the OMP for which PWPO has responsibility (e.g., PWPO is not responsible for O&M activities related to the underground barrier wall).

A. MatCon Asphalt Cap Operation and Maintenance

Background - Within the treatment plant area of the TLT Site, an asphalt cap was placed in 2007 over the area encompassed by the underground barrier wall (Figure 2-3 of the Final Construction Report, March 2009; reproduced herein as Attachment 1 to Exhibit 3A). The asphalt cap was placed as part of EPA's remedial action and it consists of a nominal 4-inch-thick layer of proprietary (MatCon) low permeability asphalt cap (hereinafter referred to as the "MatCon asphalt cap") covering approximately 6.75 acres (about 1.65 of those acres are structures or concrete). The MatCon asphalt cap replaced an interim asphalt cap that had been constructed in 2000 by EPA.

Operational limitations, visual inspection and evaluation criteria, and maintenance and repair procedures for the MatCon asphalt cap are included in the Low Permeability Asphalt Cap Operation and Maintenance Plan (LPACOMP) prepared by Granite Construction Company (2009) and the Low Permeability Asphalt Cap Materials and Workmanship Warranty (LPACMWW). The LPACOMP and LPACMWW are attached as Attachments 2 and 3, respectively, to Exhibit 3A.

Work - PWPO shall perform MatCon asphalt cap O&M requirements in compliance with the LPACOMP and LPACMWW (Attachments 2 and 3, respectively). PWPO shall conduct operations at the facility in accordance with the special operational requirements described in the LPACOMP, including:

- Standard Site Operation and Operational Limitations
- Visual Inspection and Evaluation (with the exceptions noted below)
- Recommended Maintenance and Repair Procedures

Under this SOW of work, PWPO is not responsible for Annual Inspections of the MatCon asphalt cap, Hydraulic Conductivity Monitoring, and Thin Slice Rheology Analysis described in the LPACOMP.

PWPO shall be responsible for O&M activities for the MatCon cap due to normal wear and tear as a result of facility operations. It is anticipated that these minor repairs will be identified during the informal inspections conducted by PWPO. These minor repairs are not subject to the corrective action procedures (i.e., development, approval and implementation of a corrective action plan) described in Table 1, below.

If PWPO damages the cap because it did not follow the limitations described in the LPACOMP, or breaches or penetrates the cap due to utility repairs, or changes or modifications to facility structures, operations or activities, PWPO shall make repairs to the MatCon cap following the procedures established in the LPACOMP. For these major repairs, PWPO shall follow the corrective action procedures established in Table 1, below. PWPO is not responsible for repairs or replacement of the MatCon cap due to defects in original design or materials.

To ensure that the MatCon asphalt cap performs as designed, PWPO shall:

- Identify who can perform the inspections and repairs;
- Develop a schedule and guidelines for routine cap inspections;
- Use the MatCon Asphalt Cap Weekly Inspection Checklist form (Attachment 4) for informal inspections;
- Use the MatCon Inspection Report form (Attachment 4) from the TLT OMP for special inspections or if problem(s) are observed;
- Observe and comply with the standard Site operation and operational limitations identified in the LPACOMP and LPACMWW; and
- Use and comply with the recommended maintenance and repair procedures as defined in the LPACOMP.

PWPO shall perform the O&M activities for the MatCon asphalt cap according to the schedule described in Table 1, below. Table 1 also identifies the responsible parties for the activities described.

TABLE 1: ASPHALT CAP OPERATION AND MAINTENANCE REQUIREMENTS

Taylor Lumber and Treating Superfund Site
 Sheridan, Oregon

Activity	Description	Required By	Frequency	Responsible Party	
				2011 – 2012	Beyond 2012
1	Conduct informal ¹ visual inspections during the course of normal operations to identify signs of cracks or damage to the cap.	LPACOMP	Weekly	PWPO	PWPO
2	Conduct special inspection ² of all affected areas of the asphalt cap any time a site incident, activity or atypical weather event may have caused reason to suspect potential damage to the cap.	LPACOMP	As required	PWPO	PWPO
3	Conduct special inspection ² of areas affected by changes in use of the facility or if the site is subject to heavy and/or prolonged use in concentrated areas.	LPACOMP	As required	PWPO	PWPO
4	Oversee and approve of MatCon asphalt cap informal and special inspections by a qualified person.	LPACOMP	As required	PWPO	PWPO
5	Conduct annual inspection. ³		Annual	Granite ⁴	DEQ
6	Submit Annual Inspection report to regulatory agencies (EPA and DEQ) and PWPO for review.	EPA	Annual	Granite	DEQ
7	Submit a corrective action plan (CAP) for major repairs to the MatCon asphalt cap that are deemed to be PWPO's responsibility to DEQ/EPA/Granite during the 5-year warranty period and DEQ thereafter, including scope, methods and schedule of proposed repairs.	EPA	After Informal, Special, or Annual Inspection identifies need for major corrective action	PWPO	PWPO
8	Approve Corrective Action Plan.	EPA/DEQ	After CAP for major repair is submitted	DEQ/EPA/ Granite	DEQ
9	Make major repairs that are deemed to be PWPO's responsibility to MatCon asphalt cap in accordance with the procedures detailed in LPACOMP	EPA/DEQ	After approval of CAP	PWPO	PWPO

TABLE 1: ASPHALT CAP OPERATION AND MAINTENANCE REQUIREMENTS

Taylor Lumber and Treating Superfund Site
Sheridan, Oregon

Activity	Description	Required By	Frequency	Responsible Party	
				2011 – 2012	Beyond 2012
	the LPACOMP and LPACMWW.				
10	Oversee and approve of major repairs by a qualified person	LPACOMP	As required	PWPO/Granite	PWPO
11	Submit a corrective action report documenting all MatCon asphalt cap major repairs. Submit report to DEQ, EPA, and Granite during the 5-year warranty period and DEQ thereafter.	EPA	After completion and approval of repairs	PWPO	PWPO
12	Make repairs of minor cracks in MatCon asphalt cap as a result of routine wear and tear within 7 days in accordance with the procedures detailed in the LPACOMP and the LPACMWW. A CAP and formal approvals for repairs of minor cracks are not required.	EPA	As needed, after Informal, Special, or Annual Inspection identifies need for minor repairs	PWPO	PWPO
13	Document minor repairs, including location and repair activities conducted, and file on Site.	EPA	As needed	PWPO	PWPO
14	Submit documentation of minor repairs to DEQ/EPA/Granite during the 5-year warranty period or DEQ starting 2013.	EPA	At the time of the Annual Audit Report	PWPO	PWPO
15	Inspect previously- repaired cracks and repair as needed.	LPACOMP	Quarterly	PWPO	PWPO
16	Dispose of asphalt and subgrade materials from patch and repair activities in accordance with state and federal regulations. Material may not be stockpiled on Site.	EPA	As required	PWPO	PWPO
17	Maintain pavement striping and lettering on barrier wall centerline per product-specific requirements of the LPACOMP.	EPA	As required	PWPO	PWPO
18	Immediately clean-up of spills ⁵ from MatCon asphalt surface.	LPACOMP	Within 24 hours of detection	PWPO	PWPO
19	Conduct “street sweeping” of the MatCon asphalt cap to remove gravel and other debris.	DEQ	As needed and Annually	PWPO	PWPO

TABLE 1: ASPHALT CAP OPERATION AND MAINTENANCE REQUIREMENTS

Taylor Lumber and Treating Superfund Site
 Sheridan, Oregon

Activity	Description	Required By	Frequency	Responsible Party	
				2011 – 2012	Beyond 2012
20	Inspect and re-tighten vault cover bolts for extraction wells PW-01, PW-03, and PW-03. ⁶ Bolts are currently removed to facilitate operation of the well pumps. If use of the pumps is discontinued for more than 3 months, PWPO will replace bolts and inspect and re-tighten as needed. Consistent with standard for truck safety protocols, fork trucks should use a minimum ground clearance of 4-6 inches from the lowest part of the front (tips) of the load and 2 inches from the back (heels) of the load in order to clear the vaults and vault hinges. If snowplows are used on Site, do not run over the vaults, as the plow may catch on the lip of the concrete pad or the hinges to the vault cover. If plowing over the vaults is necessary, the blade should be at least 3" off the ground to ensure adequate clearance. Normal traffic flow from vehicles with pneumatic tires (semi trailers, industrial fork trucks) do not present any special concern for the vault hinges, as the hinges are made of 1/8" thick stainless steel. Avoid running over the hinges with heavy vehicles that use solid rubber tires.	EPA	Periodically; Semi-annually if extraction well use and inspections are discontinued. If bolts replaced, inspection to be conducted weekly.	PWPO	PWPO

Notes:

1. Informal Inspections are defined as routine and regular visual inspections performed as a normal part of operation.
2. Special Inspections are defined as visual inspections made of all affected areas of the cap, at any time a site incident, activity, or atypical weather event may cause reason to suspect potential damage to the MatCon asphalt cap. Such inspections are also made if there are changes in use of the facility or if the site is subject to heavy and/or prolonged use in concentrated areas.
3. Annual Inspections are defined as a thorough evaluation and a detailed assessment of the MatCon asphalt cap performed at times corresponding to any regulatory agency planned reviews. Annual inspections are the responsibility of the Granite Construction Company, its successor, or equivalent through 2012; after 2012, DEQ is responsible for performing the Annual Inspections. EPA and DEQ will perform oversight of any work conducted by Granite to address defects in material that are discovered on or before August 1, 2012, as set forth in the LPACMWW.

TABLE 1: ASPHALT CAP OPERATION AND MAINTENANCE REQUIREMENTS

Taylor Lumber and Treating Superfund Site
 Sheridan, Oregon

Activity	Description	Required By	Frequency	Responsible Party	
				2011 – 2012	Beyond 2012
Notes (continued):					
	4. Granite means Granite Construction Company, its successor, or equivalent.				
	5. Although the MatCon material is resistant to most chemicals, it is not immune to damage caused by petroleum solvents, such as gasoline, diesel fuel, lube oils, transmission fluid, or hydraulic fluid. When inadvertent spills occur, they must be immediately blotted using industrial absorbents and then water flushed and vacuumed to remove any standing fluids (i.e., 4 ounces or greater). This cleaning should take place as soon as possible to minimize any damage to the MatCon asphalt cap. It is recognized that a minor spill may occur over a weekend or other non-work period and may not be discovered for up to several days; however, in no cases shall the spill be allowed to remain uncleaned longer than 24 hours after discovery. Weather events (e.g., rain, snow, hail, etc.) do not constitute a spill.				
	6. During remedial action, extraction well vault covers were replaced with water tight units with bolt-on covers, which should be checked periodically to ensure they are still secure. The pumps associated with the extraction wells are checked weekly. Operation of the extraction wells require that the well vaults be vented to the atmosphere to allow the pneumatic pumps to operate. Securing the bolts on the covers may not provide sufficient venting, and so PWPO has removed the bolts. However, if the extraction wells are turned off for a significant period of time (longer than for routine maintenance), the bolts should be replaced and be checked every 6 months to ensure they are still snug and secure.				

Results of these O&M activities shall be provided in the Annual Environmental Audit Report to be submitted to EPA and Oregon DEQ as required by Section E of this SOW. Attachment 4 includes the MatCon Asphalt Cap Weekly Inspection Checklist form and the MatCon Inspection Report form that PWPO will use to document inspections of the MatCon asphalt cap.

PWPO may need to reconstruct portions of the asphalt cap as a result of site-related circumstances (for example, structure foundation construction or removal of a concrete pad). Whenever the MatCon asphalt cap is breached, PWPO must follow the corrective action procedures described in Table 1 (Activities 7 through 11) and reconstruct the cap consistent with the remedial design and the manufacturer's requirements described in the LPACOMP to ensure that the remedial action objectives for the selected remedy are satisfied. If a variance to the existing cap design is needed for the purpose of a particular reconstruction effort, PWPO must submit a plan to Oregon DEQ and EPA for approval.

In the event that the MatCon asphalt cap is expanded or modified for remediation purposes, PWPO will perform inspection and maintenance on the expanded cover areas in accordance with the requirements of the LPACOMP and LPACMWW, and the requirements of this SOW. If the MatCon product becomes unattainable, PWPO may substitute a similar product as approved in writing by DEQ and EPA.

B. Groundwater Extraction System Operation and Maintenance

Background – The groundwater extraction system consists of four 6-inch-diameter groundwater extraction wells (PW-01, PW-02, PW-03, and PW-04) with pneumatic pumps located within the barrier wall to induce an inward hydraulic gradient and to prevent the water level from rising above the protective cap over the barrier wall. The groundwater extraction system is designed to keep the groundwater elevation at or below 3-feet below ground surface. The groundwater discharge pipes and air supply pipes are routed underground (18-inch minimum depth) to the closest groundwater receiving tanks or sumps and air supply outlets at the Site. Extracted groundwater is conveyed to the on-site Stormwater Treatment System (SWTS) for treatment.

For reference purposes, the TLT OMP includes the location of the groundwater extraction wells and associated piping on As-Built Drawing C-2, Existing Underground Utilities Plan, in Appendix B.

Work – PWPO shall operate and maintain the groundwater extraction system and shall collect and treat groundwater from the extractions wells. PWPO shall treat extracted groundwater in the on-site SWTS. PWPO shall perform the O&M activities for the groundwater extraction system as described in Table 2, below.

TABLE 2: GROUNDWATER EXTRACTION SYSTEM OPERATION AND MAINTENANCE REQUIREMENTS
Taylor Lumber and Treating Superfund Site
Sheridan Oregon

Activity	Description	Required By	Frequency	Responsible Party	
				2011-2012	Beyond 2012
1	Conduct visual inspection of well vaults and piping to detect leaks. If any piping is leaking, the pump shall be shut off and the piping repaired.	EPA	Weekly	PWPO	PWPO
2	Conduct visual inspection to confirm that water is being pumped through the effluent lines. To check wells PW-01 and PW-02, PWPO shall attach a hose to the ball valve and pump the effluent into a container. Since wells PW-03 and PW-04 each discharge into a sump pit, verification can be achieved by witnessing the effluent discharge. If a pump is not functioning, PWPO shall identify the problem and repair the pump as soon as possible.	EPA	Weekly	PWPO	PWPO
3	Record air pressure setting for each pump. The air pressure should be set between 65 and 70 pounds per square inch.	EPA	Monthly	PWPO	PWPO
4	Record time for three pump cycles and calculation of flow rate (see procedures below).	EPA	Quarterly	PWPO	PWPO
5	Repair/replace inoperable equipment or systems.	EPA	Begin corrective action Within 14 days	PWPO	PWPO
6	Record each inspection and maintenance of inspection records on Site (see procedures below).	EPA	Continuous	PWPO	PWPO
7	Conduct O&M of any expansions to groundwater extraction system.	EPA	As required	PWPO	PWPO
8	Submit result of long-term groundwater water monitoring plan to PWPO after each monitoring event. ¹	EPA	As available	DEQ	DEQ

TABLE 2: GROUNDWATER EXTRACTION SYSTEM OPERATION AND MAINTENANCE REQUIREMENTS
 Taylor Lumber and Treating Superfund Site
 Sheridan Oregon

Activity	Description	Required By	Frequency	Responsible Party	
				2011-2012	Beyond 2012

Notes:

1. Collection of static water level measurements and analysis of groundwater samples is required by the Long-term Groundwater Monitoring and Reporting Plan (EPA, March 2010). PWPO will review this information to increase its knowledge of the subsurface environment.

PWPO shall measure the extraction well flow rates as follows:

1. Open vault cover.
2. Attach discharge hose to discharge manifold.
3. Adjust valve settings to divert flow from conveyance pipe to discharge hose.
4. Time a minimum of three pump discharge cycles.
 - Start the stop watch when you hear pump discharge cycle 1.
 - Listen for pump discharge cycles 2, 3, and 4. Stop the stop watch at pump cycle 4, and record the time that passed from cycle 1 through cycle 4 (which is three pump cycles).
5. Measure flow collected in bucket using 1 gallon graduations on bucket.
6. Divide flow collected (gallons) by time (minutes) for a minimum of three pump cycles to determine flow rate (gallons/minute).
7. Check pressure gauge and record reading in psi. Adjust if the pressure is not within the specified range.
8. Adjust valve settings to divert flow from discharge hose back to conveyance pipe.
9. Remove temporary hose from discharge manifold.
10. Replace vault cover.

PWPO shall prepare and maintain inspection records as follows:

1. Prepare a record of groundwater extraction system (as described above) after each inspection and file the record on Site. The inspection records shall be made available to EPA or EPA's authorized representatives upon request. The record shall include the following:
 - a. The time and date of each inspection.
 - b. The name of the person performing the inspection.
 - c. The time required for each pump to go through three pumping cycles.
 - d. Calculations of the flow rate for each pump.
 - e. The air pressure at the well head of each pump.
 - f. A brief description of any leaks found in the air or water piping.
 - g. A brief description of repairs made to the air or water piping.
 - h. A brief description of problems with a pump.
 - i. A brief description of repairs made to a pump.
 - j. The time and date that any required repairs were performed.
 - k. The name of the person(s) performing required repairs.
 - l. The time and date of the inspection and final approval of required repairs.
 - m. The name of the person who inspected and approved the repairs.

Results of these O&M activities shall be provided in the Annual Environmental Audit Report to be submitted to EPA and Oregon DEQ consistent with Section E of this

SOW. Attachment 5 includes inspection forms PWPO will use during the inspection of the groundwater extraction system.

C. Stormwater Collection and Treatment System Operation and Maintenance

Background – The stormwater collection system is designed to collect extracted groundwater from the extraction system and to collect stormwater from areas of the Site where wood is treated and where treated wood products are stored. Extracted groundwater and stormwater, as well as PWPO boiler water, is conveyed to the SWTS operated by PWPO.

Treated water discharges to the South Yamhill River pursuant to Oregon DEQ NPDES Waste Discharge Permit Number 101267. This permit specifies that PWPO will operate and maintain all facilities and systems to achieve compliance with the conditions of the permit. O&M of the TLT SWTS is described in the TLT Stormwater Treatment System Operation and Maintenance Manual (TLT SWTS OMP) (Maul Foster and Alongi, Inc., 2000). The TLT SWTS OMP was never formally adopted by PWPO, but PWPO has generally followed the O&M requirements of the plan. PWPO is currently preparing a new SWTS OMP for the facility. The new SWTS OMP will summarize stormwater collection and treatment system O&M requirements for the facility, meet the requirements of the NPDES permit, and address SWTS O&M issues described in Section 4.3 of the TLT OMP (EPA 2009). Within 120 days of the Effective Date of this Amendment, EPA and Oregon DEQ will be provided an opportunity to review the draft SWTS OMP, and will be provided a copy of the revised final SWTS OMP.

As part of the Site remedy, two concrete trench drains with grates were installed, in part, to collect surface water runoff from the MatCon asphalt cap and convey it to the SWTS. Clean out of debris and sediment from trench drains in support of a properly functioning remedy is also a routine maintenance requirement for proper functioning of the stormwater conveyance system and is necessary for the collection of stormwater for treatment prior to discharge under Oregon DEQ NPDES permit.

Work – PWPO shall operate and maintain the stormwater treatment system and shall perform stormwater collection and treatment system O&M requirements in compliance with the new SWTS OMP being prepared for the facility.

PWPO shall perform routine O&M of the SWTS, which requires periodic cleanout of sediment from the following locations:

1. Oil water separators in front of the wet well
2. Wet well
3. 500,000-gallon storage tank
4. Two mix tanks
5. Four sedimentation tanks

6. Surge tank filter bag canisters.

PWPO shall routinely clean and remove debris from the concrete trench drains and from the top of trench drain grates. All materials collected will be disposed of in compliance with state and federal hazardous waste regulations.

In addition to the cleanout of sediment and debris, the granulated activated carbon (GAC) in the adsorption columns will be changed out to prevent breakthrough of contaminants. Criteria for changing out GAC are to be defined in the BMP Plan (see Section D, below).

Accumulated sediments and filter cake generated by the SWTS must be properly disposed of and may not be dumped or land applied on Site. Oregon DEQ clarified this requirement in a letter dated May 29, 2007 (Oregon DEQ, 2007).

Results of these O&M activities will be provided in the Annual Environmental Audit Report to be submitted to EPA and Oregon DEQ consistent with Section E of this SOW.

For purposes of stipulated penalties under this Agreement, a violation of PWPO's NPDES permit for its stormwater treatment system shall not be deemed to be a violation of this Agreement. Failure to collect and deliver extracted groundwater to the stormwater treatment system shall be deemed to be a violation of this agreement.

D. Implementation of Best Management Practices

Within 90 days of the Effective Date, PWPO shall prepare and submit to Oregon DEQ a draft Best Management Practices (BMP) Plan. Within 90 days of receipt of the draft BMP Plan, Oregon DEQ, with input from EPA, shall review and provide comments on the draft BMP Plan. Within 15 days of receipt of comments, PWPO shall finalize and implement a final BMP Plan and shall provide copies to Oregon DEQ and EPA.

The BMP Plan shall include, but not be limited to, integrity inspections of product tanks and protections for spills in the entire TLT Site, the boundaries of which are shown in Attachment 6, including the Treatment Plant Area, Treated Wood Storage Yards and Treated Wood Inspection Areas. Oregon DEQ shall provide oversight of the BMP Plan.

E. Annual Environmental Audit Reporting

PWPO shall prepare and submit to EPA and Oregon DEQ an Annual Environmental Audit Report signed by a third party registered Environmental Professional, or as needed, a Professional Engineer. These reports shall describe and summarize, for the entire facility, the status of the following:

- Regulatory compliance with requirements of the Resource Conservation and Recovery Act (RCRA);
- Site-specific National Pollution Discharge Elimination System (NPDES) permit issued by Oregon DEQ, including a brief summary of Discharge Monitoring Reports and inspection records of the SWTS;
- Violations of state and federal environmental laws and regulations;
- Actions taken to address violations, if any;
- Results of tank integrity inspections conducted as part of the facilities' Spill Prevention Control and Countermeasures Plan (SPCC) Plan (Attachment 7);
- Reportable quantity spills of product or waste and actions taken to address those spills;
- Results of O&M activities required in Tasks A and B, and C, including all inspection forms and any supporting documentation and photographs;
- Documentation of off-site disposal of filter cake from the SWTS;
- Documentation of off-site disposal of sediment/sludge removed from Site trench drains; and
- Supporting documentation and photographs.

The Annual Environmental Audit Report shall be submitted by February 1 of each year to EPA and DEQ and shall include the information required for the previous calendar year. The report may be submitted electronically as an Adobe pdf file. An outline for the Annual Environmental Audit Report is included as Attachment 8. PWPO shall provide responses to EPA and DEQ questions or comments on the report. Although the failure to submit one or more reports listed in this section shall constitute a violation of this Agreement, any violation or incident of noncompliance referenced therein shall not constitute a violation under this Agreement.

Attachment 1 to Exhibit 3A

Low Permeability Asphalt Pavement Overview

(Reproduced herein from Figure 2-3 of the Final Construction Report for the Taylor Lumber and Treating Superfund Site, dated March 2009)

Attachment 2 to Exhibit 3A

Low Permeability Asphalt Cap Operation and Maintenance Plan (LPACOMP)
Granite Construction Company, August 10, 2009

Attachment 3 to Exhibit 3A

Low Permeability Asphalt Cap Materials and Workmanship Warranty
(LPACMWW)

Wilder Construction Company, March 3, 2008

Attachment 4 to Exhibit 3A

MatCon Asphalt Cap Weekly Inspection Checklist Form
and
MatCon Inspection Report Form

Attachment 5 to Exhibit 3A

Groundwater Extraction System Weekly Inspection Checklist

Attachment 6 to Exhibit 3A

Boundaries of TLT Site Subject to Best Management Practices Plan

Attachment 7 to Exhibit 3A

Spill Prevention Control and Countermeasures Plan

Attachment 8 to Exhibit 3A

Annual Environmental Audit Report Outline

Exhibit 4

EXHIBIT 4
DRAFT EASEMENT AND EQUITABLE SERVITUDE

Space above this line for Recorder's use.

After recording, return to:

Oregon DEQ
165 E 7th Avenue
Eugene, OR 97401
Attn: Norm Read

EASEMENT AND EQUITABLE SERVITUDE

This grant of Easement and acceptance of Equitable Servitude is made [DATE], 2011 between Pacific Wood Preserving of Oregon, Inc. ("**Grantor**") and the State of Oregon, acting by and through the Oregon Department of Environmental Quality ("**DEQ**" or "**Grantee**").

RECITALS

A. Grantor is the owner of certain real property located at 22125 S.W. Rock Creek Rd., in Yamhill County, Oregon in Tax Lots [TO BE ADDED AFTER SURVEY] at Township 5 South, Range 6 West, Section 33 (the "**Property**") the location of which is more particularly described in Exhibit A to this Easement and Equitable Servitudes, and referenced under the name Taylor Lumber and Treating, ECSI #666 in the files of DEQ's Western Region Environmental Cleanup Program in Eugene, Oregon. Interested parties may contact the Eugene DEQ to review a detailed description of the residual risks present at the Property and addressed in the Record of Decision ("**ROD**") issued by the U.S. Environmental Protection Agency ("**EPA**") on September 30, 2005. The ROD and related administrative record are on file with EPA Region 10 or its successor agency, presently located at 1200 Sixth Avenue, Seattle, Washington 98101.

B. The ROD requires, among other things, institutional controls ensuring that:

- There will be no future non-industrial use of the West Facility at the Property.
- Any breaching of the low-permeability MatCon asphalt cap at the Property will be conducted in a manner that is protective of human health and the environment.
- Excavation and movement of soils from within the West Facility will be conducted in a manner that is protective of human health and the environment.
- Shallow groundwater at the West Facility will not be used as drinking water, and any well drilling and groundwater use will be conducted in a manner that is protective of human health and the environment.

C. On February 5, 2002 Grantor entered into a Prospective Purchaser Agreement with DEQ. This agreement was amended on [DATE], 2011. Under the amended agreement, Grantor agreed to implement operation and maintenance activities of selected portions of the remedial action, including the required institutional controls.

D. Pursuant to a State Superfund Contract between DEQ and EPA dated February 21, 2007, DEQ agreed to obtain the institutional controls necessary to implement the ROD.

E. The provisions of this Easement and Equitable Servitude are intended to further the implementation of the selected remedial action and thereby protect human health and the environment.

1. DEFINITIONS

1.1. "DEQ" means the Oregon Department of Environmental Quality, and its employees, agents, and authorized representatives. "DEQ" also means any successor or assign of DEQ under the laws of Oregon, including but not limited to any entity or instrumentality of the State of Oregon authorized to perform any of the functions or to exercise any of the powers currently performed or exercised by DEQ.

1.2 "Owner" means any person or entity, including Grantor, who at any time owns, occupies, or acquires any right, title, or interest in or to any portion of the Property or a vendee's interest of record to any portion of the Property, including any successor, heir, assign or holder of title or a vendee's interest of record to any portion of the Property, excluding any entity or person who holds such interest solely for the security for the payment of an obligation and does not possess or control use of the Property.

1.3 "Property" means the real property described in Exhibit A to this Easement and Equitable Servitude.

1.4 "West Facility" means the former Taylor Lumber facility located west of Rock Creek Road, including the Treatment Plant Area, White Pole Storage Area, and Treated Pole Storage Area, as shown in Exhibit B to this Easement and Equitable Servitude.

2. GENERAL DECLARATION

Grantor, in consideration of Grantee's approval of the Prospective Purchaser Agreement described above, grants to DEQ an Easement for access and accepts the Equitable Servitude described in this instrument and, in so doing, declares that the Property described in Exhibit A to this Easement and Equitable Servitude, is now subject to and shall in the future be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this Easement and Equitable Servitude. Each condition and restriction set forth in this Easement and Equitable Servitude touches and concerns the Property and the equitable servitudes

granted in Paragraph 3 (collectively, the "Equitable Servitude") and easement granted in Paragraph 4 (the "Easement") below, shall run with the land for all purposes, shall be binding upon all current and future owners of the Property as set forth in this Easement and Equitable Servitude, and shall inure to the benefit of the State of Oregon. Grantor further conveys to DEQ the perpetual right to enforce the conditions and restrictions set forth in this Easement and Equitable Servitude.

3. EQUITABLE SERVITUDE (RESTRICTIONS ON USE)

3.1 General Restrictions.

a. Excavation of soils from within the West Facility shall be conducted in a manner that is protective of human health and the environment. Owner shall submit a written plan for soil management and obtain DEQ approval before excavating soils from within the West Facility. Any soil excavated from within the slurry wall and beneath the MatCon asphalt cap would be classified under Resource Conservation and Recovery Act (RCRA) as F032, F034, or F035 listed wastes based on the wood-preserving formulations used at the facility.

b. Investigation derived wastes (IDW) must be handled and disposed of properly in accordance with state and federal regulations. IDW soil and water from within the slurry wall and beneath the MatCon asphalt cap would be classified under Resource Conservation and Recovery Act (RCRA) as F032, F034, or F035 listed wastes based on the wood-preserving formulations used at the facility.

c. Owner shall operate on the Property in such a manner as to protect the groundwater monitoring wells located on the Property. These groundwater monitoring wells are operated and maintained by DEQ for long-term monitoring of shallow groundwater at the site.

d. Owner shall require on-site workers to wear personal protective equipment when in contact with soil beneath the peeler asphalt cap (indicated as such on Exhibit B). This restriction is intended to protect workers from arsenic concentrations that exceed background levels but are below EPA's action level as set forth in the ROD.

3.2 Groundwater Use Restrictions. Shallow groundwater at the West Facility may not be used for drinking water or other potable purposes. Any well drilling and any groundwater use may not be performed without receiving written approval from DEQ. Unless EPA approves an alternate method for treatment of extracted groundwater in writing, Owner shall treat extracted groundwater from the on-site extraction wells in the on-site storm water treatment system in accordance with Section B of the Revised Statement of Work, attached as Exhibit C to this Easement and Equitable Servitude.

3.3 Asphalt Cap Restrictions.

a. Owner shall maintain the low-permeability MatCon asphalt cap in accordance with Section A of the Revised Statement of Work, to ensure the long-term structural integrity of the MatCon cap.

b. Except upon prior written approval from DEQ, Owner may not conduct operations on the Property or use the Property in any manner (including without limitation any breaching, excavating, drilling, scraping, or eroding) that may penetrate the MatCon cap or jeopardize its function as an engineering control preventing exposure to contaminated soil.

3.4 Land Use Restrictions. The following operations and uses are prohibited at the West Facility:

- a. Residential use of any type;
- b. Agricultural use of any type;
- c. Recreational use of any type; and
- d. Non-industrial use of any type.

3.5 Notice of Transfer. Owner shall notify DEQ at least ten (10) days before the effective date of any conveyance, grant, gift, lease, or other transfer, in whole or in part, of Owner's interest in or occupancy of the Property; or the start of any development activities or change in use of the Property that might expose human or ecological receptors to hazardous substances at the Property. Notwithstanding the foregoing, Owner may not commence any development inconsistent with the conditions or restrictions in this Paragraph 3 without (a) prior written approval from DEQ, or (b) removal of the condition or restriction as provided in Paragraph 6.1 below.

3.6 Cost Recovery. Owner shall pay DEQ's costs for review and oversight of implementation of and compliance with the provisions in this Easement and Equitable Servitude. This Easement and Equitable Servitude is a binding agreement by the Owner to reimburse DEQ for all such eligible review and oversight costs. DEQ will establish a cost recovery account for tracking and invoicing DEQ project costs. DEQ will provide Owner with a monthly statement and direct labor summary. DEQ costs include direct and indirect costs. Direct costs include site-specific expenses and legal costs. Indirect costs are those general management and support costs of the State of Oregon and DEQ allocable to DEQ oversight of this Easement and Equitable Servitude and not charged as direct site-specific costs. Indirect charges are based on actual costs and are applied as a percentage of direct personal services costs.

4. EASEMENT (RIGHT OF ENTRY)

During reasonable hours and subject to reasonable advance notice and Owner's security requirements, DEQ, EPA, and their representatives, including contractors, shall have the right to enter upon and inspect any portion of the Property to determine whether the requirements of this Easement and Equitable Servitude have been or are being complied with and to conduct sampling and analysis, including that required by the Long-term Groundwater Monitoring and Reporting Plan. DEQ and EPA shall have the right, privilege, and license to enter upon the Property at any time to abate, mitigate, or cure at the expense of Owner the violation of any condition or restriction contained in this Easement and Equitable Servitude, provided DEQ or EPA first gives written notice of the violation to Owner describing what is necessary to correct the violation and Owner fails to cure the violation within a reasonable time following receipt of such notice. Any such entry by DEQ or EPA shall not be deemed a trespass, and neither DEQ nor EPA shall be subject to liability to Owner for such entry and any reasonable action taken to abate, mitigate, or cure a violation.

5. THIRD PARTY BENEFICIARY RIGHTS OF EPA

5.1 EPA shall have the right, but shall not be obliged, to monitor and to enforce, by all means available in law or equity, the terms of this Easement and Equitable Servitude as a third party beneficiary of the agreement between Grantor and Grantee contained in this Easement and Equitable Servitude.

5.2 EPA's rights provided in this Paragraph 5 are in addition to, and not in derogation of, all rights of DEQ to enforce the terms of this Easement and Equitable Servitude. Nothing in this Paragraph 5 shall be construed to create, either expressly or by implication, the relationship of agency between EPA and DEQ and neither EPA nor DEQ is authorized by this Paragraph 5 to represent or act on behalf of the other in the enforcement of rights granted under this Easement and Equitable Servitude.

5.3 Grantee represents that it has notified EPA of EPA's status as a third party beneficiary under Paragraph 5 of this Easement and Equitable Servitude.

6. GENERAL PROVISIONS

6.1 Each condition and restriction contained in this Easement and Equitable Servitude shall be recited in any deed or lease conveying the Property or any portion of the Property, and shall run with the land so burdened until such time as the condition or restriction is removed by written certification from DEQ, recorded in the deed records of the County in which the Property is located, certifying that the condition or restriction is no longer required in order to protect human health or the environment.

6.2 Upon the recording of this Easement and Equitable Servitude, all future Owners, as defined in Paragraph 1.2 above, shall be conclusively deemed to have consented and agreed to every condition and restriction contained in this Easement and Equitable Servitude, whether or not any reference to this Easement and Equitable

Servitude is contained in an instrument by which such person or entity occupies or acquires an interest in the Property.

6.3 Upon any violation of any condition or restriction contained in this Easement and Equitable Servitude, DEQ, in addition to the remedies described in Paragraph 4 above, may enforce this Easement and Equitable Servitude as provided in the Amendment to the Prospective Purchaser Agreement, as amended, or may seek any other available legal or equitable remedy to enforce this Easement and Equitable Servitude.

IN WITNESS WHEREOF Grantor and Grantee have executed this Easement and Equitable Servitude as of the date and year first set forth above.

GRANTOR: Pacific Wood Preserving, Inc., of Oregon

By: _____ Date: _____
Elaina Jackson, Chief Operating Officer

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument is acknowledged before me this ____ day of _____, 20__ , by Elaina Jackson of Pacific Wood Preserving of Oregon, Inc., on its behalf.

NOTARY PUBLIC FOR OREGON
My commission expires:_____

GRANTEE: State of Oregon, Department of Environmental Quality

By: _____ Date: _____
Paul S. Rosenberg, Western Region Environmental Cleanup Manager

STATE OF OREGON)
) ss.
County of _____)

The foregoing instrument is acknowledged before me this ____ day of _____, 20__, by _____ Paul S. Rosenberg of the Oregon Department of Environmental Quality, on its behalf.

NOTARY PUBLIC FOR OREGON

My commission expires:_____

EXHIBIT A

Legal Description of the Property

EXHIBIT B

Survey Diagram of Property

EXHIBIT C

Revised Statement of Work