

PROSPECTIVE PURCHASER AGREEMENT

DEQ No.02-03

BETWEEN: Oregon Department of Environmental Quality

AND: Pacific Wood Preserving of Oregon

EFFECTIVE DATE: 2-5-02 (Date of last signature below)

This Agreement is entered between the Oregon Department of Environmental Quality (DEQ) and Pacific Wood Preserving of Oregon (PWPO) pursuant to Oregon Revised Statutes (ORS) 465.260 and 465.327. This Agreement contains the following provisions:

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Attachment A

Attachment B

1. RECITALS

A. The subject property (Property) is located at 22125 S.W. Rock Creek Rd., Sheridan, Oregon. The Property is owned by Taylor Lumber & Treating, Inc.(Taylor). The legal description of the Property is set forth as Attachment A to this Agreement. Taylor filed a voluntary petition for relief pursuant to Chapter 11 of the U.S. Bankruptcy Code on June 11, 2001.

B. Taylor Lumber and Treating operated a wood processing and treating business on the Property from 1966 to 2001. A number of chemicals were used for the treatment of lumber, including creosote, pentachlorophenol (PCP) and arsenic.

C. The Property is about 300 feet north of the South Yamhill River. Rock Creek flows about 300 yards from the westernmost Property boundary.

D. Beginning with a groundwater assessment in 1988, Taylor has been the subject of over a dozen inspections, investigations, and cleanup actions related to stormwater discharges and releases of hazardous substances. In April 1995, an Administrative Order on Consent (U.S. Environmental Protection Agency Docket 10-94-0244-RCRA) was issued between Taylor Lumber and EPA. The Order outlined the conditions under which Taylor would conduct environmental investigations at the site.

Soil and water samples have been collected from test pits, soil borings, piezometers. Groundwater monitoring wells, ditches, sediments, and surface water. Interim cleanup actions have been performed to preliminarily address contaminated areas at the site.

Contaminants have been detected in soil and groundwater samples collected from the Property. The contaminants detected in the site soils and/or groundwater include arsenic, creosote, polycyclic aromatic hydrocarbons, and PCP. Contaminants were also found in the sediments of Rock Creek and the South Yamhill River. These contaminants are “hazardous substances” within the meaning of ORS 465.200(15). The presence of hazardous substances at the Property constitutes a “release” of hazardous substances within the meaning of ORS 465.200(21), and makes the Property a “facility” within the meaning of ORS 465.200. Additional removal or remedial action is necessary at the Property to protect human health or the environment.

E. A number of corrective action activities have been performed at the site since 1990 to address onsite contamination caused by past operating practices and spills:

- A former concrete cooling water vault was cleaned, tested for leakage, and filled with a gravel/concrete mix (1990-1994).
- Contaminated soils were removed from the drip pad and retort area and disposed offsite (1991-1993).
- EPA responded to the release of 3,500 gallons of 5 percent enriched P-9 oil which flowed overland and collected in onsite drainage ditches (February 1999).
- EPA responded to the release of 27,500 gallons of reclaimed creosote and wastewater. Most was contained within a secondary containment structure but some migrated into the Rock Creek Road ditch (September 1999).
- EPA issued a Unilateral Administrative Order (UAO) for Removal Response Activities (EPA Docket CERCLA-10-2000-006) in November 1999. Taylor agreed to implement portions of the Work Plan attached to the UAO and EPA agreed to perform the remainder.
- A stormwater treatment system was installed by Taylor to control contaminant migration in onsite surface water runoff, and to meet the

requirements of the National Pollutant Discharge Elimination System (NPDES) permit (2000).

- Pursuant to the UAO referenced above, EPA installed a subsurface bentonite barrier wall onsite to contain the contaminated groundwater plume (2001).
- Pursuant to the UAO, EPA capped a portion of the former treated pole storage area to prevent exposure to arsenic-contaminated soil (2001).
- Pursuant to the UAO, EPA consolidated and placed contaminated soil from various onsite stockpiles and roadside ditches in soil storage cells located in the northwest area of the Treatment Plant (2001).

E. On June 14, 2001, the Property was added to EPA's National Priorities List. EPA has done significant removal work at the Property and is preparing a Remedial Investigation and Feasibility Study (RI/FS). Following the completion of the RI/FS, EPA will evaluate cleanup alternatives and choose a final remedy for the Property.

F. PWPO entered into an Asset Purchase Agreement with Taylor, dated December 13, 2001, to purchase certain assets from Taylor, including the Property. The United States Bankruptcy Court, District of Oregon approved the sale to PWPO by Order dated December 20, 2001.

G. On January 23, 2002, PWPO executed an Agreement And Covenant Not To Sue (Docket CERCLA-10-2002-0034) with EPA (EPA Agreement).

H. On January 30, 2002, PWPO applied to DEQ for entry into this Agreement, and agreed to reimburse DEQ's costs of technical review and agreement preparation.

I. PWPO is a Nevada corporation and a "person" within the meaning of ORS 465.200(20). According to information provided by PWPO, DEQ has determined that PWPO is not an owner or operator of the facility, and is not currently liable under ORS 465.255 for the release of hazardous substances existing at the facility as of the date of this Agreement.

J. PWPO intends to operate a wood preserving business on the Property using low environmental impact and low mammalian toxicity wood preservatives. PWPO's ability to use these preservatives provides the opportunity for redevelopment of the Property. The business activities will create about 40 jobs with a payroll approaching \$1,000,000 within the first two years of operation. In addition, PWPO's agreement to operate and maintain the groundwater extraction system will relieve EPA and DEQ of significant on-going costs.

K. PWPO agrees to perform the activities described in Section 2 of this Agreement at its expense. DEQ has determined that a "substantial public benefit" will result from this Agreement, within the meaning of ORS 465.327 (1)(d).

L. Based upon the information submitted by PWPO, DEQ has further determined that the proposed development activities at the Property will not contribute to or exacerbate existing contamination, increase health risks, or interfere with remedial measures necessary at the Property.

M. In determining to enter this Agreement, DEQ has consulted with the Yamhill County and has considered reasonably anticipated future land uses at the Property and surrounding properties.

N. PWPO recognizes that implementation of remedial measures at the Property in the future might interfere with PWPO's use of the Property. However, pursuant to the EPA Agreement, EPA has agreed to use reasonable efforts to minimize any interference with PWPO's operations in implementing its response action.

2. MEASURES TO BE UNDERTAKEN

A. EPA is the lead agency with regard to the remediation of the Property. Attachment B is the Statement of Work that is attached to the EPA Agreement. PWPO agrees to perform the measures described in Attachment B under EPA review and oversight DEQ will provide contemporaneous review with EPA of the remedial investigation and cleanup tasks at the Property. Except as provided in Section 2.C. of this Agreement, PWPO shall have no responsibility for payment of DEQ costs for oversight of the measures described in Attachment B.

B. Any development, construction, or other use of the Property shall be consistent with and shall not interfere with investigative or remedial activities necessary at the Property. To ensure such consistency and prevent exacerbation of existing contamination on the Property, PWPO will send copies to DEQ of any plans submitted to EPA regarding proposed physical changes or disturbances to the Property.

C. PWPO shall pay to DEQ Twenty Thousand Dollars (\$20,000.00) in full settlement of PWPO's responsibility for DEQ costs incurred prior to the effective date of this Agreement in connection with the Property. DEQ shall apply as a credit against this amount any balance remaining of PWPO's advance deposit.

PWPO shall pay this amount in monthly payments of One Thousand Dollars (\$1,000.00), commencing November 15, 2002, and continuing on the fifteenth day of each month until the amount has been paid in full. The payment shall be made by check payable to the "State of Oregon, Hazardous Substance Remedial Action Fund." PWPO shall pay simple interest of 9% per annum on late monthly installments, which interest shall begin to accrue the day after the monthly payment is due under this paragraph.

D. In accordance with existing State and Federal regulations, PWPO will notify occupants of the facility, site workers, demolition, construction, remediation, and landscape workers of the presence of soil contamination. Hazard notifications will be performed in accordance with applicable state and federal Occupational Safety and Health Administration (OSHA) regulations so that appropriate health and safety plans can be developed and implemented, if necessary.

E. Materials containing hazardous substances that are excavated from the Property or generated during building renovation/demolition are considered solid waste under Oregon Administrative Rules (OAR).

F. Excavated soil or debris that is disposed of off-site must be managed in accordance with OAR 340-093-040. In addition, each solid waste generated at the Property must be evaluated to determine if it is a hazardous waste under the Resource, Recovery and Conservation Act (RCRA) as defined in OAR 340-102-011 and Chapter 40 Code of Federal Regulations, Division 261 (40 CFR 261). Wastes that are determined to be hazardous must be appropriately managed and disposed of at a permitted facility.

Construction and demolition waste are not exempt from Oregon Solid Waste or Hazardous Waste Rules.

G. PWPO agrees that if EPA imposes any restrictions on the use of the Property that may be necessary to protect human health and the environment, PWPO will abide by such restrictions. If required by EPA, PWPO agrees that it will record such use restrictions in the office of the county clerk for Yamhill County.

3. GENERAL PROVISIONS

A. DEQ Oversight

DEQ will provide joint oversight with EPA of PWPO performance of the measures described in Attachment B. DEQ's costs for performing such oversight activities will be reimbursed by EPA pursuant to Support Agency Cooperative Agreement for multiple sites in OR # V-00718-05.

B. Access

(1) PWPO grants an irrevocable right of entry to DEQ and its authorized representatives to enter and move freely about the Property at all reasonable times for purposes of overseeing implementation of this Agreement, or conducting removal or remedial measures DEQ deems necessary. DEQ agrees to provide at least 72 hours oral notice prior to entering the Property, except in an emergency involving public health, safety, and welfare or the environment. Oral notification will be followed with written confirmation within five (5) business days.

(2) PWPO shall allow DEQ to inspect and copy all records in PWPO's possession or control relating to measures undertaken at the Property under this Agreement. PWPO shall preserve all such records for six (6) years after the effective date of this Agreement, and, after such six-year period, shall provide DEQ with sixty (60) days notice before destruction or other disposal of such records and make the records available for inspection and copying. (3) PWPO may assert a claim of confidentiality regarding any records submitted to or copied by DEQ pursuant to this Agreement. DEQ shall treat documents and records for which a claim of confidentiality has been made in accordance with ORS 192.410 to 192.505. If PWPO does not make a claim of confidentiality at the time the records are submitted to or copied by DEQ, the records may be made available to the public without notice to PWPO. DEQ reserves any rights to obtain documents withheld from DEQ as privileged.

C. Use Restrictions

PWPO agrees that in conducting its wood treating business, PWPO will not treat wood with solutions containing ACZA (ammoniacal copper zinc arsenate), CCA (Copper chromated arsenate), Pentachlorophenol, creosote, or any arsenical wood-preserving compounds.

D. Notice

All reports, notices, and other communications required under or relating to this Agreement shall be directed to:

For DEQ:

Marilyn Daniel

1102 Lincoln Street

Suite 210

Eugene, OR 97401

Tel: (541) 686-7838 ext. 239

For PWPO:

Elaina Jackson

5601 District Blvd.

Bakersfield, CA 93313

Tel: (661) 833-0429

E. DEQ Costs

PWPO will not be responsible for any costs incurred after the effective date of this Agreement by DEQ for which PWPO is not liable pursuant to Section 4B of this Agreement. DEQ costs may be recovered from EPA and other persons not a party to this Agreement.

F. Enforcement of Agreement and Reservation of Rights

(1) In the event of any failure of PWPO to comply with any obligation of this Agreement, DEQ may enforce this Agreement under ORS 465.260(5) or exercise any authority or pursue any claim or cause of action that DEQ might have. PWPO reserves any defenses or counterclaims it might have in the event of such action by DEQ.

(2) Except as provided in Subsections 3.F and 3.G of this Agreement, DEQ and PWPO reserve any claim or cause of action they respectively have as to any person or entity not a signatory to this Agreement.

(3) PWPO does not admit any liability or violation of law by virtue of entering this Agreement.

(4) DEQ reserves its authority to perform remedial measures regarding a release of hazardous substances at or from the Property.

G. Waivers

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

(2) PWPO waives any right it might have under ORS 465.260(7) to seek reimbursement from the Hazardous Substance Remedial Action Fund or the Orphan Site Account for cost incurred under this Agreement.

H. Hold Harmless and Indemnification

PWPO shall save and hold harmless the State of Oregon and its commissions, agencies, officers, employees, contractors, agents, and authorized representatives, and indemnify the foregoing, from and against any and all claims arising from acts or omissions related to this Agreement of PWPO or its officers, employees, contractors, agents, receivers, trustees, or assigns. DEQ shall not be considered a party to any contract made by PWPO or its agents in carrying out activities under this Agreement.

I. Public Notice

Upon execution of this Agreement, DEQ will provide public notice of this Agreement in a local newspaper of general circulation, describing the measures to be undertaken under this Agreement. Copies of the Agreement will be made available to the public. DEQ shall provide PWPO a draft of such notice and consider any comments

by PWPO on the draft notice, before publication. PWPO is responsible for the publication costs, if any, of such notice.

J. Recording

(1) Within thirty (30) days of the date PWPO receives an ownership interest in the Property, PWPO shall submit a copy or original of this Agreement (whichever is required by the county) to be recorded in the real property records of Yamhill County, State of Oregon. PWPO shall provide DEQ with written evidence of such recording within seven (7) days of recording.

(2) Before approval of any remedial action by EPA, DEQ will provide public notice and opportunity for comment on the proposed remedy in accordance with ORS 465.320.

K. Transfer of Interest

Until DEQ issues a No Further Action determination or Certification of Completion for the Property and PWPO completes all obligations required under this agreement, upon transfer of any interest in the Property, or a portion of the Property, from PWPO to another person or entity, PWPO shall provide written notice to the DEQ project manager within thirty (30) days of such transfer.

4. RELEASE FROM LIABILITY

A. Subject to the satisfactory performance by PWPO of its obligations under this Agreement, PWPO shall not be liable to the State of Oregon under ORS 465.200 through 465.455 and 465.900 for any release of the hazardous substances described in

Section 1 above at the Property existing as of the date PWPO's acquisition of its interest in or operation of the Property. PWPO shall bear the burden of proving that any hazardous substance release existed before the date of acquisition of its interest in or operation of the Property.

B. The release from liability under Subsection 4.A of this Agreement shall not apply to any liability regarding:

(1) A release of hazardous substances at the Property after the date of acquisition of an interest in or operation of the Property;

(2) Contribution to or exacerbation of a release of hazardous substances;

(3) Interference or failure to cooperate with DEQ, or with persons conducting remedial measures under DEQ's oversight at the Property

(4) Failure to exercise due care or take reasonable precautions with respect to any hazardous substance at the Property;

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

(6) Any ownership, operation, or release of hazardous substances at the Property by PWPO before the effective date of this Agreement;

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

(8) Any matters as to which the State of Oregon is owed indemnification under Subsection 3.G. of this Agreement.

5. PARTIES BOUND

A. This Agreement shall be binding on the signatories and their respective commissions, agencies, officers, directors, assigns, parents, subsidiaries, successors, employees, contractors, agents, and authorized representatives. The undersigned representative of each party certifies that he or she is fully authorized to execute and bind such party to this Agreement. No change in ownership or corporate or partnership status relating to the Property shall in any way alter PWPO's obligations under this Agreement, unless approved otherwise in writing by DEQ.

B. The benefits and burdens of this Agreement shall run with the land; however, the release from liability set forth in Subsection 4.A of this Agreement shall limit or otherwise affect the liability only of persons who are not potentially liable under ORS 465.255 for a release of hazardous substances at the Property as of the date of that person's acquisition of ownership or operation of the Property and who assume and are bound by the terms of this Agreement applicable to the Property as of the date of their acquisition of ownership or operation of the Property.

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6. SIGNATURES

Elaina Jackson

Date: 2-5-02

Elaina Jackson
Vice President
Pacific Wood Preserving of Oregon

SUBSCRIBED AND SWORN TO BEFORE ME this 5th day of February, 2002 by Elaina Jackson

Katherine M. Ceglia
NOTARY PUBLIC FOR Nevada
My Commission expires: October 1, 2005

Date: 2 Feb 02

Dave Rozell, Acting Administrator
Land Quality Division
Oregon Department of Environmental Quality

SUBSCRIBED AND SWORN TO BEFORE ME this 2nd day of February, 2002 by Dave Rozell ^{Charles}
w/ Donaldson ~~Rozell~~ in his capacity as Acting Administrator of the Land Quality Division, Oregon Department of Environmental Quality.

Barrett MacDougall
NOTARY PUBLIC FOR OREGON
My Commission expires: 7/12/02

