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STATE OF OREGON

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE OF OREGON, ex rel. RICHARD
WHITMAN, DIRECTOR, DEPARTMENT
OF ENVIRONMENTAL QUALITY,
Plaintiff,

MULTNOMAH COUNTY CIRCUIT COURT
Case No. 0610-10510

v.

**DRAFT CERTIFICATION OF
COMPLETION**

**ARKEMA INC., BAYER CROPSCIENCE,
INC., BNSF RAILWAY COMPANY,
CHEVRON U.S.A. INC., a Pennsylvania
corporation, CITY OF PORTLAND,
CONOCOPHILIPS COMPANY,
GUNDERSON LLC, KINDER MORGAN,
NW NATURAL, OREGON STEEL
MILLS, INC. PORT OF PORTLAND,
SILTRONIC CORPORTATION, TIME
OIL CO., AND UNION PACIFIC
RAILROAD COMPANY,**
Defendants.

1. Findings

A. On November 6, 2006 the Multnomah County Circuit Court entered Consent Judgment No. 0610-10510 (the “Consent Judgment”) entered into by the Oregon Department of Environmental Quality (DEQ) with Defendants Arkema Inc., Bayer CropScience, BNSF Railway Company, Chevron U.S.A. Inc., a Pennsylvania corporation, City of Portland, ConocoPhillips Company, Gunderson LLC, Kinder Morgan, NW Natural, Oregon Steel Mills, Inc., Port of Portland, Siltronic Corporation, Time Oil Co., and Union Pacific Railroad Company (collectively, parties). The mutual objectives of the parties were (1) to resolve Defendants’ liability for certain remedial action costs at the Portland Harbor Superfund Site; and (2) to protect public health, safety, and welfare and the environment by the implementation of a remedial investigation and feasibility study at the Portland Harbor Superfund Site in accordance with the federal Comprehensive

1 Environmental Report, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* (“CERCLA”)
2 and consistent with Oregon’s Hazardous Substance Removal and Remedial Action Statute, ORS
3 465.200 *et seq.*

4 B. The Consent Judgment required payment of Remedial Action Costs including payment
5 of Past Remedial Action Costs, Interim Remedial Action Costs, and Oversight Costs incurred by
6 DEQ in implementation and oversight of performance of the Administrative Order on Consent for
7 Remedial Investigation/Feasibility Study, U.S. EPA Docket No. CERCLA-10-2001-0240 (EPA
8 Settlement Agreement). Consistent with the terms of the Consent Judgement, upon receipt of
9 payment for Past Remedial Action Costs, DEQ forwarded \$400,000 of the payment to the Oregon
10 State Treasurer for deposit into an interest-bearing site-specific account within the Hazardous
11 Substances Remedial Action Fund (the “Portland Harbor Source Control Account”) to be used at
12 DEQ’s direction at the Site.

13 C. The Consent Judgement designated that the work to be performed included to perform
14 or fund the RI/FS as directed by EPA under the EPA Settlement Agreement (“RI/FS” Work), in
15 accordance either with their respective status as signatories to the Settlement Agreement or their
16 funding contribution to performance of the RI/FS Work.

17 D. Defendants provided payment for Remedial Action Costs incurred by DEQ as
18 stipulated in the Consent Judgement during performance of the EPA Settlement Agreement through
19 issuance of the Proposed Plan for Portland Harbor. Defendants, other than the City of Portland, the
20 Port of Portland and NW Natural, declined to pay DEQ remedial action costs from issuance of the
21 Proposed Plan until issuance of the Record of Decision. On August 20, 2016, the City of Portland,
22 the Port of Portland and NW Natural entered into agreements with DEQ that collectively provided
23 for payment of \$175,500 in costs related to DEQ’s review of the Proposed Plan and remedy
24 selection. DEQ agreed that that amount would satisfy the obligation of the City of Portland, the
25 Port of Portland and NW Natural to pay DEQ remedial action costs under the Consent Judgment
26

1 and DEQ would not seek further reimbursement for charges exceeding \$175,500 from the City of
2 Portland, the Port of Portland and NW Natural.

3 E. On October 18, 2017, Defendants provided a certification to terminate their work
4 or obligations under the EPA Settlement Agreement. The certification was approved by EPA on
5 October 26, 2017.

6 F. On January 1, 2020, DEQ provided public notice and opportunity to comment on a
7 proposed Certification of Completion determination for the facility in accordance with ORS 465.320
8 and 465.325(10)(b). The public notice was published on January 1, 2020, in the *Oregon Secretary of*
9 *State's Bulletin*, and in the Oregonian newspaper. The comment period was closed on January 31,
10 2020. [No comments were received. –OR– Comments included the following: (describe/list).
11 None of the comments were in opposition to DEQ's proposed certification decision. DEQ provided
12 responses to comments to each party.]

13 **2. Conclusions**

14 A. Defendants have satisfactorily met their obligations for payment of DEQ remedial
15 action costs and performance of RI/FS Work as required under the Consent Judgment, except as
16 stated in Section 3.B below for Defendants other than the City of Portland, the Port of Portland and
17 NW Natural.

18 **3. Conditions**

19 A. This Certification of Completion applies only to the satisfactory completion of the work
20 conducted by the Defendants pursuant to the Consent Judgment.

21 B. DEQ reserves its rights to seek recovery of remedial action costs incurred from the
22 issuance of the Proposed Plan until the issuance of the Record of Decision from all defendants,
23 excepting the City of Portland, the Port of Portland and NW Natural, and does not release
24 Defendants, excepting the City of Portland, the Port of Portland and NW Natural, from liability for
25 such costs under the consent judgment. The City of Portland, the Port of Portland and NW Natural
26 have fulfilled their obligations to pay for DEQ remedial action costs under this Consent Judgment in

1 full.

2 C. DEQ does not, by this Certification, assume liability for any claim arising from acts or
3 omissions of the Defendants or their officers, employees, agents, successors, subsidiaries, or assigns
4 relating to actions pursuant to the Consent Judgment.

5 **4. Notice**

6 This order constitutes Certification of Completion under ORS 465.325(10), and may be
7 appealed by any aggrieved person in accordance with ORS 465.325(10)(c).

8 **Issued By:**

9 State of Oregon
10 Department of Environmental Quality

State of Oregon
Department of Justice

11 By: _____
12 Nina DeConcini
13 Administrator Northwest Region

By: _____
Gary Vrooman, OSB No. 075832
Assistant Attorney General

14 _____
Date

CERTIFICATE OF SERVICE

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I certify that on _____ I served a true copy of the above Certification of Completion by depositing it in the United States mail, postage prepaid, and addressed to the following persons:

[Name]
[Street Address]
[City, State ZIP]

Gary Vrooman, OSB No. 075832
Assistant Attorney General