

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:  
**Capital Industries, Inc.**

**AGREED ORDER**

No. DE 5348

TO: Mr. Ronald Taylor  
President  
Capital Industries, Inc.  
PO Box 80983  
Seattle, WA 98108

**TABLE OF CONTENTS**

I.	INTRODUCTION.....	3
II.	JURISDICTION.....	3
III.	PARTIES BOUND.....	3
IV.	DEFINITIONS.....	3
V.	FINDINGS OF FACT.....	5
VI.	ECOLOGY DETERMINATIONS.....	5
VII.	WORK TO BE PERFORMED.....	6
VIII.	TERMS AND CONDITIONS OF ORDER.....	7
	A. Public Notice.....	7
	B. Remedial Action Costs.....	7
	C. Implementation of Remedial Action.....	8
	D. Designated Project Coordinators.....	9
	E. Performance.....	9
	F. Access.....	10
	G. Sampling, Data Submittal, and Availability.....	11
	H. Public Participation.....	11
	I. Retention of Records.....	13
	J. Resolution of Disputes.....	13
	K. Extension of Schedule.....	14
	L. Amendment of Order.....	16
	M. Endangerment.....	16
	N. Reservation of Rights.....	17

O.	Transfer of Interest in Property .....	17
P.	Compliance with Applicable Laws .....	18
Q.	Indemnification .....	19
IX.	SATISFACTION OF THIS ORDER .....	20
X.	ENFORCEMENT .....	20
EXHIBIT A.	Site Diagram	
EXHIBIT B	Scope of Work	
EXHIBIT C	Schedule	
EXHIBIT D	Interim Vapor Intrusion Plan	

## **I. INTRODUCTION**

The mutual objective of the State of Washington, Department of Ecology ("Ecology"), and Capital Industries, Inc. ("Capital"), under this Agreed Order ("Order") is to provide for a Remedial Action where there has been a release or threatened release of hazardous substances. Specifically, the purpose of this Order is to perform the Remedial Investigation (RI) and perform interim cleanup action(s), if necessary, and such other activities more fully set forth in the attached Scope of Work (Exhibit B). Ecology believes the actions required by this Order are in the public interest.

## **II. JURISDICTION**

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

## **III. PARTIES BOUND**

This Agreed Order shall apply to and be binding upon the Parties to this Order and their successors and assigns. The undersigned representative of each Party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such Party to comply with the Order. Capital agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Capital's responsibilities under this Order. Capital shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

## **IV. DEFINITIONS**

Unless otherwise specified, the definitions set forth in Chapter 70.105D RCW and Chapters 173-340 WAC shall control the meanings of the terms used in this Order.

A. Agreed Order or Order: Refers to this Order and each of the Exhibits to this Order. All Exhibits are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits to this Order.

B. Cleanup Standards: Refer to the standards promulgated under RCW 70.105D.030(2)(e) and include (1) hazardous substance concentrations (cleanup levels) that protect human health and the environment, (2) the location at the Facility where those cleanup levels must be attained (points of compliance), and (3) additional regulatory requirements that apply to a cleanup because of the type of action and/or the location of the Facility.

C. Contaminants of Concern: Refer to the specific contaminants of concern ("COCs") to be investigated and otherwise addressed under this Order, which are: PCE (tetrachloroethene, or perchloroethylene); TCE (trichloroethene); DCEs (dichloroethenes); Vinyl Chloride, 1,4-Dioxane, and manganese and iron where they are found at concentrations elevated above natural background levels; and those other substances identified as COCs in pursuing work associated with the attached Scope of Work (*please see Exhibit B*).

D. Parties: Refers to the State of Washington's Department of Ecology, and Capital.

E. Potentially Liable Person (PLP): Refers to Capital.

F. Release: Refers to any intentional or unintentional spilling, leaking, pouring, emitting, emptying, discharging, injecting, pumping, escaping, leaching, dumping, or disposing of dangerous waste or dangerous constituents into the environment. It also includes the abandonment or discarding of barrels, containers, and other receptacles containing dangerous waste or dangerous constituents and includes the definition of "release" in RCW 70.105D.020(20).

G. Remedial Action: Refers to the WAC 173-340-200 definition, including any action to identify, eliminate, or minimize threats posed by hazardous substances at the Site.

H. Remedial Investigation (RI): Refers to an investigation and characterization performed in accordance with the requirements of Chapter 173-340 WAC and the Scope of Work attached to this Order as Exhibit B, including the investigative work to be performed under Section VII below.

I. Site: The Site is referred to as Capital Industries, or Capital, Site and is generally located at 5801 Third Avenue South, Seattle, Washington. The Site is defined by the extent of

contamination caused by the release of hazardous substances at the Site. Based upon factors currently known to Ecology, the Site is more particularly described in the Site Diagram (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(4).

J. Source Area(s): Refers to the portion of the property owned and/or occupied by Capital from which hazardous substances have been released or threatened to be released. Source Area(s) may also be referred to more specifically as the "Capital Source Area."

## **V. FINDINGS OF FACT**

Ecology makes the following Findings of Fact, without any express or implied admissions of such facts by the PLP.

A. Capital is located at 5801 Third Avenue South, Seattle, Washington, referred to more specifically as the "Capital property." Capital performed soil, soil gas, and groundwater sampling on and in the vicinity of the Capital property, and detected hazardous substances, including COCs, exceeding state cleanup levels.

B. Concentrations of some COCs have been detected at levels above cleanup standards in soil and groundwater beneath some of the buildings on the Capital property. Concentrations of some COCs have also been detected at levels above cleanup standards in groundwater immediately south of some of the buildings on the Capital property, along South Fidalgo Street.

## **VI. ECOLOGY DETERMINATIONS**

A. Capital is a "person" within the meaning of RCW 70.105D.020(14).

B. Capital is an "owner and/or operator," as defined by RCW 70.105D.020(12) of properties at which hazardous substances were released into the environment.

C. Based on the Findings of Fact and the administrative record, Ecology has determined that releases of hazardous substances from the Capital Source Area present a threat to human health and the environment.

D. Based on credible evidence, Ecology issued a PLP status letter to Capital, dated December 12, 2006, pursuant to RCW 70.105D.040, -.020(16), and WAC 173-340-500. By

letter dated January 11, 2007, Capital submitted a signed PLP Waiver Form by which Capital acknowledged its status as a PLP for the Facility.

E. Pursuant to RCW 70.105D.030(l) and RCW 70.105D.050(1), Ecology may require a PLP to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances from lands the PLP owns or operates, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the Remedial Action required by this Order and set forth in the Scope of Work are in the public interest.

## **VII. WORK TO BE PERFORMED**

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the PLP take the following Remedial Action and that this action be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein. Each deliverable, once approved by Ecology, becomes an integral and enforceable part of this Order.

The Scope of Work sets out the deliverables, or documents, and requirements for the content of these deliverables, to complete the RI for the COCs at the Site. The Remedial Action Schedule, attached as Exhibit C and fully incorporated herein, sets out the schedule for performance and/or deliverables.

A. Capital shall prepare an RI Work Plan, RI Report, and other deliverables for the COCs at the Site according to the requirements of chapter 173-340 WAC and as described in the Scope of Work, attached as Exhibit B and fully incorporated herein.

B. The PLP shall notify Ecology's Project Coordinator in writing of any newly discovered release(s) on the Site or from the Capital property, including available credible evidence of releases from properties located within the Site, as defined in Section IV, owned or operated by entities other than the PLP currently a party to this Order, no later than ninety (90) days after discovery. The PLP shall investigate newly discovered releases on the Capital property as directed by Ecology. For those releases which include substances identified as COCs, or which otherwise have the potential to affect the nature and extent of contamination

being studied under this Order, written notification by the PLP to Ecology's Project Coordinator shall be completed no later than thirty (30) days after the discovery. If credible evidence is provided to Ecology regarding releases of hazardous substances to the Capital property from properties owned or operated by entities other than the PLP to this Order, Ecology will issue letters to such entities designating them as PLPs.

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

### **VIII. TERMS AND CONDITIONS OF ORDER**

#### **A. Public Notice**

RCW 70.105D.030(2)(a) and WAC 173-340-600(11)(c) require that, at a minimum, this Order be subject to public notice and comment. Public notice on the Order shall be for the time period required in WAC 173-340-600. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations that indicate to Ecology that the Order is inadequate or improper in any respect.

#### **B. Remedial Action Costs**

The PLP shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Ecology shall notify the PLP in writing prior to using technical staff outside of Ecology if Ecology intends the PLP to pay the costs incurred. The PLP shall pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on

the project. A general statement of work performed will also be provided upon request. Itemized statements shall be prepared quarterly. Ecology will send the itemized statement of costs to the PLP's project coordinator. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

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

In order to assure these payments get to the proper staff as soon as possible, the address for mailing via the post office is:

Cashiering Section  
P.O. Box 5128  
Lacey, WA 98509-5128

If Capital chooses to send a check by a messenger/overnight delivery service, the address to use is:

Cashiering Section  
300 Desmond Drive  
Lacey, WA 98503

In order to ensure that payment is properly credited, Capital shall should enclose the bottom portion of Ecology's invoice and indicate that the check is for cost recovery associated with the Site.

### **C. Implementation of Remedial Action**

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

Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

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

**D. Designated Project Coordinators**

The Project Coordinator for **Ecology** is:

Ed Jones, HWTR  
Department of Ecology, NWRO  
3190 160<sup>th</sup> Ave. SE  
Bellevue, WA 98008-5452

The Project Coordinator for **Capital** is:

Peter Jewett, L.G., L.E.G.  
Farallon Consulting  
320 3<sup>rd</sup> Ave. NE  
Issaquah, WA 98027

The Project Coordinators shall be responsible for overseeing the implementation of this Order. Ecology's Project Coordinator will be Ecology's designated representative for the purposes of this Order. To the maximum extent possible, communications between Ecology and the PLP, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the Project Coordinators, as appropriate. The Project Coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed under this Order.

Any party may change its respective Project Coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

**E. Performance**

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist licensed in the State of Washington or under the direct

supervision of an engineer registered in the State of Washington, except as otherwise provided for by Chapters 18.220 and 18.43 RCW.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer. The professional engineer must be registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrologic, or engineering work shall be under the seal of an appropriately licensed professional as required by Chapter 18.220 RCW or RCW 18.43.130.

The PLP shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Order, at least 7 calendar days in advance of their involvement at the Facility.

#### **F. Access**

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that the PLP either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the PLP's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the PLP. The PLP shall make all reasonable efforts to secure access rights for those properties not owned or controlled by the PLP where remedial activities or investigations will be performed pursuant to this Order. If Ecology cannot monitor the work to be performed without interrupting the business operations, Ecology or any Ecology authorized representative shall give reasonable notice (24 hours) before entering any property owned or operated by the PLP unless

an emergency prevents such notice. All Ecology staff, Ecology-authorized representatives and all other persons who access properties owned or controlled by the PLP pursuant to this Section shall comply with any applicable Health and Safety Plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of property access.

#### **G. Sampling, Data Submittal, and Availability**

With respect to the implementation of this Order, the PLP shall make the results of all sampling, laboratory reports, and/or test results generated by them or on their behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, the PLP shall allow Ecology and/or its authorized representatives to take split or duplicate samples of any samples collected by the PLP pursuant to implementation of this Order. The PLP shall notify Ecology seven (7) days in advance of any sample collection or work activity associated with the Site. Ecology shall, upon request, allow the PLP and/or the PLP's authorized representatives to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.F., Ecology shall notify the PLP prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

#### **H. Public Participation**

A Public Participation Plan is required as part of the scope of work for the RI for the Site under Exhibit B subsection 2(n). Once approved, the PLP shall comply with the tasks and

commitments set out in that Plan. Ecology shall maintain overall responsibility for public participation associated with meeting regulatory requirements related to the Work to be Performed. However, the PLP shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts of public notices and fact sheets at important stages of the work to be performed such as the submission of work plans, remedial investigation/feasibility study reports, draft cleanup action plans, and any interim action or interim measure engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings. Agreed-upon changes to the scope of work to be performed shall also be included in public participation.

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify the PLP prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments and where possible shall allow the PLP sufficient notice to allow comment or participation. For all press releases, fact sheets, meetings, and other outreach efforts by the PLP that do not receive prior Ecology approval, the PLP shall not in any way indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was sponsored or endorsed by Ecology.

3. When requested by Ecology, participate in public presentations on the progress of the Remedial Action associated with the Site. Participation may be through attendance at public meetings to assist in answering questions, or as a presenter.

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- (a) ECOSS  
8201 10<sup>th</sup> Avenue South  
Seattle, WA 98108
- (b) Department of Ecology, Northwest Regional Office  
3190 160<sup>th</sup> Ave. SE  
Bellevue, WA 98008-5452

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports; supplemental remedial planning documents; and all other similar documents relating to performance of the Remedial Action required by this Order shall be promptly placed in these repositories.

**I. Retention of Records**

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, the PLP shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors that perform work pursuant to this Order. Upon request of Ecology, the PLP shall make all records available to Ecology and allow access for review within a reasonable time.

**J. Resolution of Disputes**

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, including disputes regarding an itemized billing statement under Section VIII.B., the Parties shall utilize the dispute resolution procedure set forth below.

a. Upon receipt by the PLP of Ecology's project coordinator's written decision, notice of action or itemized billing statement, the PLP has fourteen (14) days within which to notify Ecology's project coordinator in writing (including via email) of the PLP's objection to the decision or itemized statement and seven (7) days thereafter to provide Ecology specific reasons for its objection.

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within twenty-one (21) days of Ecology's receipt of the PLP's written objection submitted pursuant to subparagraph (a) above, Ecology's project coordinator shall issue a written decision responding to the PLP's objection.

c. Within fourteen (14) days of receiving the written decision of Ecology's project coordinator, the PLP may request review of the decision.

d. This request shall be submitted in writing to the Northwest Region Hazardous Waste and Toxics Reduction Section Manager and shall include a written statement of the Parties' positions on the disputed matters.

e. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of the request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matters.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

**K. Extension of Schedule**

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, at least ten (10) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- (a) The deadline that is sought to be extended;
- (b) The length of the extension sought;
- (c) The reason(s) for the extension; and
- (d) Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on the PLP to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension.

Good cause may include, but may not be limited to:

- a. Circumstances beyond the reasonable control and despite the due diligence of the PLP, including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the PLP;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII.M. (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of the PLP.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the PLP written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved in writing by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.L. (Amendment of Order) when a schedule extension is granted.

4. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:

- a. Delays in the issuance of a necessary permit which was applied for in a timely manner;
- b. Other circumstances deemed exceptional or extraordinary by Ecology; or
- c. Endangerment as described in Section VIII.M. (Endangerment).

**L. Amendment of Order**

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.N. (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and the PLP. The PLP may initiate an amendment by submitting a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. Ecology may also initiate a request for an amendment by notifying the PLP of its desire for any such amendment. If the amendment to this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J. (Resolution of Disputes).

**M. Endangerment**

In the event Ecology determines that any activity being performed within or near the Site is creating or has the potential to create a danger to human health or the environment within or surrounding the Site area, Ecology may direct the PLP to cease such activities for such period of time as it deems necessary to abate the danger. The PLP shall immediately comply with such direction.

In the event the PLP determines that any activity being performed within or near the Site is creating or has the potential to create a danger to human health or the environment, the PLP may cease such activities. The PLP shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction the PLP shall provide Ecology with written

documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the PLP's cessation of activities, it may direct the PLP to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this Section, the PLP's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.K. (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

**N. Reservation of Rights**

This Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against the PLP to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the PLP regarding remedial actions required by this Order, provided the PLP complies with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology and the PLP also reserve all of their respective rights and defenses regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances.

**O. Transfer of Interest in Property**

No voluntary conveyance or relinquishment of title, easement, leasehold or other interest in any portion of the Site shall be consummated by the PLP without provision for continued

implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to the PLP's transfer of title to or grant of an easement for or lease of any portion of their properties, and during the effective period of this Order, the PLP shall provide a copy of this Order to any prospective purchaser, transferee, assignee, lease or other successor in said interest; and, at least thirty (30) days prior to any transfer, the PLP shall notify Ecology in writing of said transfer. Upon transfer of any interest, the PLP shall notify all transferees of the restrictions on the use of the property.

**P. Compliance with Applicable Laws**

1. All actions carried out by the PLP pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order, except street use permits for placement of certain monitoring devices, including wells and probes.

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

The PLP has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the Remedial Action under this Order. If the PLP determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for remedial actions under this Order, the PLP shall promptly notify Ecology. Likewise, if Ecology determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the Remedial Action under this Order, Ecology shall promptly notify the PLP. Ecology shall determine

whether Ecology or the PLP shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the PLP shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the Remedial Action. Ecology shall make the final determination on the additional substantive requirements that must be met by the PLP and on how the PLP must meet those requirements. Ecology shall inform the PLP in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The PLP shall not begin or continue the Remedial Action potentially subject to the additional requirements until Ecology makes its final determination.

3. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for the State to administer any federal law, the exemption shall not apply and the PLP shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

**Q. Indemnification**

The PLP agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property to the extent arising from or on account of negligent acts or omissions of the PLP, the PLP's officers, employees, agents, or contractors in entering into and implementing this Order. However, the PLP shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

### **IX. SATISFACTION OF THIS ORDER**

The provisions of this Order shall be deemed satisfied upon the PLP's receipt of written notification from Ecology that the PLP has completed the Remedial Action required by this Order, as amended by any modifications, and that the PLP has complied with all other provisions of this Order.

### **X. ENFORCEMENT**

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for the Remedial Action required under this Order.

C. In the event the PLP refuses, without sufficient cause, to comply with any term of this Order, the Attorney General may bring an action against the PLP for:


1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and
2. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board.

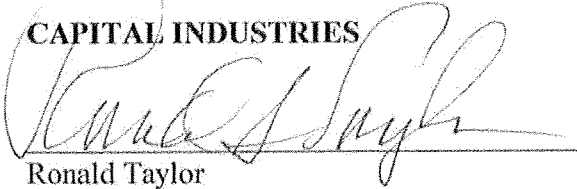
This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: January 24, 2008

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

  
Julie Sellick  
Section Manager  
Hazardous Waste and Toxics Reduction Program  
Northwest Regional Office  
(425) 649-7053

**CAPITAL INDUSTRIES**

  
Ronald Taylor  
President  
Capital Industries, Inc.  
PO Box 80983  
Seattle, WA 98108  
(206) 762-8585