

**STATE OF OREGON
DEPARTMENT OF ENVIRONMENTAL QUALITY**

In the Matter of:

DEQ NO. LQVC-NWR-23-01

PENISULA IRON WORKS
RESPONDENT

ORDER ON CONSENT
FOR REMOVAL ACTION

Pursuant to ORS 465.260(4) the Director of the Oregon Department of Environmental Quality (“DEQ”) issues this Order on Consent (Consent Order) to Peninsula Iron Works (“PIW” or “Respondent”). This Consent Order contains the following provisions:

<u>Contents</u>	<u>Page</u>
1. Purpose.....	2
2. Stipulations	2
3. Findings of Fact	3
4. Conclusions of Law and Determinations.....	4
5. Work to be Performed.....	5
A. Timely and Temporary Cover of Bare PCB Impacted Soil.....	5
B. PCB Impacted Soil Removal Action	5
C. Additional Measures	5
6. Public Participation.....	6
7. General Provisions	6
A. Project Managers	6
B. Supervising Contractor	7
C. DEQ Approvals.....	7
D. Access to Property	8
E. Records	9
F. Notice and Samples.....	10
G. Quality Assurance.....	10
H. Progress Reports	11
I. Other Applicable Laws	11
J. Reimbursement of DEQ Costs.....	12
K. Force Majeure	13
L. Dispute Resolution.....	13
M. Stipulated Penalties.....	14
N. Enforcement of Consent Order	16
O. Indemnification	16
P. Parties Bound.....	17

Q. Modification.....	17
R. Effective Date	17
8. Duration	17
9. Signatures.....	18

Exhibit A: PIW Property and Vicinity Map

Exhibit B: Scope of Work

1. Purpose

The mutual objective of DEQ and Respondent (collectively the “Parties”) is to protect public health, safety, and welfare and the environment by performing a Removal Action in a manner that complies with the applicable provisions of ORS 465.200 through 465.420 and regulations promulgated thereto.

2. Stipulations

Respondent consents and agrees:

- A. To issuance of this Consent Order;
- B. To perform and comply with all provisions of this Consent Order;
- C. In any proceeding brought by DEQ to enforce this Consent Order, to not challenge DEQ's jurisdiction to issue and enforce this Consent Order;
- D. To waive any right Respondent might have, before commencement of action by DEQ to enforce this Consent Order, to seek judicial review or review by the Environmental Quality Commission of this Consent Order;
- E. To not litigate, in any proceeding brought by DEQ to enforce this Consent Order or to assess penalties for noncompliance with this Consent Order, any issue other than Respondent’s compliance with this Consent Order;
- F. To not assert, in any proceeding brought by DEQ to enforce this Consent Order or to assess penalties for noncompliance with this Consent Order, that performance of any interim or removal measures or phase of work by Respondent discharges Respondent’s duty to fully perform all remaining provisions of this Consent Order; and
- G. To waive any right Respondent might have under ORS 465.260(7) to seek reimbursement from the Hazardous Substances Remedial Action Fund of costs incurred under this Consent Order.
- H. For purposes of this Consent Order, "day" means calendar day unless otherwise specified.

3. Findings of Fact

DEQ makes the following findings without admission of any such facts by Respondent:

- A. PIW is an Oregon corporation which owns and operates an industrial machine and fabrication shop by the same name at 6618 N Alta Avenue, Portland. The machine and fabrication shop are located adjacent to Cathedral Park, bordered by N Bradford Street / railroad right-of-way (southwest), N Alta Ave (northwest), N Crawford St (northeast), and a Cathedral Park parking lot (southeast).
- B. The general location of the PIW property is shown on Exhibit A to this Consent Order.
- C. The PIW industrial machine and fabrication shop has been active since the early 1900s and has included a machine shop, foundry, pattern shop, pattern loft, chipping room and air compressor. Sanborn maps from the 1920s and 1950s show that the PIW industrial machine and fabrication shop was powered by electricity, gas, coke, and coal and had wooden floors. PIW built cargo ship parts during World War I, cast hand grenades during World War II, and manufactured products for the timber industry such as saws, veneer hogs, belt sanders and scissor lifts. The machine shop remains active today, and the southwest and southern portion of the Site include an indoor machine pit, and outdoor covered metal shavings container, and new and waste oil storage.
- D. Polychlorinated biphenyls (PCBs) are often associated with historical operations at machine and fabrication shops.
- E. PCBs are present at high concentrations in surface and subsurface soil on and adjacent to the PIW property. The PCB impacted soil presents a complete exposure pathway to PIW employees who work near the metal shavings and waste storage containers; PIW employees and community members who walk along or cross the railroad tracks; and community members who use Cathedral Park. Bare soil contaminated with PCBs on and adjacent to the PIW property may be migrating offsite through stormwater transport.
- F. In March 2023, PIW provided DEQ a draft report documenting results of a focused site investigation conducted between November 2022 to January 2023. This sampling identified high concentrations of PCBs in surface and subsurface soils. PCBs were detected in 73 of the 142 soil samples. The highest concentrations, up to 130 mg/kg, were found under the asphalt apron abutting the PIW building to the southwest and adjacent to the metal shavings container and waste storage.

G. Investigations performed by other parties have documented the presence of high concentrations of PCBs in soil adjacent to the PIW property. These investigations include the following:

- The City of Portland performed several rounds of sampling associated with source control investigations adjacent to the Site in 2011. PCBs were detected at high concentrations in multiple soil samples, including two composite surface samples within 10 feet of the metal shavings container used by PIW.
- DEQ in coordination with the U.S. Environmental Protection Agency and the City of Portland collected surface samples using incremental sampling methodology in Cathedral Park in May 2022. The highest PCB concentrations were detected immediately downslope and southwest of the PIW property.
- Union Pacific Railroad conducted a surface soil investigation along the railroad right-of-way adjacent to the PIW property in October 2022. The highest PCB concentrations were located adjacent to the PIW property (124 mg/kg in a discrete sample and 12 mg/kg in an incremental sampling decision unit).

H. A soil excavation and/or capping is urgently needed to reduce exposure of site workers and community members to high concentrations of PCB impacted soils on and adjacent to the PIW property, and to minimize the offsite transport of PCBs in stormwater. Additional soil sampling is urgently needed in Cathedral Park to determine if additional areas of the park are contaminated with high concentrations of PCBs.

I. In February 2022, PIW entered into a voluntary cleanup letter agreement with DEQ to investigate hazardous substances located on and adjacent to the PIW property and to pay DEQ's review and oversight costs in accordance with ORS 465.255.

4. Conclusions of Law and Determinations

Based on the above findings of fact and the administrative record, DEQ determines, without admission of any such determinations by Respondent, that:

- A. PIW is a "person" within the meaning of ORS 465.200(21).
- B. The chemicals described in Section 3 are "hazardous substances" within the meaning of ORS 465.200(16).

- C. The presence of hazardous substances on and adjacent to the PIW property constitutes a “release” or “threat of release” into the environment within the meaning of ORS 465.200(22).
- D. The PIW property and adjacent properties described in Section 3 constitute a "facility" within the meaning of ORS 465.200(13).
- E. The activities required by this Consent Order are necessary to protect public health, safety, and welfare and the environment.

Based upon the above Stipulations, Findings of Fact, Conclusions of Law and Determinations, DEQ ORDERS:

5. Work to be Performed

A. Timely and Temporary Cover of Bare PCB Impacted Soil

Respondent shall place and maintain a temporary cover on bare surface soils impacted by PCBs on and adjacent to the PIW property to protect public health, safety, and welfare and the environment. The PCB impacted soils will be further addressed in Subsection B and a DEQ approved work plan. This work is on-going and began under the voluntary cleanup letter agreement.

B. PCB Impacted Soil Removal Action

Respondent shall excavate and/or cap PCB impacted soil on and adjacent to the PIW property in accordance with OAR Chapter 340 Division 122, the terms and schedules set forth in the Scope of Work (SOW) contained in Exhibit B to this Consent Order, and the terms and schedules set forth in any DEQ-approved work plan. Once approved by DEQ, a work plan is deemed to be incorporated into and made a fully enforceable part of this Consent Order.

C. Additional Measures

- (1) Respondent may elect at any time during the term of this Consent Order to undertake measures, beyond those required under this Consent Order and the SOW, as necessary to address the release or threatened release of hazardous substances at the facility. Such additional measures (including but not limited to engineering or institutional controls and other removal or remedial measures) are subject to prior approval by DEQ. DEQ’s approval will be granted if DEQ determines that the additional measures will not threaten human health or the environment and will

comply with applicable laws.

- (2) DEQ may determine that, in addition to work specified in the SOW or an approved work plan, additional work is necessary to satisfy the SOW and OAR Chapter 340 Division 122, or is necessary to address unanticipated threats to human health or the environment. DEQ may require that such additional work be incorporated into the applicable work plan by modification and/or be performed in accordance with a DEQ-specified schedule. Respondent must modify the work plan and/or implement the additional work in accordance with DEQ's directions and schedule, or invoke dispute resolution under Subsection 7.L. within 14 days of receipt of DEQ's directions.

6. Public Participation

Upon issuance of this Consent Order, DEQ will provide public notice of this Consent Order through issuance of a press release describing the measures required under this Consent Order. Copies of the Consent Order will be made available to the public. DEQ will provide Respondent a draft of such press release and consider any comments by Respondent on the draft press release, before publication.

7. General Provisions

A. Project Managers

- (1) To the extent possible, all reports, notices, and other communications required under or relating to this Consent Order must be directed to:

<u>DEQ Project Manager:</u>	<u>Respondent Project Manager</u>
Franziska Landes	Name: Lynn Green
Department of Environmental Quality	Organization: EVREN Northwest, Inc
Northwest Region	
700 NE Multnomah St., Suite 600	Address: PO Box 14488
Portland, OR 97232	Portland, OR 97293
Phone: 503-887-7059	Phone: 503-849-5895
Email: Franziska.Landes@deq.oregon.gov	E-mail: lynng@evren-nw.com

- (2) The Project Managers or their respective designees must be available and have the authority to make day-to-day decisions necessary to implement the work plan. The Project Managers also may modify, by mutual agreement in writing, the SOW and work plans as necessary to complete the PCB impacted soil excavation in satisfaction of OAR Chapter 340 Division 122 or as necessary to address

unanticipated threats to human health or the environment.

B. Supervising Contractor

- (1) All aspects of the work to be performed by Respondent pursuant to this Consent Order must be performed under the direction and supervision of a qualified employee or contractor having experience in hazardous substance investigation or remediation and knowledge of applicable state and federal laws, regulations, and guidance.
- (2) No later than 14 days after the Effective Date of this Consent Order, Respondent will notify DEQ in writing of the name, title, and qualifications of any proposed supervising contractor. DEQ may for good cause disapprove the proposed contractor. In the event of such disapproval, DEQ will notify Respondent in writing of the reasons for its disapproval within 14 days of receipt of the initial notice from Respondent. Respondent, within 14 days of receiving DEQ's notice of disapproval, will notify DEQ of the name, title, and qualifications of an alternative supervising contractor, subject to DEQ's right to disapprove under the terms and schedule specified above. If DEQ subsequently disapproves the alternative supervising contractor, DEQ may terminate this Consent Order, and reserves its authority to perform the SOW and seek reimbursement of costs from Respondent.
- (3) If, during the course of work required under this Consent Order, Respondent proposes to change its supervising contractor, Respondent will notify DEQ in accordance with the provisions of the preceding paragraph. DEQ may disapprove such contractor, under the terms and schedule specified in this Subsection.

C. DEQ Approvals

- (1) Where DEQ review and approval is required for any plan or activity under this Consent Order, Respondent may not proceed to implement the plan or activity until DEQ approval is received. Any DEQ delay in granting or denying approval correspondingly extends the time for completion by Respondent. Prior approval is not required in emergencies; provided, Respondent will notify DEQ immediately after the emergency and evaluate the impact of its actions.
- (2) After review of any plan, report, or other item required to be submitted for DEQ approval under this Consent Order, DEQ will: (a) approve the submission in whole

- or in part; or (b) disapprove the submission in whole or in part and notify Respondent of its deficiencies and/or request modifications to cure the deficiencies.
- (3) DEQ approvals, rejections, modifications, or identification of deficiencies will be given as soon as practicable in writing and will state DEQ's reasons with reasonable specificity.
 - (4) In the event of DEQ disapproval or request for modification of a submission, Respondent will, within 30 days of receipt of the DEQ notice or such longer time as may be specified in the notice, correct the deficiencies and resubmit the revised report or other item for approval.
 - (5) In the event of two deficient submittals of the same deliverable that are deficient for the same reasons due to Respondent's failure to cure the original deficiency, DEQ may modify the submission to cure the deficiency.
 - (6) In the event of approval or modification of a submission by DEQ, Respondent will implement the action(s) required by the plan, report, or other item, as so approved or modified, or invoke dispute resolution under Subsection 7.L.

D. Access to Property

- (1) Respondent will allow DEQ to enter all portions of the Site owned by or under the control of Respondent at all reasonable times for the purpose of overseeing Respondent's performance under this Consent Order, including but not limited to inspecting records relating to work under this Consent Order, observing Respondent's progress in implementing this Consent Order, conducting such tests and taking such samples as DEQ deems necessary, verifying data submitted to DEQ by Respondent, conducting periodic review, and using camera, sound recording, or other recording equipment. DEQ will make available to Respondent, upon Respondent's request, any photographs or recorded or videotaped material taken.
- (2) Respondent will also seek to obtain access to property not owned or controlled by Respondent as necessary to perform the work required in this Consent Order, including access by DEQ for purposes described in Paragraph 7.D.(1). DEQ may use its statutory authority to obtain access to property on behalf of Respondent if DEQ determines that access is necessary, and that Respondent has exhausted all good faith efforts to obtain access.

E. Records

- (1) In addition to those reports and documents specifically required under this Consent Order, Respondent will provide to DEQ, within 10 days of DEQ's written request, copies of QA/QC memoranda and audits, raw data, final plans, task memoranda, field notes (not made by or at the direction of Respondent's attorney), and laboratory analytical reports relating to the work to be performed under this Consent Order.
- (2) Respondent will preserve all records and documents in possession or control of Respondent or its employees, agents, or contractors that relate in any way to activities under this Consent Order for at least five years after termination under Section 8 of this Consent Order. Upon DEQ's request, Respondent will provide to DEQ, or make available for copying by DEQ, copies of non-privileged records. For a period of 10 years after termination, Respondent will provide DEQ 60 days notice before destruction or other disposal of such records or documents. Ten years after termination, Respondent has no further obligation to preserve documents or records.
- (3) Subject to Paragraph 7.E.(4), Respondent may assert a claim of confidentiality under the Oregon Public Records Law regarding any documents or records submitted to or copied by DEQ pursuant to this Consent Order. DEQ will treat documents and records for which a claim of confidentiality has been made in accordance with ORS 192.410 through 192.505. If Respondent does not make a claim of confidentiality at the time the documents or records are submitted to or copied by DEQ, the documents or records may be made available to the public without notice to Respondent.
- (4) Respondent will identify to DEQ (by addressor-addressee, date, general subject matter, and distribution) any document, record, or item withheld from DEQ on the basis of attorney-client or attorney work-product privilege, except to the extent that such identifying information is itself subject to a privilege. Attorney-client and work-product privileges may not be asserted with respect to any records required to be submitted under Paragraph 7.E.(1). DEQ reserves its rights under law to obtain documents DEQ asserts are improperly withheld by Respondent.

F. Notice and Samples

- (1) Respondent will make every reasonable effort to notify DEQ of any excavation, drilling, sampling, or other fieldwork to be conducted under this Consent Order at least five working days before such activity, but in no event less than 24 hours before such activity. Upon DEQ's verbal request, Respondent will make every reasonable effort to provide a split or duplicate sample to DEQ or allow DEQ to take a split or duplicate of any sample taken by Respondent while performing work under this Consent Order. DEQ will provide Respondent with copies of all analytical data from such samples as soon as practicable.
- (2) If DEQ conducts any sampling or analysis in connection with this Consent Order, DEQ will, except in an emergency, make every reasonable effort to notify Respondent of any excavation, drilling, sampling, or other fieldwork, at least 72 hours before such activity. Upon Respondent's verbal request, DEQ will make every reasonable effort to provide a split or duplicate sample to Respondent or allow Respondent to take a split or duplicate of any sample taken by DEQ, and will provide Respondent with copies of all analytical data for such samples. Respondent will provide DEQ with copies of all analytical data from such samples as soon as practicable.

G. Quality Assurance

- (1) Respondent will conduct all sampling, sample transport, and sample analysis in accordance with the Quality Assurance/ Quality Control ("QA/QC") provisions approved by DEQ as part of the work plan. All plans prepared and work conducted as part of this Consent Order must be consistent with DEQ's *Quality Assurance Policy for the Environmental Cleanup Programs* (DEQ10-LQ-0063-QAG). Respondent will make every reasonable effort to ensure that each laboratory used by Respondent for analysis performs such analyses in accordance with such provisions.
- (2) If DEQ conducts sampling or analysis in connection with this Consent Order, DEQ will conduct sampling, sample transport, and sample analysis in accordance with the QA/QC provisions of the approved work plan. Upon written request, DEQ will

provide Respondent with copies of DEQ's records regarding such sampling, transport, and analysis.

H. Progress Reports

During each quarter of this Consent Order, Respondent will deliver to DEQ, on or before the tenth day of April, July, October, & January, a progress report containing:

- (1) Actions taken by Respondent under this Consent Order during the previous month;
- (2) Actions scheduled to be taken by Respondent in the next two months;
- (3) A summary of sampling, test results, and any other data generated or received by Respondent during the previous month; and
- (4) A description of any problems experienced during the previous month and actions taken to resolve them.

DEQ may approve less frequent reporting by Respondent, if warranted. Progress reports may be submitted in electronic form.

I. Other Applicable Laws

- (1) Subject to ORS 465.315(3), all actions under this Consent Order must be performed in accordance with applicable federal, state, and local laws and regulations.
- (2) All activities under this Consent Order must be performed in accordance with any applicable federal, state, and local laws related to archeological objects and sites and their protection, including requirements for consulting with the State Historic Preservation Office to determine whether any information exists to indicate that the site is within an area likely to contain cultural resources. If archeological objects or human remains are discovered during any investigation, removal, or remedial activity at the Property, Respondent will, at a minimum: (a) stop work immediately in the vicinity of the find; (b) provide any notifications required by ORS 97.745 and ORS 358.920; (c) notify the DEQ Project Manager within 24 hours of the discovery; and (d) use best efforts to ensure that Respondent and its employees, contractors, counsel, and consultants keep the discovery confidential, including but not limited to refraining from contacting the media or any third party or otherwise sharing information regarding the discovery with any member of the public. An Inadvertent Discovery Plan, provided by the State Historic Preservation Office, outlines key steps and contact information in the event of a discovery. Any project

delay caused by the discovery of archeological object or human remains is a Force Majeure under Subsection 7.K.

J. Reimbursement of DEQ Costs

- (1) DEQ will continue to submit to Respondent a monthly invoice of costs incurred by DEQ including costs in connection with development and approval of this Consent Order and any activities related to the oversight and periodic review of Respondent's implementation of this Consent Order. Each invoice must include a summary of costs billed to date.
- (2) DEQ oversight costs payable by Respondent includes direct and indirect costs. Direct costs include site-specific expenses, outreach and engagement with impacted communities, DEQ contractor costs, and DEQ legal costs actually and reasonably incurred by DEQ under ORS 465.200 et seq. DEQ's direct cost summary must include a Land Quality Division ("LQD") direct labor summary showing the persons charging time, the number of hours, and the nature of work performed. Indirect costs include those general management and support costs of DEQ and of the LQD allocable to DEQ oversight under this Consent Order and not charged as direct, site-specific costs. Indirect charges are based on actual costs and applied as a percentage of direct personal services costs. DEQ will maintain work logs, payroll records, receipts, and other documents to document work performed and expenses incurred under this Consent Order and, upon request, will provide copies of such records to Respondent.
- (3) Within 30 days of receipt of DEQ's invoice, Respondent will pay the amount of costs billed by check payable to the "State of Oregon, Hazardous Substance Remedial Action Fund," or invoke dispute resolution under Subsection 7.L. After 30 days, any unpaid amounts that are not the subject of pending dispute resolution, or that have been determined owing after dispute resolution, become a liquidated debt collectible under ORS 293.250 or other applicable law.
- (4) Respondent will pay simple interest of 9% per annum on the unpaid balance of any DEQ oversight costs, which interest begins to accrue at the end of the 30-day payment period, unless dispute resolution has been invoked. Interest on any amount disputed under Subsection 7.L. begins to accrue 30 days from final resolution of

any such dispute.

K. Force Majeure

- (1) If any event occurs that is beyond Respondent's reasonable control and that causes or might cause a delay or deviation in performance of the requirements of this Consent Order despite Respondent's reasonable efforts ("Force Majeure"), Respondent will promptly, upon learning of the event, notify DEQ's Project Manager verbally of the cause of the delay or deviation, its anticipated duration, the measures that have been or will be taken to prevent or minimize the delay or deviation, and the timetable by which Respondent proposes to carry out such measures. Respondent will confirm in writing this information within five working days of the verbal notification. Failure to comply with these notice requirements precludes Respondent from asserting Force Majeure for the event and for any additional delay caused by the event.
- (2) If Respondent demonstrates to DEQ's satisfaction that the delay or deviation has been or will be caused by Force Majeure, DEQ will extend times for performance of related activities under this Consent Order as appropriate. Circumstances or events constituting Force Majeure might include but are not limited to acts of God, unforeseen strikes or work stoppages, unanticipated site conditions, fire, explosion, riot, sabotage, war, and delays in receiving a governmental approval or permit. Normal inclement weather, increased cost of performance, or changed business or economic circumstances may not be considered Force Majeure.

L. Dispute Resolution

- (1) Except as provided in Paragraph 7.L.(4), if Respondent disagrees with DEQ regarding any matter during implementation of this Consent Order, Respondent will promptly notify DEQ in writing of its objection. DEQ and Respondent then will make a good-faith effort to resolve the disagreement within 14 days of Respondent's written objection. At the end of the 14-day period, DEQ will provide Respondent with a written statement of its position from DEQ's Northwest Region Cleanup Manager. If Respondent still disagrees with DEQ's position, then Respondent, within 14 days of receipt of DEQ's position from the Cleanup Manager, will provide Respondent's position and rationale in writing to DEQ's

Northwest Region Administrator. The Region Administrator may discuss the disputed matter with Respondent and, in any event, will provide Respondent with DEQ's final position in writing as soon as practicable after receipt of Respondent's written position.

- (2) If Respondent refuses or fails to follow DEQ's final position pursuant to Paragraph 7.L.(1), and DEQ seeks to enforce its final position, the Parties, subject to Section 2, are entitled to such rights, remedies, and defenses as are provided by applicable law.
- (3) During the pendency of any dispute resolution under this subsection, the time for completion of work or obligations affected by such dispute is extended for a period of time not to exceed the actual time taken to resolve the dispute. Elements of work or obligations not affected by the dispute must be completed in accordance with the applicable schedule.
- (4) Dispute resolution under this subsection does not apply to: (a) DEQ approval or modification of the PCB impacted soil excavation and/or plan required under the SOW (which approval or modification is nonetheless subject to Subsection 7.C.); or (b) DEQ assessment of stipulated penalties under Subsection 7.M. (after dispute resolution has been exhausted, before assessment of a penalty, regarding the alleged violation).

M. Stipulated Penalties

- (1) Subject to Subsections 7.C., 7.K., and 7.L., upon any violation by Respondent of any provision of this Consent Order, and upon Respondent's receipt from DEQ of written notice of violation, Respondent will pay the stipulated penalties set forth in the following schedule:
 - (a) \$5,000 for the first week of violation or delay and \$2,500 per day of violation or delay thereafter, for:
 - (i) failure to allow DEQ access to the Site under Subsection 7.D.
 - (ii) failure to provide notice and samples under Subsection 7.F.
 - (iii) failure to provide records under Subsection 7.E.
 - (b) \$ 2,500 for the first week of violation or delay and \$ 1,000 per day of

violation or delay thereafter, for:

- (i) failure to submit a final work plan in accordance with the SOW's schedule and terms;
 - (ii) failure to perform work in accordance with an approved work plan's schedule and terms;
 - (iii) failure to perform additional work required by DEQ under Subsection 5.C.; or
 - (iv) failure to submit a final report in accordance with an approved work plan's schedule and terms.
- (c) \$500 for the first week of violation or delay and \$500 per day of violation or delay thereafter, for:
- (i) failure to submit a draft work plan in accordance with the SOW's schedule and terms;
 - (ii) failure to submit draft reports in accordance with the SOW's schedule and terms or progress reports in accordance with Subsection 7.H or
 - (iii) any other violation of the Consent Order, SOW, or an approved work plan.
- (2) Violations arising out of the same facts or circumstances or based on the same deadline are considered as one violation per day.
- (3) Stipulated penalties do not begin to accrue under this subsection until Respondent receives a notice of violation from DEQ describing the violation and what is necessary to correct it. If the violation was not intentional, is capable of cure, and Respondent corrects the violation within 30 days of receipt of such notice of violation or such other period as may be specified in the notice, DEQ in its sole discretion may waive in writing the stipulated penalties. This opportunity to cure does not apply to violations subject to Subparagraph 7.M.(1)(a).
- (4) Respondent will, within 30 days of receipt of the notice, pay the amount of such stipulated penalty not waived by DEQ in writing as provided in Paragraph 7.M.(3) by check made payable to the "State of Oregon, Hazardous Substance Remedial Action Fund," or request a contested case hearing in accordance with Paragraph 7.M.(5). Respondent will pay simple interest of 9% per annum on the unpaid

balance of any stipulated penalties, which interest begins to accrue at the end of the 30-day payment period. Any unpaid amounts that are not the subject of a pending contested case, or that have been determined owing after a contested case, are a liquidated debt collectible under ORS 293.250 and other applicable law.

- (5) Respondent may request a contested case hearing regarding the penalty assessment in accordance with OAR Chapter 340, Division 11. The scope of any such hearing must be consistent with the stipulations set forth in Section 2, be limited to the occurrence or non-occurrence of the alleged violation, and not review the amount of penalty assessed. Further penalties regarding the alleged violation subject to the penalty assessment do not accrue from the date DEQ receives a request for a contested case, through disposition of that case.
- (6) If DEQ assesses stipulated penalties pursuant to this subsection for any failure of Respondent to comply with this Consent Order, DEQ may not seek civil penalties from Respondent for the same violation under ORS 465.900 or other applicable law.

N. Enforcement of Consent Order

- (1) In lieu of stipulated penalties under Subsection 7.M., DEQ may assess civil penalties under ORS 465.900 for Respondent's failure to comply with this Consent Order. Penalties may not accrue pending any contested case regarding the alleged violation. In addition to penalties, DEQ may seek any other available remedy for failure by Respondent to comply with any requirement of this Consent Order, including but not limited to termination of this Consent Order or court enforcement of this Consent Order.
- (2) Subject to Section 2, Respondent does not admit any liability, violation of law, or factual or legal findings, conclusions, or determinations made by DEQ under this Consent Order.
- (3) Subject to Subsection 2.G., nothing in this Consent Order prevents DEQ, the State of Oregon, or Respondent from exercising any rights each might have against any person not a party to this Consent Order.

O. Indemnification

- (1) Respondent will indemnify and hold harmless the State of Oregon and its

commissions, agencies, officers, employees, contractors, and agents from and against any and all claims arising from acts or omissions related to this Consent Order of Respondent or its officers, employees, contractors, agents, receivers, trustees, or assigns. DEQ may not be considered a party to any contract made by Respondent or its agents in carrying out activities under this Consent Order.

- (2) To the extent permitted by Article XI, Section 7, of the Oregon Constitution and by the Oregon Tort Claims Act, the State of Oregon will indemnify and hold harmless Respondent and its officers, employees, contractors, and agents from and against any and all claims arising from acts or omissions related to this Consent Order of the State of Oregon or its commissions, agencies, officers, employees, contractors, or agents (except for acts approving or omissions constituting approval of any activity of Respondent under this Consent Order). Respondent may not be considered a party to any contract made by DEQ or its agents in carrying out activities under this Consent Order.

P. Parties Bound

This Consent Order is binding on the Parties and their respective successors, agents, and assigns. The undersigned representative of each Party certifies that they are fully authorized to execute and bind such party to this Consent Order. No change in ownership, corporate, or partnership status in any way alters Respondent's obligations under this Consent Order, unless otherwise approved in writing by DEQ. Respondent will notify and provide a copy of this Consent Order to any prospective successor, purchaser, lessee, assignee, or mortgagee of the PIW property during the term of this Consent Order.

Q. Modification

DEQ and Respondent may modify this Consent Order by mutual written agreement.

R. Effective Date

The effective date of this Consent Order is the date of signature by the DEQ's Northwest Region Cleanup Program Manager.

8. Duration

This Consent Order is deemed satisfied upon completion of work required under this Consent Order and payment by Respondent of any outstanding oversight costs and penalties. DEQ will determine whether work under this Consent Order is satisfactorily completed and the Consent

Order terminated, by letter issued within 60 days of receipt of the last deliverable required from Respondent under this Consent Order, or as soon thereafter as reasonably practicable.

9. Signatures

STIPULATED, AGREED, and APPROVED FOR ISSUANCE:

Peninsula Iron Works
Respondent

By: _____ Date: _____

Name: _____

Title: _____

STIPULATED, AGREED, and SO ORDERED:

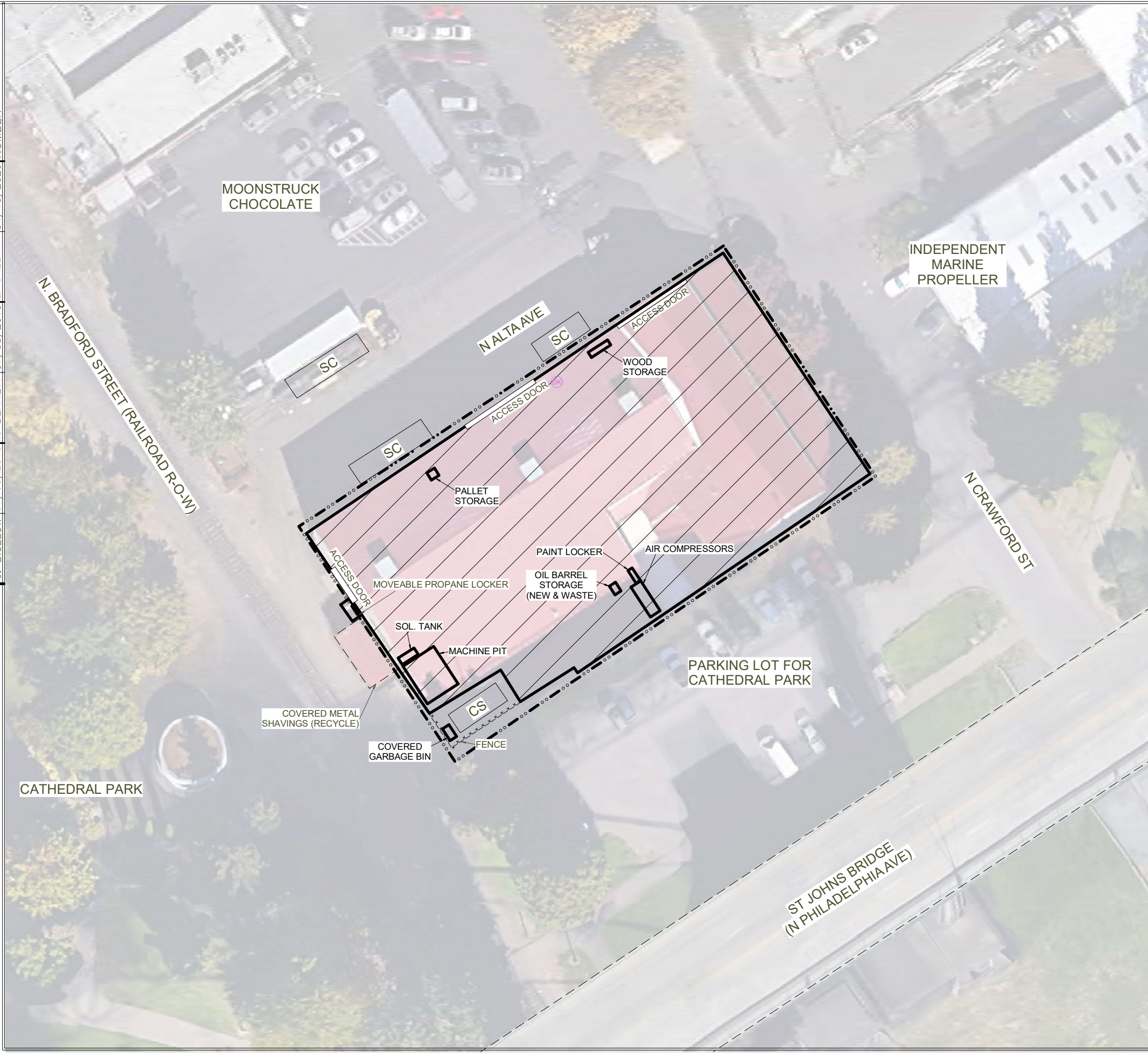
State of Oregon
Department of Environmental Quality

By: _____ Date: _____

Kevin Parrett

Cleanup Program Manager, Northwest Region

DRAWING NUMBER 351-12023(v01)
 APPROVED BY L. GREEN 04/10/2020
 CHECKED BY T. BENNETT 07/08/2019
 DRAWN BY J. BIGELOW 07/08/2019



LEGEND:

- Peninsula Iron Works Property
- Peninsula Iron Works Building

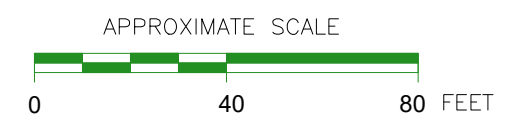
Exhibit A:

**Peninsula Iron Works (PIW)
Property and Vicinity Map**

Note: Figure legend, number and name edited by DEQ. Original Figure 2 from the March 28, 2023 Focused Surface Soil Investigation report prepared by Evren Northwest.

NOTES:

1. BASE MAP DEVELOPED FROM AN AERIAL PHOTOGRAPH MAP DATED 2018 AND ENW FIELD NOTES.
2. ALL BUILDING, STREET, AND FEATURE LOCATIONS ARE APPROXIMATE.
3. SYMBOLS REPRESENT LOCATION AND DO NOT ALWAYS REPRESENT EXACT SHAPE, SIZE, OR ORIENTATION.



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PENISULA IRON WORKS - BUILDING 2
 6618 N ALTA AVENUE
 PORTLAND, OREGON

EXHIBIT B

**PENINSULA IRON WORKS
REMOVAL ACTION
SCOPE OF WORK**

I. SCHEDULE

Peninsula Iron Works (PIW), hereafter Respondent, shall submit for DEQ review and approval a PCB Impacted Soil Excavation and/or Capping Work Plan and Report which addresses all elements of this Scope of Work (SOW). Elements of the SOW may be addressed by alternative means or by using existing data or information to the extent that the data are applicable, meet the objectives of the PCB Impacted Soil Excavation and/or Capping and be of acceptable quality and quantity.

All work completed under this Consent Order shall proceed in accordance with the following schedule:

SUBMITTALS	SCHEDULE (days are calendar days)
Timely and Temporary Cover of PCB Impacted Bare Soil	Within 15 days of issuance of this Consent Order
Draft PCB Impacted Soil Excavation and/or Capping Work Plan(s) to DEQ	To DEQ within 30 days of issuance of this Consent Order.
DEQ reviews Draft PCB Impacted Soil Excavation and/or Capping Work Plan(s) and provides comments	To Respondent within 15 days of receipt of Draft PCB Impacted Soil Excavation and/or Capping Work Plan.
Final PCB Impacted Soil Excavation and/or Capping Work Plan(s) to DEQ	To DEQ within 15 days of receipt of DEQ's comments.
Initiation of PCB Impacted Soil Excavation and/or Capping	To be specified in Project Management section of Work Plan.
PCB Impacted Soil Excavation and/or Capping Sampling Report(s)	To DEQ within 45 days of receipt of analytical reports.

Respondent, as necessary to reflect or incorporate newly discovered information and/or environmental conditions, may amend all work plans. Additional work plans and work plan amendments are subject to DEQ review and approval and will be processed according to schedules negotiated between the parties at the time of each phase change or task addition. Respondent shall initiate and complete work according to the schedule specified in the applicable approved work plan or amendment.

II. OBJECTIVES

Work performed under this Consent Order shall complement and incorporate existing site information with the following overall objectives:

1. Place a timely and temporary cover of PCB impacted soil to prevent direct contact with highly contaminated surface soil.
2. Perform a timely soil excavation and/or capping of PCB impacted soil to protect public health, safety and welfare, and the environment where highly contaminated surface soil is accessible to public.

III. TIMELY AND TEMPORARY COVER OF PCB IMPACTED SOIL

Objective: A temporary cover of PCB impacted soil is urgently needed to reduce exposure of site workers and community members to high concentrations of PCB impacted soils on and adjacent to the PIW property, and to minimize the offsite transport of PCBs in stormwater. This work is on-going and began under the voluntary cleanup letter agreement.

Scope: Respondent shall place a temporary cover on bare surface soils impacted by PCBs on and adjacent to the PIW property to protect public health, safety, and welfare and the environment. The covered PCB impacted soils will be further addressed in Section IV.

Procedures: Respondent shall place and maintain a temporary cover on bare surface soils which shall include, but not be limited to, the following:

1. A temporary cover on surface soils impacted by PCBs on and adjacent to the PIW property, including, but not limited to area ISM-03, ISM-03 plus, ISM-04, and ISM-04 plus, on Attachment A, within 15 days of the issuance of this Consent Order.
2. The cover should consist of a material intended to prevent direct contact with surface soil and prevent soil erosion or dust formation, and be able to withstand equipment (e.g. fork lift) traffic, similar to a construction fabric.
3. Respondent shall inform DEQ the time and date intended for performing the work, no less than three business days prior to work being performed.
4. Respondent shall provide DEQ with photos of the temporary cover, a map with the extent of the cover, and specifications of the material placed, within 15 days of placing the cover.
5. Respondent shall maintain the temporary cover until the surface soils impacted by PCBs are more permanently addressed in Section IV.

IV. PCB IMPACTED SOIL EXCAVATION AND/OR CAPPING WORK PLAN

Objective: Soil excavation and/or capping is urgently needed to reduce exposure of site workers and community members to high concentrations of PCB impacted soils on and adjacent to the PIW property, and to minimize the offsite transport of PCBs in stormwater.

Scope: The PCB Impacted Soil Excavation and/or Capping Work Plan shall detail actions proposed to mitigate immediate threats to human health and safety or the environment and prevent or reduce further contaminant migration.

Procedures: A work plan(s) shall be submitted which shall include, but not be limited to, the following:

6. A description of the proposed PCB impacted soil excavation and/or capping, which shall include addressing hot spot concentrations and locations shown in Attachment A;
7. Access agreements and permitting requirements, including TSCA compliance with PCB cleanup and disposal;
8. Material management and disposal; and
9. Implementation and reporting schedule.

V. REPORTS

A. QUARTERLY REPORTS

A quarterly report shall be submitted to DEQ, electronically, by the 10th day of the month (April, July, October, January) following the reporting period. The quarterly reports shall summarize activities performed, data results collected or received, and problems encountered or resolved during the past quarter, and activities planned for the upcoming two quarters.

B. PCB IMPACTED SOIL EXCAVATION AND/OR CAPPING REPORT

The PCB Impacted Soil Excavation and/or Capping Report shall address the items listed below. These reports may be combined into one report or kept separate.

1. **Executive Summary.**
2. **Introduction.**
3. **Site Background.** A discussion and supporting maps of PIW operations, site description, site setting, and current and reasonably likely future land and water uses.
4. **Previous Study Area Investigation.** A discussion of the previous sampling procedures and results.
5. **Timely and Temporary Cover of PCB Impacted Soil.** A discussion of the temporary cover placed on PCB impacted surface soil.
6. **PCB Impacted Soil Excavation and/or Capping.** A discussion of the soil excavation and/or capping, including the extent to which the action restores or protects public health, safety and welfare, and the environment.
7. **Soil Sampling.** A discussion of any sampling procedures and results, if applicable.
8. **Summary and Conclusions.** A discussion of the nature and extent of contaminants in the current state and recommended next steps to permanently or more fully address historical releases of PCBs and other hazardous substance from the PIW property.
9. **Appendices.** Detailed information supporting the results of the PCB Impacted Soil Excavation and/or Capping shall be submitted in the Appendices of the report.

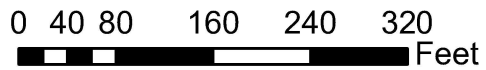
C. REPORT DISTRIBUTION




1. One (1) electronic copy of all reports will be submitted to DEQ.
2. Electronic copies of work plans and reports, including all data and figures, if requested, shall be submitted in Microsoft Office or ArcGIS compatible format. All photographs must be submitted in both hard copy and electronic file formats.

VI. SOW ATTACHMENT A – PIW Removal Action Scope of Work Minimum Action Areas



**Attachment A: Removal Action
Scope of Work Minimum Action Areas**



-  Temporary Cover
-  Soil Excavation and/or Capping
-  Elevation contour lines



State of Oregon
Department of
Environmental
Quality

Last updated on 5/17/2023.