

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON
2 FOR THE COUNTY OF CLACKAMAS

3 STATE OF OREGON, ex rel. LEAH
4 FELDON, DIRECTOR OF
5 ENVIRONMENTAL QUALITY,

6 Plaintiff,

7 v.

8 TYEE MANAGEMENT COMPANY, LLC, a
9 Washington limited liability company

Defendant

Case No. CCV0108179

**CERTIFICATION OF COMPLETION
(PHASE II)**

ORS 20.140 - State fees deferred at filing

10 **1. Findings**

11 A. On August 14, 2001, the Clackamas County Circuit Court entered Consent Decree No.
12 CCV0108179 (the "Consent Decree") regarding a Stipulation and Consent Decree entered into by
13 the Oregon Department of Environmental Quality (DEQ) with L.D. McFarland Company, LTD.
14 (LDM), concerning the L.D. McFarland Milwaukie site and the adjacent Union Pacific Railroad and
15 the Milwaukie Marketplace properties. The LDM site is located between SE Oak Street, SE Monroe
16 Street, SE 37th Street, and the Union Pacific Railroad. The LDM property is divided into two
17 parcels: Parcel 1 and Parcel 2. Parcel 1 (Tax Lot 3003 in T1S R1W Sec. 36ab) consists of
18 approximately 4.9 acres. Parcel 2 (Tax Lot 19203 in T1S R1W Sec. 36ab) consists of approximately
19 2.4 acres. The Site is also known as the Former L.D. McFarland Wood Treating Facility,
20 Environmental Cleanup Site Information (ECSI) No. 0887 (Parcel 2) and No. 3331 (Parcel 1). The
21 site is currently a residential development known as the Seven Acres complex.

22 B. Under the terms of the Consent Decree, LDM agreed to complete the following work
23 items:

24 1. Remedial Design and Remedial Action. Perform the remedial design and remedial
25 action for the facility in accordance with the terms and schedules set forth in the Scope of Work
26 ("SOW"), attached to and incorporated by reference into the Consent Decree as Attachment B,

1 and the terms and schedules set forth in the approved work plan.

2 2. Site Restrictions.

3 (1) Within 60 days of entry of the Consent Decree, record the Easement and
4 Equitable Servitude, attached to the Consent Decree as Attachment C, with the County Clerk,
5 Clackamas County, State of Oregon, with respect to Parcel 2 within the Site. Provide DEQ a file-
6 stamped copy of the Easement and Equitable Servitude within five working days of recording.

7 (2) Property subject to the Easement and Equitable Servitude, the Site, as defined
8 in the Consent Decree, may be freely alienated at any time after recording; provided, the deed or
9 other instrument of conveyance shall refer or incorporate the Easement and Equitable Servitude.

10 (3) any deed, title, or other instrument of conveyance regarding real property
11 owned by the Defendant within the Site shall contain a notice that the Site is the subject of this
12 Consent Decree. Defendant, in any such deed or conveyance, shall also reserve such access – by
13 easement, right-of-way, or otherwise – as might be necessary to carry out its obligations under the
14 Consent Decree.

15 (4) At least 30 days before conveyance of any portion of the property within the
16 Site, Defendant shall notify DEQ in writing of the proposed conveyance of fee title, the name of
17 the grantee, and a description of Defendants obligations under the Consent Decree proposed to be
18 performed by the grantee, if any. In the event of such conveyance, all of Defendants obligations
19 under the Consent Decree shall continue to be met by Defendant unless, subject to approval by
20 DEQ which shall not be unreasonably withheld, the obligations are assumed by the grantee.

21 C. The Consent Decree SOW required that the remedial action be accomplished in two
22 phases:

23 1. Phase I Remedy.

24 (1) Excavate all Parcel 1 soil with carcinogenic polycyclic aromatic hydrocarbons
25 (“CPAH”) concentrations greater than the Parcel 1 protective level and place the soil on Parcel 2
26 without treatment.

1 (2) Excavate shallow Parcel 2 soil with CPAH concentrations greater than the
2 Parcel 2 hot spot concentration and treat the soil onsite using land farm/compost treatment.

3 (3) Excavate all Milwaukie Marketplace soil with CPAH concentrations greater
4 than the protective concentrations and place soil on Parcel 2 without treatment.

5 (4) Excavate all accessible UPRR soil with the CPAH concentrations greater than
6 the protectiveness concentrations and place the soil on Parcel 2 without treatment.

7 Development of the site will be initiated after the Phase I remedial action is
8 completed and a Phase I Certificate of Completion is issued by DEQ.

9 2. Phase II Remedy.

10 (1) Cap Parcel 2 using the site development features.

11 (2) Implement institutional controls on Parcel 2 and the UPRR partition.

12 3. In addition, the remedial action includes groundwater monitoring and periodic
13 protectiveness reviews.

14 D. LDM conducted the Phase I remedial design and remedial action during 2000. DEQ
15 issued the Phase I Certification of Completion on July 10, 2002.

16 E. LDM recorded the Parcel 2 EES with Clackamas County on October 25, 2001. In
17 addition, LDM recorded the UPRR EES with Clackamas County on December 5, 2001.

18 F. On December 29, 2003, LDM transferred fee title to the LDM site to McFarland
19 Cascade Pole & Lumber Company (MCPLC). In that transaction, MCPLC did not assume LDM's
20 obligations under the Consent Decree. On November 1, 2012, MCPLC conveyed fee title of the
21 LDM site to Tyee Management Company, LLC (Tyee). On that same day, LDM and Tyee entered
22 into a Consent Decree Assignment and Assumption Agreement, under which Tyee accepted and
23 assumed all LDM's rights and obligations under the Consent Decree. DEQ approved the Consent
24 Decree Assignment and Assumption Agreement.

25 G. Tyee completed the remaining Phase II remedial design and remedial action. On
26 June 18, 2024, Tyee submitted a Phase II project closeout report, as provided under Section 7 of the

1 Consent Decree, Certification(s) of Completion; Termination then codified in ORS 465.325. The
2 work is summarized in the Staff Memorandum in support of the Proposed Phase II Certification of
3 Completion. Section 7.4 of the Consent Decree provides that the “Consent Decree shall be deemed
4 satisfied and terminated upon filing of DEQ’s certifications of completion of both the groundwater
5 and soil remedies and payment by Defendant of any and all outstanding costs and penalties.”

6 H. On December 2, 2024, DEQ provided public notice and opportunity to comment on a
7 proposed no further action determination and, in accordance with ORS 465.320 and 465.325(10)(b),
8 a proposed Certification of Completion. Copies of the work plans and reports completed for the
9 project were available to review at DEQ’s Northwest Region office in Portland, Oregon. The public
10 notice was published on December 1, 2024, in the *Oregon Secretary of State’s Bulletin* and in the
11 Oregonian newspaper. The comment period was closed on January 2, 2025. No comments were
12 received.

13 I. Based on the reports and other information submitted by LDM and Tyee and DEQ’s
14 inspection and oversight of activities, DEQ finds that the Phase II remedial design and remedial
15 action at the LDM site have been satisfactorily completed in accordance with the Consent Decree.

16 **2. Conclusions**

17 A. LDM and Tyee have satisfactorily completed the remedial design and remedial action
18 for Phase II remedial activities at the LDM Site located in Milwaukie, Oregon, required under the
19 Consent Decree. This Certificate of Completion constitutes DEQ’s administrative order certifying
20 that the Phase II remedial action has been completed in accordance with the Consent Decree.

21 B. No further remedial actions are required for soil on Parcel 2 at the LDM site and the
22 UPRR property to protect the public health, safety, and welfare or the environment, except as
23 provided under Subsection 3.B. of this Certification.

24 **3. Conditions**

25 A. This Certification of Completion applies only to the Phase II remedial design and
26 remedial action activities for soil conducted by LDM and Tyee pursuant to the Consent Decree.

1 B. Conditions include:

2 1. Institutional controls in the form of Easement and Equitable Servitudes for Parcel 2
3 and the Union Pacific Railroad property that prohibit the use of groundwater contained in any
4 aquifer at the properties, operations or uses that will or likely will jeopardize the cover’s functional
5 integrity, and certain zoning changes.

6 2. Ongoing cap operation, monitoring, maintenance, and reporting in accordance with
7 the approved *Parcel 2 Operations and Maintenance Plan* and *Union Pacific Railroad Operations*
8 *and Maintenance Plan*.

9 C. DEQ’s determination that no further action is required for soils on Parcel 2 at the Site
10 may be withdrawn upon discovery that Site controls have not been maintained, or discovery of new
11 information showing that public health, safety, and welfare or the environment are not being
12 protected.

13 D. DEQ does not, by this Certification, assume liability for any claim arising from acts or
14 omissions of Tye or its officers, employees, agents, successors, subsidiaries, or assigns relating to
15 actions pursuant to the Consent Decree.

16 4. **Notice**

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

19 **Issued By:**

20 State of Oregon
21 Department of Environmental Quality

State of Oregon
Department of Justice

22 By: Michael E. Kucinski
Michael E. Kucinski (Jan 13, 2025 14:23 PST)
23 Michael E. Kucinski
24 Interim Administrator,
Land Quality Division

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

25 01/13/2025
26 _____
Date

Date