

**STATE OF OREGON  
DEPARTMENT OF ENVIRONMENTAL QUALITY**

In the Matter of:

DEQ No. LQVC-NWR-18-01

Townsend Farms, Inc.  
Respondent

ORDER ON CONSENT

Pursuant to ORS 465.260(4), the Director, Oregon Department of Environmental Quality (DEQ), issues this Order on Consent (Consent Order) to Townsend Farms, Inc. (“Respondent”). This Consent Order contains the following provisions:

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Exhibit A: Vicinity and Site Maps

Exhibit B: Scope of Work

Exhibit C: Oregon Water Resource Division Letters and Correspondence dated July 6, 2018, Sept. 7, 2018, Oct. 1, 2018 and Nov. 7, 2018.

**1. Purpose**

The mutual objective of DEQ and Respondent (collectively the “Parties”) is to protect public health, safety, and welfare and the environment by the design and implementation of removal measures at Respondent’s facility, in accordance with the applicable provisions of ORS 465.200 through 465.420.

**2. Stipulations**

A. Respondent consents and agrees:

- (1) To issuance of this Consent Order;
- (2) To perform and comply with all provisions of this Consent Order;
- (3) In any proceeding brought by DEQ to enforce this Consent Order, to not challenge DEQ's jurisdiction to issue and enforce this Consent Order;
- (4) 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;

- (5) 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;
- (6) To waive any right Respondent might have under ORS 465.260(7) to seek reimbursement from the Hazardous Substance Remedial Action Fund for costs incurred under this Consent Order.

B. DEQ and Respondent stipulate:

- (1) For the purposes of this Consent Order, the "Facility," as defined in ORS 465.200(13), means: (a) the Townsend Farms' Site; and (b) the full extent of existing known or unknown contamination by hazardous substances of any media on, above, or below the Townsend Farms' Site, or that has migrated, might have migrated, or hereafter migrates to anywhere from the Townsend Farms' Site.

### **3. Findings of Fact**

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

- A. The Townsend Farms property at 23400 NE Townsend Way in Fairview, Oregon (and the larger Townsend Business Park) is located at the general location shown on the Map, Exhibit A of this Consent Order.
- B. Townsend Farms, Inc., is a "person" under ORS 465.200(21). The Townsend Farms' Business Park Property is a "facility" under ORS 465.200(13). The Townsend Farms' Business Park Property includes multiple developable lots which occupy approximately 103 acres at several addresses and is hereafter in this Agreement referred to as the "Property."

- C. For purposes of this Consent Order, the Townsend Farms' Site (the "Site") consists of lot numbers 18 and 10 contained within the Property.
- D. As described in project documents, the Site and surrounding property were historically used for agriculture since the early 1900s. Crops previously grown on the Property include raspberries, strawberries, peaches and vegetables. The Townsend Business Park lots are in various stages of commercial redevelopment. The property located at 23400 NE Townsend Way is the Townsend Farms corporate office and remains a produce processing facility.
- E. This Order on Consent is focused on groundwater, surface water and subsurface contamination concerns and is not intended to supersede any other Agreement between DEQ and Respondent entered into as of the effective date of this Consent Order.
- F. Townsend Farms has historically used groundwater supply wells for their agriculture and food-processing businesses. Groundwater from the Townsend Farms' supply Well #3/Mult 63487 (hereinafter referred to as "Well #3") and located on Lot 18 contains EDB at concentrations periodically exceeding EPA drinking water maximum contaminant levels (MCLs) and DEQ drinking water risk-based concentrations (DEQ RBCs). The most recent exceedance of the DEQ RBC in Townsend Well #3 was in August 2016. Detections exceeding the DEQ RBC have occurred 17 times during quarterly testing between Nov. 2010 and Aug. 2016. Water from Townsend Well #3 is treated with activated carbon filtration to remove volatile organic contaminants prior to potable use in food processing.
- G. At least two City of Fairview municipal water supply wells may utilize the same aquifer as Townsend Well #3. Groundwater in two City of Fairview wells is impacted by EDB,

although at lesser concentrations than is found in groundwater from Townsend Well #3. In response to findings of groundwater contamination, City of Fairview municipal wells #6 was removed from service in 2011.

- H. Secondary contaminants of concern in area wells are trichloroethylene (TCE) and tetrachloroethylene (PERC).
- I. In July of 2018, Respondent learned that OWRD determined that Well #3 did not meet current minimum construction standards and would need to be repaired or replaced. Subsequently, DEQ alerted Respondent that Well #3, as constructed, may be acting as a transfer agent and potentially creating a pathway for volatile organic compounds from surface and subsurface water into the Troutdale Sandstone Aquifer (“TSA”) or underlying Sand and Gravel Aquifer (“SGA”) aquifer.
- J. In response to Oregon Water Resource Department (“OWRD”), Respondent is processing a water permit for a new well on Lot 18. Respondent will comply with requirements stipulated in ORWD letters and correspondence to construct the new well to specifications detailed by OWRD which will result in the new well terminating in the lower Sand and Gravel Aquifer (“SGA”). Further, the new well will be cased and sealed to OWRD current requirements from ground level into the SGA. After the new well begins producing beneficial water use, Respondent will decommission Well #3 consistent with OWRD requirements. Relevant OWRD letters and correspondence are incorporated into this Consent Order and is attached as Exhibit C.
- K. Two groundwater monitoring wells and Well #1/Mult 1359 (hereinafter referred to as “well #1”) are located on Lot 10. Well #1 has been decommissioned. Respondent intends to decommission the two monitoring wells no later than December 30, 2018.

Subsequently, within 60 days of work completion, Respondent will provide a report to DEQ documenting the completion of the decommissioning work.

#### **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. Townsend Farms, Inc., is a “person” within the meaning of ORS 465.200(21) and potentially liable under ORS 465.255.
- B. The contaminants described in Subsection 3.F-H are “hazardous substances” within the meaning of ORS 465.200(16).
- C. The presence of hazardous substances in groundwater constitutes a “release” or “threat of release” into the environment within the meaning of ORS 465.200(22).
- D. The Site described in Subsection 2.B (1). is 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. Remedial Design and Remedial Action**

Respondent will perform a removal action for the Site in accordance with the terms and schedule set forth in the Scope of Work (SOW), attached to and incorporated by reference into this Consent Order as Exhibit B, and the terms and schedules set forth in a DEQ-approved work plan.

B. Modification of SOW or Related Work Plans

- (1) If DEQ determines that modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary, DEQ may require that such modification be incorporated in the SOW and/or such work plans; provided, any such modification may be required pursuant to this paragraph only to the extent that the modification is consistent with the scope of the Consent Order.
- (2) Subject to dispute resolution under Subsection 6.L., Respondent will modify the SOW and/or work plans as required by DEQ and implement any work required by the modifications. Before invoking dispute resolution under Subsection 6.L., Respondent and DEQ will make a good-faith effort to resolve any dispute regarding DEQ-requested modifications by informal discussions for no more than 30 days following notice from DEQ of a requested modification.

C. Additional Measures

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, necessary to address the release or threatened release of hazardous substances at the Site. Such additional measures are subject to prior approval by DEQ. DEQ's approval will be granted if DEQ determines that the additional measures are consistent with the remedial action objectives and will not threaten human health or the environment.

- (1) Any deed, title, or other instrument of conveyance regarding real property owned by Respondent related to the Site must include a notice that the Property is subject to this Consent Order. Respondent, in any such deed or conveyance, must also reserve such access (by easement, right-of-way, or otherwise) as might be necessary

to carry out Respondent's obligations under this Consent Order. DEQ may waive this obligation after Respondent provides adequate evidence that the SOW related to either Lot 10 or Lot 18 has been completed.

## 6. 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:

DEQ Project Manager:

Kenneth Thiessen  
Department of Environmental Quality  
Northwest Region  
700 NE Multnomah Street, Ste. 600  
Portland, Oregon 97232  
503 229-6015  
Thiessen.Kenneth@deq.state.or.us

Respondent Project Manager

Paul Trone  
Evren Northwest  
PO Box 14488  
Portland Oregon 97293  
503 452-5561  
pault@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 complete the SOW required under this Consent Order.

### 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 meeting the applicable requirements related to the SOW, as well as applicable state and federal laws, regulations, and guidance.
- (2) Paul Trone of EVREN-Northwest has been approved by DEQ as the Project Manager. In the event that Respondent intends to change the supervising contractor, Respondent must notify DEQ 30 days before such change. The written notification



must include 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.

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, or identification of deficiencies will be given in writing within the time specified in the SOW or as soon as practicable, 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 6.M.

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, 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 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 activities 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 Respondent certifies completion of the SOW related to 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 certification of completion, Respondent will provide DEQ 60 days notice before destruction or other disposal of such records or documents. Ten years after certification of completion, Respondent has no further obligation to preserve documents or records.
- (3) Subject to Paragraph 6.E.(4), Respondent may assert a claim of confidentiality under the Oregon Public Records Law regarding any document or record 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 or work product privilege may not be asserted with respect to any records required to be submitted under Paragraph 6.E.(1). DEQ reserves its rights under law to obtain documents DEQ asserts are improperly withheld by Respondent.

F. Notice and Samples

Respondent will make every reasonable effort to notify DEQ of any 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.

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

Respondent will provide DEQ with reports consistent with the SOW to this Consent Order. The reports will contain the following:

- (1) Actions taken by Respondent under this Consent Order consistent with the SOW;
- (2) Actions scheduled to be taken by Respondent consistent with the SOW;
- (3) A summary of sampling, test results, and any other data generated or received by Respondent as a result of the SOW; and
- (4) A description of any problems experienced by Respondent during the time period prior to the sampling or testing as detailed by the SOW and any actions taken to resolve identified problems.
- (5) Respondent will provide a work plan to DEQ describing the specifications and engineering details of the well to be constructed, with a level of detail consistent with that used by the contractor to construct the well, and as approved by OWRD. Respondent will provide DEQ with a construction completion report documenting work completed, including the well log and "as built" details from well construction.

DEQ may approve less frequent reporting by Respondent, if warranted. Progress reports may be submitted in electronic form. If submitted in hard-copy written form, two copies

must be provided to DEQ.

I. Other Applicable Laws

(1) Subject to ORS 465.315(3), all activities under this Consent Order must be performed in accordance with all applicable federal, state, and local laws. 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. 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. Any project delay caused by the discovery of archeological object or human remains is a Force Majeure under Subsection 6.K.

J. Reimbursement of DEQ Costs

- (1) DEQ will submit to Respondent a monthly invoice of costs incurred by DEQ 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 include direct and indirect costs.

Direct costs include site-specific expenses, 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 6.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 6.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 6.L.(4), if Respondent disagrees with DEQ regarding any matter during implementation of this Consent Order, Respondent will



promptly notifying 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 Region 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 6.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 work plan required under the SOW (which approval or modification is nonetheless subject to Subsection 6.C.); or (b) DEQ assessment of

stipulated penalties under Subsection 6.M. (after dispute resolution has been exhausted, before assessment of a penalty regarding the alleged violation).

M. Stipulated Penalties

(1) Subject to Subsections 6.C., 6.L., and 6.M., 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 thereafter, for:

(i) failure to allow DEQ access to the Site under Subsection 6.D.

(ii) failure to provide notice and samples under Subsection 6.F.

(iii) failure to provide records under Subsection 6.E.

(b) \$2,500 for the first week of violation or delay and \$1,000 per day thereafter, for:

(i) failure to submit a final work plan in accordance with the SOW's schedule and terms;

(ii) failure to complete work in accordance with an approved work plan's schedule and terms;

(iii) failure to submit a final report, in accordance with an approved work plan's schedule and terms; or

(c) \$500 for the first week of violation or delay and \$500 per day 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 or progress reports in accordance with the SOW's schedule and terms; 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 treated 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 the necessary actions to cure the violation. 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.
- (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 6.N.(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 6.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 6.M., DEQ may assess civil penalties under ORS 465.900 for Respondent's failure to comply with this Consent Order. Penalties do 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 asserted in this Consent Order.
- (3) Subject to Subsection 2.A., 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. DEQ may not be considered a party to any contracts 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 or disapproval 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.

Before commencing any on-site work under this Consent Order, Respondent will obtain and maintain for the duration of this Consent Order comprehensive general liability and automobile insurance with limits of \$1 million, combined single limit per occurrence, naming as an additional insured the State of Oregon. If Respondent demonstrates by evidence satisfactory to DEQ that its contractor(s) or subcontractor(s) maintain equivalent coverage, or coverage for the same risks but in a lesser amount or for a lesser term, Respondent may provide only that portion of the insurance that is not maintained by its contractor(s) or subcontractor(s).

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 he or she is 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 facility during the term of this Consent Order.

Q. Modification

This Consent Order may not be modified except in writing by mutual consent between DEQ and Respondent.

R. Effective Date

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

7. Certification of Completion

A. Upon Respondent's completion of work in accordance with the SOW, Respondent will submit a final closeout report to DEQ signed by Respondent's Project Manager or designated agent certifying that the SOW has been completed in accordance with this Consent Order. The report must summarize the work performed and include all necessary supporting documentation.

B. DEQ will determine whether the work has been performed in accordance with this Consent Order and issue a final certification decision.

C. This Consent Order is satisfied upon issuance of DEQ's certification of completion and payment by Respondent of any and all outstanding costs and penalties, except that

issuance of a certification of completion does not affect Respondent's remaining obligations under this Consent Order or for implementation of measures necessary to long-term effectiveness of the removal action.

**8. Signatures**

STIPULATED, AGREED, and APPROVED FOR ISSUANCE:

Respondent

**Townsend Farms, Inc.**

By: Michael Townsend Date: 11-12-18

**Michael Townsend**

President, Townsend Farms, Inc.

STIPULATED, AGREED, and SO ORDERED:

State of Oregon

Department of Environmental Quality

By: \_\_\_\_\_ Date: \_\_\_\_\_

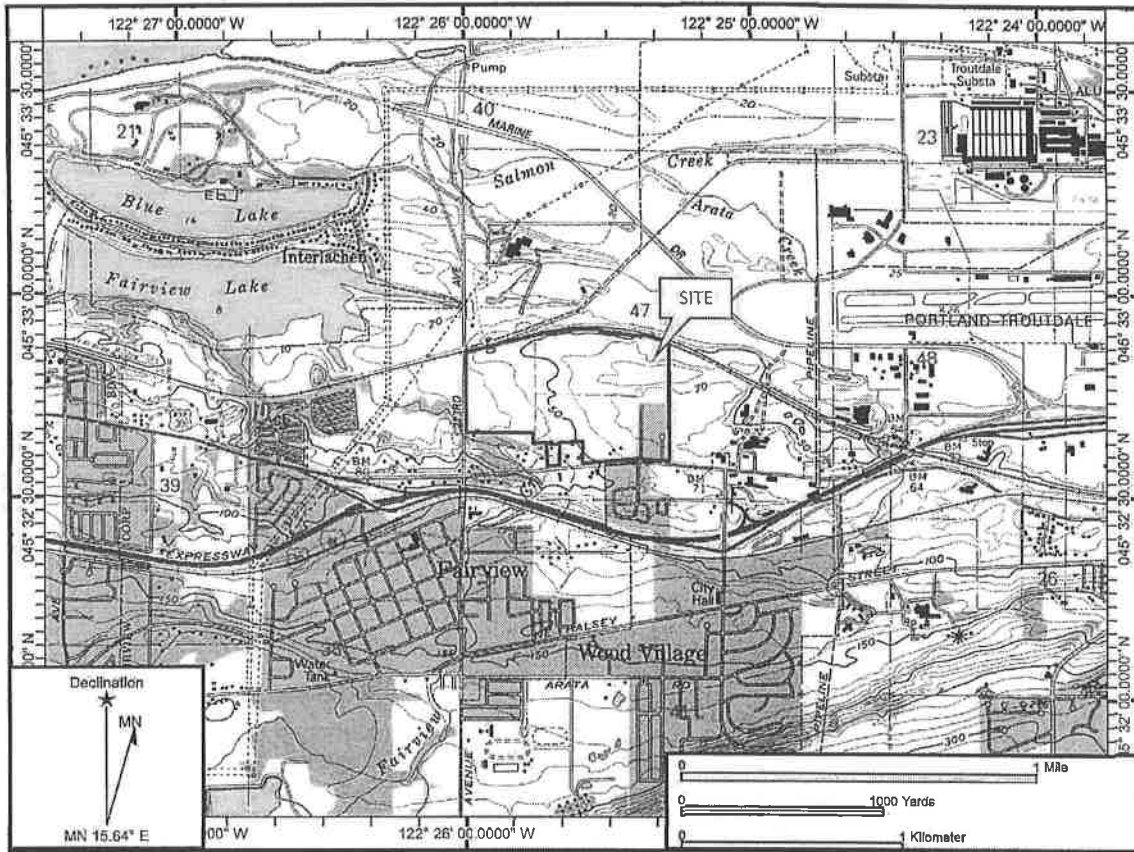
**Paul Seidel**

Cleanup Program Manager, Northwest Region

Exhibit A

Townsend Business Park Vicinity and Site Maps





Date Published: 1993  
 Map Name: CAMAS

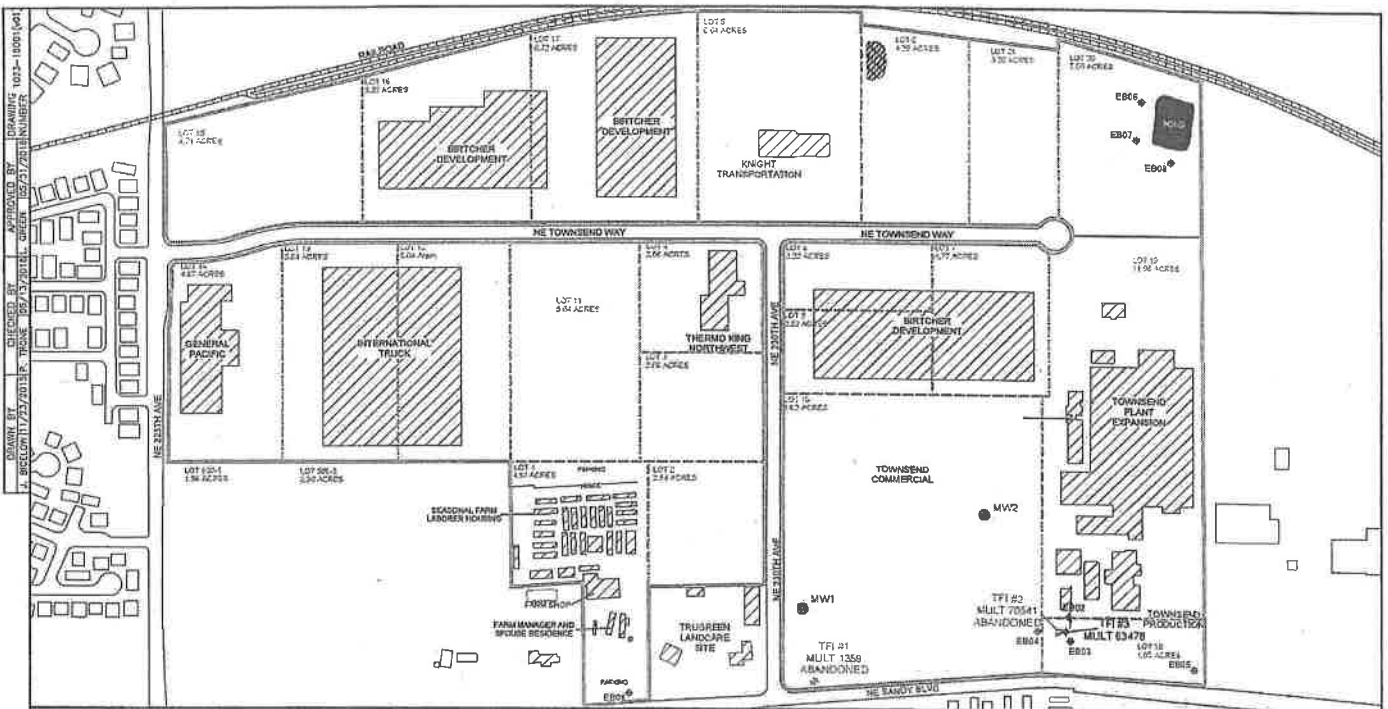


Date Drawn: 11/09/2016  
 CAD File Name: 1023-15001-01\_dwg\_rwp(03)  
 Drawn By: PMT  
 Approved By: LDG

Townsend Business Park  
 23303 NE Sandy Boulevard  
 Fairview, Oregon

### Site Vicinity Map

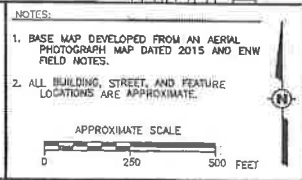
ECSI #4230  
 Exhibit A



DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 APPROVED BY: [Name]  
 DRAWING NUMBER: 101-10001-001  
 PROJECT NUMBER: 02/15/2018

- LEGEND:**
- SUBJECT PROPERTY BOUNDARY
  - LOT BOUNDARY
  - SUBJECT BUILDINGS
  - BUILDING LOCATIONS
  - BURN PIT
  - ENVIRONMENTAL BORING SAMPLE LOCATION (FEB 15-16, 2018)
  - PIEZOMETER (EXISTING)
  - SUPPLY WELL
  - ABANDONED SUPPLY WELL

- NOTES:**
1. BASE MAP DEVELOPED FROM AN AERIAL PHOTOGRAPH MAP DATED 2015 AND ENW FIELD NOTES.
  2. ALL BUILDING, STREET, AND FEATURE LOCATIONS ARE APPROXIMATE.



**EVRENNORTHWEST**  
 ENVIRONMENTAL & GEOTECHNICAL CONSULTANTS

PO BOX 1448L PORTLAND, OREGON 97203  
 P: (503)452-6561, E: ENW@EVREN-NW.COM

EXHIBIT A  
 SITE LOCATION MAP  
 TOWNSEND BUSINESS PARK  
 2303 NE BAYVIEW BOULEVARD  
 FAIRVIEW, OREGON

## Exhibit B

### Scope of Work

## **Exhibit B – Scope of Work**

### **TOWNSEND FARMS, INC**

Respondent Townsend Farms, Inc. (TFI) of Fairview, Oregon agrees to perform the following Scope of Work pursuant to the Consent Order between Respondent and the Oregon Department of Environmental Quality (DEQ) to which this Scope of Work is attached.

Respondent agrees to implement this Scope of Work, which includes well replacement work and groundwater quality testing. The specific tasks Respondent will perform pursuant to the Consent Order are set forth below.

#### **I. PRODUCTION WELL TFI #3 (MULT 63478)**

Respondent shall replace well per requirements indicated in the letters and correspondence from the Oregon Water Resources Division (OWRD) attached to this Consent Order as Exhibit C. A new well will be constructed and sealed and the existing well TFI#3 will be decommissioned in accordance with OWRD requirements.

#### **II. GROUNDWATER WELLS ON LOT 10**

Lot 10 of the Townsend Business Park, includes two groundwater monitoring wells and production well TFI #1, (MULT 1359). Respondent shall decommission the wells within 90 days of signing this Consent Order and prior to completion of sales agreement for the parcel. If TFI #1 production well (MULT 1359) has been properly decommissioned, TFI will provide evidence of this work. The two monitoring wells will be decommissioned in accordance with OWRD and DEQ guidelines and a decommissioning report provided to DEQ.

#### **III. PRODUCTION WELL TFI #3 (MULT 63478) GROUNDWATER MONITORING**

Respondent shall sample groundwater from well TFI #3 once prior to decommissioning in accordance with procedures previously used during periodic monitoring.

#### **IV. GROUNDWATER MONITORING**

After completion of new well construction, groundwater samples will be collected from the newly developed well and analyzed for volatile organic analytes (VOCs) including ethylene dibromide, methyl bromide, trichloroethylene, and tetrachloroethylene in accordance with a DEQ approved work plan. Initial sampling will occur quarterly for four quarters, with a subsequent frequency and schedule to be determined in a DEQ approved work plan. Respondent will prepare quarterly reports of findings for submittal to DEQ within 30 days of receipt of analytical data validation. Groundwater sampling to begin within 30 days of well development.

**V. SCHEDULE**

Respondent shall provide a schedule for performance of this Scope of Work within 30 days following issuance of this Consent Order. This schedule will be submitted for DEQ review and approval. Compliance with this approved schedule will become part of this Consent Order.

Exhibit C

Letters and Correspondence from the Oregon Water Resources  
Department Regarding Well MULT 63478



# Oregon

Kate Brown, Governor

## Water Resources Department

North Mall Office Building

725 Summer St NE, Suite A

Salem, OR 97301

Phone (503) 986-0900

Fax (503) 986-0904

[www.Oregon.gov/OWRD](http://www.Oregon.gov/OWRD)

July 6, 2018

Roy N Janssen WWC # 1266  
A M Janssen Well Drilling Co Inc.  
2459 SE Tualatin Valley Highway PMB # 344  
Hillsboro, Oregon 97123-7919

Re: Irrigation Well MULT 63478

Dear Mr. Janssen,


This letter is a follow-up to our telephone conversation on July 6, 2018 regarding the irrigation well you constructed for Townsend Farms located at 23303 NE Sandy Boulevard in Fairview, Oregon. The property is further identified as tax-lot 800 located in the SE Quarter of the NE Quarter of Section 27, Township 1 North and Range 3 East of the Willamette Meridian, Multnomah County, Oregon.

A recent review of the construction of this well shows that it does not meet current minimum well construction standards and therefore it must be repaired or permanently abandoned. The Department's determination is based on an analysis of the wells' annular seal, which consists of an upper and lower seal with "drill gel" between them. Unfortunately, according to OAR 690-210-0130, drill gel is not an acceptable material to place between seals and in order to meet minimum standards, the well will need to be properly repaired, or permanently abandoned.

You have 30 days from the date of this letter to bring the well into compliance by either repairing, or permanently decommissioning it. Failure to comply may result in this matter being forwarded to the Enforcement Section for formal enforcement action. If you need additional time, please provide a request in writing and it will be considered.

Thank you for your cooperation in this matter. In order to arrange my schedule to be present, please contact me 3 business days prior to the start of work. If you should have any questions, please contact me @ (503) 986-0852 or by email at [Joel.W.Jeffery@oregon.gov](mailto:Joel.W.Jeffery@oregon.gov).

Sincerely,

  
Joel W. Jeffery, Coordinator  
Well Construction Program  
Well Construction and Compliance Section

Cc: Mike Townsend, Townsend Farms  
Kris Byrd, Manager Well Construction and Compliance Section Manager  
Barry Sanford, Well Inspector, Northwest Region  
Buffy Gillis, Well Construction and Compliance Section (Driller's File)



# Oregon

Kate Brown, Governor

## Water Resources Department

North Mall Office Building  
725 Summer St NE, Suite A

Salem, OR 97301

Phone (503) 986-0900

Fax (503) 986-0904

[www.Oregon.gov/OWRD](http://www.Oregon.gov/OWRD)

September 7, 2018

Roy N Jannsen WWC # 1266  
A M Jannsen Well Drilling Co Inc.  
2459 SE Tualatin Valley Highway  
Hillsboro, Oregon 97123-7919

Re: Townsend Farms Irrigation Well MULT 63478

Dear Mr. Jannsen:

This is a follow-up to the Department's previous letter to you dated July 6, 2018 regarding the irrigation well you constructed for Townsend Farms located at 23303 NE Sandy Boulevard in Fairview, Oregon. As a reminder, the property is further identified as tax-lot 800 located in the SE Quarter of the NE Quarter of Section 27, Township 1 North and Range 3 East of the Willamette Meridian, Multnomah County, Oregon.

The previous letter provided that in order for the well to meet minimum well construction standards, it must be repaired or permanently decommissioned. This meant that the annular seal would need to be replaced to a depth of 155 ft bgs, if decommissioning did not take place. Since the date of the previous letter, the Department has performed a review of the aquifer system in the area of the well and has determined that there is a confining unit that was not sealed off during original construction that is located below the 155 ft seal depth interval. Based on this information, the Department is now requiring the annular seal to be extended to a depth of 238 ft bgs, unless the well is permanently decommissioned.

The timeline for repair or abandonment work described in the previous letter still applies. Failure to bring this well into compliance may result in this matter being forwarded to the Enforcement Section for formal enforcement action. If you need additional time, please provide a request in writing and it will be considered.

Thank you for your cooperation in this matter. In order to arrange my schedule to be present, please contact me 3 business days prior to the start of work. If you should have any questions, please contact me @ (503) 986-0852 or by email at [Joel.W.Jeffery@wrdd.state.or.us](mailto:Joel.W.Jeffery@wrdd.state.or.us).

Sincerely,

Joel W. Jeffery, Coordinator  
Well Construction Program  
Well Construction and Compliance Section

Cc: Kristopher Byrd, Well Construction and Compliance Section Manager  
Barry Sanfroid, Well Inspector, Northwest Region  
Buckley Law P.C.  
Ken Thiemann, DEQ via e-mail





## THIESSEN Kenneth

---

**From:** BYRD Kristopher R \* WRD <Kristopher.R.Byrd@oregon.gov>  
**Sent:** Wednesday, November 07, 2018 3:25 PM  
**To:** THIESSEN Kenneth  
**Subject:** FW: Well Drilling Specs

FYI.

### Kristopher Byrd, Manager

WELL CONSTRUCTION AND COMPLIANCE SECTION

725 Summer Street NE, Suite A Salem, OR 97301 | Phone (503) 986-0851



OREGON  
WATER  
RESOURCES  
DEPARTMENT

---

**From:** JEFFERY Joel W \* WRD  
**Sent:** Monday, October 01, 2018 2:10 PM  
**To:** BYRD Kristopher R \* WRD  
**Subject:** FW: Well Drilling Specs

FYI

---

**From:** William Gaar [mailto:weg@buckley-law.com]  
**Sent:** Monday, October 01, 2018 2:07 PM  
**To:** ORLOWSKI Dennis R \* WRD  
**Cc:** Lindsey Stanton; Eric Urstadt; JEFFERY Joel W \* WRD; IVERSON Justin T \* WRD  
**Subject:** RE: Well Drilling Specs

Thank you Dennis – I'm working with Eric for the well specs based on the communications between OWRD and Eric. That should give us what we need to get bids for the job. We will contact OWRD when we have a well driller hired.

Sincerely,

Bill Gaar

*William E. Gaar*

William E. Gaar, Attorney-Shareholder SPHR  
Buckley Law P.C. |

5300 Meadows Road, Suite 200  
Lake Oswego, OR 97035  
503.620.8900 | 503.620.4878 fax | 503.709.6724 cell  
[weg@buckley-law.com](mailto:weg@buckley-law.com) | [www.buckley-law.com](http://www.buckley-law.com)

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**From:** ORLOWSKI Dennis R \* WRD <Dennis.R.Orlowski@oregon.gov>  
**Sent:** Monday, October 1, 2018 2:01 PM  
**To:** William Gaar <weg@buckley-law.com>  
**Cc:** Lindsey Stanton <lms@buckley-law.com>; Eric Urstadt <ericurstadt@hotmail.com>; JEFFERY Joel W \* WRD <Joel.W.Jeffery@oregon.gov>; IVERSON Justin T \* WRD <Justin.T.Iverson@oregon.gov>  
**Subject:** RE: Well Drilling Specs

Bill,

OWRD understands that Townsend Farms is considering different options for obtaining a valid water right at their facility in the east Portland Basin. As previously communicated to Eric Urstadt by myself and Justin Iverson, it is our opinion that applying for a new groundwater right from an aquifer system deeper than that tapped by the current well (MULT 63478) would provide the most straightforward and expeditious option.

In this case, OWRD can provide only a minimum target seal depth, but not a target total well depth, for a new deeper well. The reasons for this are explained below.

Referencing the stratigraphy shown on the well log for MULT 63478, and assuming a new well is located near MULT 63478 (within ~500 ft or so), **OWRD recommends that a new well be cased and sealed to at least 300 ft below ground surface (bgs).** This target seal depth should be into the "brown clay" shown from 291-297 ft bgs on the MULT 63478 well log; however, it is possible that the clay will extend deeper than 297 ft at this location, in which case the seal should perhaps extend deeper still (well construction regulations require a minimum 5 feet of seal into low-permeable material, i.e., clay).

The total depth of a new well at this location will depend on the water-bearing nature and thickness of geologic materials actually encountered below 297 feet bgs, coupled with Townsend Farms' required groundwater yield. Either a groundwater consultant or a well driller with sufficient experience in this area, using available information, should be able to derive a reasonably-confident estimate of total target well depth at this location. This total depth estimate would also yield other related well construction details, such as required borehole/casing diameter(s), required screened depth interval, etc., all of which will relate to the total cost for a new well.

Finally, the constructed well will need to comply with OWRD water well construction standards (OAR 690-200). Specific questions related to those standards should be directed to Joel Jeffrey, OWRD Well Construction and Compliance Section (copied here).

Regards,  
Dennis Orłowski

---

**From:** William Gaar [<mailto:weg@buckley-law.com>]  
**Sent:** Friday, September 28, 2018 3:02 PM  
**To:** ORLOWSKI Dennis R \* WRD; Eric Urstadt  
**Cc:** Lindsey Stanton  
**Subject:** Well Drilling Specs  
**Importance:** High

Hi Dennis and Eric – I've tasked TFI to bid the well construction job and we need a spec sheet that will detail OWRD construction requirements. How can I get that? I have an e-mail from Eric with some or most of the specs but would

prefer a detailed communication from OWRD. As you can imagine, before I reach out to any drillers, I need to know what I'm asking them to do. Dennis, can you send to me or Eric an e-mail or letter or some other communication that details out how the well needs to be constructed? I can then move that over to a bid sheet for the well drillers.

Thank you. I know everyone is busy but we are hearing that the few well drillers available for such a large job are booked out six months. So, the sooner I get this information, the better.

Sincerely,

Bill Gaar

*William E. Gaar*

William E. Gaar, Attorney-Shareholder SPHR  
Buckley Law P.C. |

5300 Meadows Road, Suite 200  
Lake Oswego, OR 97035  
503.620.8900 | 503.620.4878 fax | 503.709.6724 cell  
[weg@buckley-law.com](mailto:weg@buckley-law.com) | [www.buckley-law.com](http://www.buckley-law.com)

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## Lindsey Stanton

---

**From:** William Gaar  
**Sent:** Monday, October 29, 2018 12:12 PM  
**To:** Joel.W.Jeffery@oregon.gov; ORLOWSKI Dennis R \* WRD  
**Cc:** Eric Urstadt; Lindsey Stanton; Margaret Townsend  
**Subject:** TFI Well Status

Dear Joel:

I am following up on TFI's agreement with Oregon Water Resource Department ("OWRD") to construct a new well consistently with specifications as detailed below and to decommission Well #3 now in use by TFI. Based on our communications and those OWRD has had with TFI's agent, Eric Urstadt, I would like confirmation that TFI and OWRD have an agreement that avoids any enforcement action by OWRD related to these wells. I also intend to share this Agreement with DEQ as part of its on-going groundwater pollution investigation.

In the meeting Kerry Rea, TFI's Chief Financial Officer, and I had with your team on September 18, 2018, we discussed coming to an Agreement with OWRD that would avoid OWRD taking an enforcement action against TFI based on TFI's improperly constructed Well #3. My understanding from that meeting is that if TFI and OWRD came to an Agreement regarding schedules and activities related to TFI's Well #3, TFI could resolve OWRD's concerns regarding the improperly constructed well #3. At this point, TFI has agreed to proceed as follows and I believe this forms the basis for TFI's Agreement with OWRD:

1. TFI, through its agent, Eric Urstadt, is taking steps to permit the drilling of a new well on TFI property.
2. TFI is undertaking bids from three different contractors who have the skill and expertise to drill a well consistently with OWRD's requirements.
3. The well will be constructed so that it can produce up to 350/gals per minute.
4. The well will be drilled to a depth so that it terminates somewhere within the SGA.
5. The well will be "cased" from the ground level all the way to either the clay layer just above the SGA, or to a depth into the SGA depending on circumstances encountered during the well drilling.
6. OWRD will be on-site during well construction and drilling and will determine whether TFI has drilled into the SGA in order to terminate the well.
7. The well will be sealed continuously with a single sealant from ground level to either the clay confining unit immediately above the SGA or to the appropriate termination point within the SGA. The sealant must meet current OWRD well construction standards.
8. TFI will continue to use the existing Well #3 until beneficial water use occurs out of the new well.
9. TFI will terminate Well #3 consistently with OWRD current well decommission standards when the new well beneficial water use begins.
10. TFI intends to begin construction for the well no later than March, 2019 and end construction no later than April 2019.
11. Beneficial water use will begin no later than April 2019.

If OWRD agrees with these Terms, I would like to memorialize the Agreement on OWRD letterhead. That Agreement will also become part of the current DEQ Groundwater Investigation with TFI. Please advise how I need to proceed in order to get an Agreement in place with OWRD. If there are other terms that I have neglected to include or changes to the Terms I have proposed please advise. Unfortunately, time is critical as I am attempting to move forward with DEQ and movement with DEQ means that TFI needs to have an Agreement in place with OWRD. I'm available for a phone call at any time if you would prefer to discuss the Agreement with me over the phone.

Sincerely,

Bill Gaar

*William E. Gaar*

William E. Gaar, Attorney-Shareholder SPHR  
Buckley Law P.C. |

5300 Meadows Road, Suite 200  
Lake Oswego, OR 97035  
503.620.8900 | 503.620.4878 fax | 503.709.6724 cell  
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# Oregon

Kate Brown, Governor

## Water Resources Department

North Mall Office Building  
725 Summer St NE, Suite A

Salem, OR 97301

Phone (503) 986-0900

Fax (503) 986-0904

[www.Oregon.gov/OWRD](http://www.Oregon.gov/OWRD)

November 7, 2018

William E. Gaar Esq.  
Buckley Law P.C.  
5300 Meadows Rd, Suite 200  
Lake Oswego OR 97035

RE: Existing Well #3 (MULT 63478) at Townsend Farms Incorporated in Fairview, OR.

Mr. Gaar:

This letter is to confirm that the Oregon Water Resources Department will not pursue formal enforcement action related to the construction of Townsend Farms' (TFI) existing well #3 (MULT 63478) as long as existing well #3 (MULT 63478) is permanently decommissioned consistent with the timeline detailed in your October 29, 2018, e-mail. In order to provide sufficient time for TFI to construct a replacement well, the Department will allow existing well #3 (MULT 63478) to remain in use until April 30, 2019. If extra time is needed, then please submit a written request for an extension and it will be considered. In addition, the licensed well constructor that is hired for the work may contact the Department with questions related to decommissioning requirements any time.

In regards to the construction details for the proposed replacement well, please review the e-mail from Dennis Orlowski to you, dated October 1, 2018. That e-mail offers suggestions for several construction aspects for a replacement well that can be given to prospective well constructors, however, until the well constructor drills the borehole to total depth, and provides a rough log to the Department, an exact required seal depth is not able to be determined. To assist in this determination, it is highly recommended that the driller obtain discrete formation samples as drilling approaches the anticipated seal and total completion depths to confirm subsurface conditions. It may also be necessary to run a downhole camera and geophysical equipment in the well to verify the appropriate seal depth. In order to make sure that TFI's well constructor is not delayed more than necessary, and that the seal is placed in the correct interval and meets minimum well construction standards, the Department plans on having staff on site to observe construction.

Please provide a copy of the signed contract with a licensed well constructor for the TFI well #3 construction and decommissioning work as soon as it is available. If you have any questions or comments regarding this letter, please feel free to contact me. I can be reached by e-mail at [kristopher.r.byrd@oregon.gov](mailto:kristopher.r.byrd@oregon.gov) or by phone at (503) 986-0851. Thank you for your cooperation, we look forward to bringing this matter to a close.

Respectfully,



Kristopher Byrd, Manager  
Well Construction and Compliance Section  
Oregon Water Resources Department

cc: Ken Thiessen, DEQ - via e-mail  
Dennis Orłowski, WRD - via e-mail  
Justin Iverson, WRD - via e-mail  
Joel Jeffery, WRD - via e-mail  
Eric Urstadt, Aspen Rural Land Consulting - via e-mail  
Margaret Townsend, TFI - via e-mail