



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10**

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OFFICE OF  
REGIONAL  
COUNSEL

May 26, 2011

**MEMORANDUM**

**SUBJECT: Response to Comments regarding Pacific Wood Preserving of Oregon  
Amendment to Agreement and Covenant Not to Sue, Taylor Lumber and  
Treating Superfund Site, Sheridan, Oregon**

**FROM: Jennifer Byrne, Site Attorney**

A handwritten signature in black ink, appearing to be "JB".

**TO: Site File, Taylor Lumber and Treating Superfund Site**

EPA received numerous letters, emails, and a petition in support of the Amendment to the Agreement and Covenant Not to Sue ["Prospective Purchaser Agreement (PPA) Amendment"] with Pacific Wood Preserving of Oregon (PWPO) who conducts a wood-treating operation at the Taylor Lumber and Treating (TLT) Superfund Site.

EPA received one comment letter opposed to the PPA Amendment from attorney Brian King at Schwabe, Williamson & Wyatt, dated May 13, 2011, on behalf of an undisclosed client.

EPA thanks commenters for their involvement in this important issue. Responses to the one comment letter opposed to the PPA Amendment are provided below.

**1. "There is No Indication That Allowing PWPO's Use of PCP at the Site Will Not Contribute to or Aggravate the Existing Contamination."**

As background, the pentachlorophenol (PCP) contamination in soil and groundwater at this Site was due to wood-treating operations conducted from 1966 to 2001 by Taylor Lumber and Treating. All operations ceased when TLT filed for bankruptcy in 2001. PWPO entered into a PPA Amendment with EPA in 2002, and purchased the wood-treating facility. This original agreement restricted the use of PCP and certain other wood-treating chemicals at the Site.

When the original agreement was signed, the nature and extent of contamination at the TLT Site was incomplete. Because the agreement provided a covenant not to sue for PWPO for pre-existing contamination, EPA was concerned that a situation could arise whereby 'historic' PCP contamination released by the former owner and operator could

comingling with potential 'new releases' of PCP by PWPO. Thus, EPA restricted PWPO's use of PCP at the Site.

Since that time, extensive environmental assessments and cleanups have occurred at the Site. The Remedial Investigation and Feasibility for the Site was completed in 2005. In surface soils in the West Facility, PCP was not commonly detected above screening values. PCP concentrations in only 9 of 150 soil samples exceeded the Industrial Preliminary Remediation Goal Screening Value of 9 milligrams per kilogram (mg/kg). As part of the remedy completed in 2007 and 2008, contaminated soils (including PCP-contaminated soils) were excavated and disposed off-site, or were contained within the slurry wall and low-permeability asphalt cap in the Treatment Plant Area. Also, a new low-permeability asphalt cap was placed in the Treatment Plant Area, which impedes the infiltration of stormwater (as well as other liquids) into the groundwater beneath the area encompassed by the barrier wall. Thus, EPA has agreed to the removal of the restriction on the use of PCP because the changed conditions at the Site have significantly reduced and contained existing contamination.

In response to the commenter's statement, EPA does not believe, given the current situation, that PWPO's use of PCP will contribute to or aggravate existing contamination if the product is used in compliance with state and federal regulations. Pentachlorophenol is a Registered Use chemical that is approved by EPA for use in certain applications. Since 1984, the purchase and use of pentachlorophenol has been restricted to wood treatment by certified applicators, and it is used industrially throughout the United States as a wood preservative for utility poles, railroad ties, and wharf pilings (see <http://www.epa.gov/oppsrrd1/reregistration/pentachlorophenol/>). The lifting of the PCP restriction in the PPA does not in any way alter PWPO's obligations to comply with all state and federal environmental laws pertaining to PCP use.

**2. "The Proposed Amendment Does Not Require PWPO to Take Steps to Ensure that New Contamination Will be Distinguishable from Old Contamination."**

As described above, site conditions are now much different than they were when EPA entered into the original PPA. Since then, the contaminated soil cells have been disposed of off-site and surface soils in all the areas of the plant where PCP contamination was found have been replaced or contained within the slurry wall and asphalt cap. PWPO will be liable for any new PCP contamination. The language in the PPA's Covenant Not to Sue gives PWPO a release for "Existing Contamination" (see PPA paragraph 21) and the Reservation of Rights shifts the burden of proving that any contamination is "existing" to PWPO (see PPA paragraph 23). Because the burden so clearly rests on PWPO, EPA did not find it necessary to require the use of a marker strategy or other mechanism to distinguish existing contamination from new contamination.

Although it is not required by the Amendment, PWPO is implementing a Baseline Assessment to establish conditions prior to PWPO's treatment with PCP in Spring 2011. PWPO will be collecting soil and groundwater samples from different parts of the Site and analyzing the samples for PCP and other chemicals related to wood treating. In addition, PWPO will prepare a Marker Strategy to distinguish existing contamination from a potential future release of PCP or related treated chemicals. PWPO will provide results to EPA and Oregon Department of Environmental Quality.

### **3. "Use of PCP at the Site Threatens the Safety of the Community, Including Important Drinking Water Sources."**

At the outset, EPA notes that pentachlorophenol is a legal and widely used wood preservative. Although PCP is sufficiently hazardous to warrant regulation under state and federal hazardous waste laws, it is a legal product used by wood-treaters throughout the Northwest. Mr. King cites to EPA's July 2000 Integrated Assessment to suggest that the use of PCP at the Site is a threat to groundwater and surface water at the Site. EPA has, however, learned much more about the site than we knew in July 2000. During the Remedial Investigation and Feasibility Study of the TLT Site, EPA investigated the possibility that releases to groundwater or surface water posed an unsafe risk to human health or the environment. Surface water and off-site groundwater were found to be unaffected by site-related activities, and on-site groundwater risks have been addressed by removal and remedial actions implemented by EPA between 2000 and 2008. Of most importance, contaminated groundwater in the Treatment Plant Area is contained within an underground slurry wall and a low-permeability asphalt cap covers the area enclosed by the wall. Data indicate that the barrier wall is effectively containing groundwater contaminants.

Long-term monitoring of groundwater for PCP will be performed to ensure that contaminated groundwater does not pose an unacceptable risk to human health or the environment. Periodic monitoring of groundwater will occur in 19 wells located outside the barrier wall and two nearby residential wells (existing data have not identified a problem, but EPA believes that it is prudent to continue sampling these wells).

Further, EPA does not agree with Mr. King's characterization of PWPO as having a "poor track record." PWPO has been a very cooperative partner in EPA's implementation of the Superfund remedy at this Site. Since 2002, PWPO has consistently performed its obligations under the original agreement, including inspection and maintenance of asphalt covers and operation and maintenance of the groundwater extraction system. The PPA Amendment includes a new requirement for PWPO to submit annual environmental audits to assist EPA in assessing the impact of PWPO's actions on the cleanup. Although it is unfortunate that PWPO has been cited for violations of environmental laws on a few occasions since it began operations at the

Taylor Site, the violations cited by Mr. King are neither sufficiently frequent nor sufficiently grave to lead EPA to conclude that PWPO cannot be trusted to exercise appropriate care in the use of a legal and extensively used wood-treating chemical.

**4. “The Restriction Prohibiting the Use of PCP on the Site was Important to the Community.”**

EPA notes at the outset that over 120 commenters from the community expressed support for allowing PWPO to use PCP at the Taylor Site. Mr. King was the only commenter opposed to the use of PCP, and since Mr. King’s client chose to remain anonymous, EPA does not know whether the commenter is a member of the Sheridan or Yamhill County communities. Nevertheless, EPA is aware that this change to the original Agreement may come as a surprise to some members of the community. Although both PWPO and EPA were hopeful in 2002 that purchasers of treated wood products would accept greener products that did not contain PCP or arsenic, that has not been the case. PWPO had been using copper naphthanate at the facility, but copper naphthanate is no longer available to PWPO. PCP remains legal, and we have not identified any added risks to human health or the environment by permitting PWPO to use PCP at this Superfund Site. EPA’s insistence on retaining the prohibition on PCP would penalize PWPO, its workers, and the local economy without generating any substantial environmental benefit now that the cleanup is done.

EPA disagrees with Mr. King’s statement that “nothing has changed since 2001.” EPA has conducted a thorough investigation of the Site, assessed the risks posed by the contaminants, and implemented a remedy to address those risks. The remediation at the Site was completed in 2008. The Site today is very different from what it was ten years ago. With the benefit of the additional information and the additional cleanup, as well as years of experience working with PWPO as a partner during the cleanup of the Site, EPA has concluded that removing the prohibition on PCP at the Site will not place the cleanup at risk, will save jobs and economic activity in Sheridan, and will benefit both the State of Oregon and EPA through PWPO’s performance of operation and maintenance activities that would otherwise have to be paid for by the governments. As a normal part of the Superfund process, EPA will perform five-year reviews at the Site to evaluate the implementation and performance of the remedy to determine whether it remains protective of human health and the environment.