LDWSF 12.3.313 v.1
04/23/09

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

APR 23 2009

Reply To
Attn Of: ECL-111

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Richard L. Desimone Jr.
(b) (6)
Browns Point, WA 98422

Re: Request for Information Pursuant to Section 104(e) of CERCLA for the Lower Duwamish Waterway Superfund Site, Seattle, Washington

Dear Representative of Richard L. Desimone Jr.:

The Lower Duwamish Waterway Superfund site is located in King County, Washington ("Superfund Site"). Under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), commonly known as the "Superfund" law, the Environmental Protection Agency (EPA) is responsible for responding to the release or threat of release of hazardous substances, pollutants or contaminants. EPA has documented that such a release has occurred at the Superfund Site.

This letter requires you to provide information and documents relating to the property(ies) referenced at the top of the enclosure, and the environmental conditions at, and cleanup of, the Superfund Site. If the addresses for the referenced property(ies) and your business offices are different, you may receive more than one copy of this letter. Only a single response is required.

REQUEST FOR INFORMATION

Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), requires you to respond to the Information Request set forth in the Enclosure to this letter.

Failure to provide a complete, truthful response to this Information Request within sixty (60) days of your receipt of this letter, or to adequately justify such failure to respond, may subject you to an enforcement action pursuant to Section 104(e) of CERCLA. The statute permits EPA to seek the imposition of penalties of up to thirty-seven thousand five hundred dollars ($37,500) for each day of non-compliance.

Please note that responses which are incomplete, ambiguous, or evasive may be

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treated as non-compliance with this Information Request. Provision of false, fictitious, or fraudulent statements or representations may subject you to criminal penalties under 18 U.S.C. § 1001.

Your response to this Information Request should be mailed to:

United States Environmental Protection Agency, Region 10
Claire Hong, Remedial Project Manager
Environmental Cleanup Office, ECL-111
1200 Sixth Ave. Suite 900
Seattle, Washington 98101

RESOURCES AND INFORMATION FOR SMALL BUSINESSES

EPA has created a number of helpful resources to assist small businesses. EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which offer various forms of resources to small businesses. You may inquire about these resources at www.epa.gov. In addition, the EPA Small Business Ombudsman may be contacted at www.epa.gov/sbo. Finally, EPA developed a fact sheet about the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), which is enclosed with this letter.

If you have questions concerning this letter or the Site, please contact Claire Hong (206) 553-1813. Any communication by any attorney on your behalf should be directed to Alexander Fidis, EPA Office of Regional Counsel, at (206) 553-4710.

Thank you for your cooperation in this matter.

Sincerely,

Sheila Eckman, Unit Manager
Site Cleanup Unit #3
Office of Environmental Cleanup

Enclosures:
- Information Request
- Definitions
- Instructions
- Declaration
- SBREFA Fact Sheet

cc: Dan Cargill, Ecology/NWRO
Mellon Trust of Washington - Trust for Giuseppe & Assunta Desimone

U.S. EPA

CERCLA SECTION 104(e)

INFORMATION REQUEST

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Respondent: Representative of Richard L. Desimone Jr.

Site: Lower Duwamish Waterway, Seattle WA

Richard L. Desimone Jr.
10600 West Marginal Way S
Seattle, WA 98168

King County Parcels: 0423049186
0423049187
0423049189
0423049190
0423049057

Date: First involvement at the Site to present

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Please note: this Information Request includes instructions for responding to this request and definitions of words such as "Respondent," "Site," and "identify" used in the questions.

INFORMATION REQUEST QUESTIONS

1. **Respondent Information**

a. Provide the full legal name and mailing address of the Respondent.

b. For each person answering these questions on behalf of Respondent, provide:

i. full name;

ii. title;

iii. business address; and

iv. business telephone number and FAX machine number.

c. If Respondent wishes to designate an individual for all future correspondence concerning this Site, please indicate here by providing that individual's name, address, telephone number, and fax number.

d. State the dates during which Respondent held any property interests at or within one-half mile of the Site.

e. State the dates during which Respondent conducted any business activity at or within one-half mile of the Site.

f. Describe the nature of Respondent's business activities at the Site or within one-half mile of the Site.

g. In relation to your answer to the previous question, identify all materials used or created by your activities at the Site, including raw materials, commercial products, building debris, and other wastes.

h. If Respondent, its parent corporation, subsidiaries or other related or associated companies have filed for bankruptcy, provide:.

   i. the U.S. Bankruptcy Court in which the petition was filed;

   ii. the docket numbers of such petition;

   iii. the date the bankruptcy petition was filed;

   iv. whether the petition is under Chapter 7 (liquidation), Chapter 11 (reorganization), or other provision; and

   v. a brief description of the current status of the petition.

2. <u>Site Activities and Interests</u>

a. Provide all documents in your possession regarding the ownership or environmental conditions of the Site, including, but not limited to, copies of deeds, sales contracts, leases, blueprints, "as-builts" and photographs. Environmental conditions of the Site includes information related to soil, sediment, water (ground and surface), and air quality, such as, but not limited to:

   i. Any spill, leak, release, or discharge of a hazardous substance, waste, or material at or near the Site;

   ii. Occurrences of violations, citations, deficiencies, and/or accidents

concerning the Site;

iii. Remediation or removal of contaminated soils, sediments, or other media at the Site; and

iv. Investigations, inspections, sampling, and reports generated by Respondent and/or others regarding the Site and surrounding area.

b. Provide information on the condition of the Site when purchased or at the beginning of the relevant time period; describe the source, volume, and content of any fill material used during the construction of the buildings, including waterside structures such as seawalls, wharves, docks, or marine ways. Additionally, describe any subsequent improvements, alterations, demolitions, or additions to the physical structures or the Site itself.

c. Provide information on past dredging or future planned dredging at this Site.

d. Provide a brief summary of the activities conducted at the Site while under Respondent's ownership or operation. Include process diagrams or flow charts of the industrial activities conducted at the Site.

e. Provide all documents pertaining to sale, transfer, delivery, disposal, of any hazardous substances, scrap materials, and/or recyclable materials to this property.

f. Provide all information on electrical equipment used at the Site, including transformers or other electrical equipment that may have contained polychlorinated biphenyls (PCBs).

g. Provide information on the type(s) of oils or fluids used for lubrication of machinery or other industrial purposes, and any other chemicals or products which are or may contain hazardous substances which are or were used at the Site for facility operations.

h. Provide any site drainage descriptions, plans or maps that include information about storm drainage which includes, but is not limited to, above or below surface piping, ditches, catch basins, manholes, and treatment/detention or related structures including outfalls. If available, also include information about connections to sanitary sewer.

i. With respect to past site activities, please provide copies of any stormwater or drainage studies, including data from sampling, conducted at the Site. Also provide copies of any Stormwater Pollution Prevention or Maintenance Plans or Spill Plans that may have been developed for different operations during the Respondent's occupation of the property.

3. <u>Information About Others</u>

a. Describe any business relationship you may have had regarding this property or

operations thereon with the following entities:

i. Mellon Trust of Washington - Trust for Giuseppe & Assunta Desimone,
ii. Port of Seattle,
iii. Richard Desimone & Co.,
iv. The Boeing Company, and
v. United States Postal Service.

b. Provide the names and last known address of any tenants or lessees, the dates of their tenancy and a brief description of the activities they conducted while operating on the above mentioned Site.

c. If not already provided, identify and provide a last known address or phone number for all persons, including Respondent's current and former employees or agents, other than attorneys, who have knowledge or information about the generation, use, purchase, storage, disposal, placement, or other handling of hazardous materials at, or transportation of hazardous materials to or from, the Site.

4. <u>Financial Information</u>

a. Provide true and complete copies of all federal income tax documents, including all supporting schedules, for 2003, 2004, 2005, 2006 and 2007. Provide the federal Tax Identification Number and, if documentation is not available, explain why in detail.

b. Provide the Respondent's financial interest in, control of, or that the Respondent is a beneficiary of any assets (in the U.S. or in another country) that have not been identified in your federal tax returns or other financial information to be presented to EPA. If there are such assets, please identify each asset by type of asset, estimated value, and location.

c. If Respondent is, or was at any time, a subsidiary of, otherwise owned or controlled by, or otherwise affiliated with another corporation or entity, then describe the full nature of each such corporate relationship, including but not limited to:

i. a general statement of the nature of relationship, indicating whether or not the affiliated entity had, or exercised, any degree of control over the daily operations or decision-making of the Respondent's business operations at the Site;

ii. the dates such relationship existed;

iii. the percentage of ownership of Respondent that is held by such other entity(ies);

iv. for each such affiliated entity provide the names and complete addresses

of its parent, subsidiary, and otherwise affiliated entities, as well as the names and addresses of each such affiliated entity's officers, directors, partners, trustees, beneficiaries, and/or shareholders owning more than five percent of that affiliated entity's stock;

v. provide any and all insurance policies for such affiliated entity(ies) which may possibly cover the liabilities of the Respondent at the Site; and

vi. provide any and all corporate financial information of such affiliated entities, including but not limited to total revenue or total sales, net income, depreciation, total assets and total current assets, total liabilities and total current liabilities, net working capital (or net current assets), and net worth.

5. <u>Insurance Coverage</u>

a. Provide copies of all property, casualty and/or liability insurance policies, and any other insurance contracts referencing the site or facility and/or Respondent's business operations (including, but not limited to, Comprehensive General Liability, Environmental Impairment Liability, Pollution Legal Liability, Cleanup Cost Cap or Stop Loss Policies). Include, without limitation, all primary, excess, and umbrella policies which could be applicable to costs of environmental investigation and/or cleanup, and include the years such policies were in effect.

b. If there are any such policies from question "5a" above which existed, but for which copies are not available, identify each such policy by providing as much of the following information as possible:

i. the name and address of each insurer and of the insured;

ii. the type of policy and policy numbers;

iii. the per occurrence policy limits of each policy; and

iv. the effective dates for each policy.

c. Identify all insurance brokers or agents who placed insurance for the Respondent at any time during the period being investigated, as identified at the beginning of this request, and identify the time period during which such broker or agent acted in this regard.

d. Identify all communication and provide all documents that evidence, refer, or relate to claims made by or on behalf of the Respondent under any insurance policy in connection with the site. Include any responses from the insurer with respect to any claims.

e. Identify any previous settlements with any insurer in connection with the site, or for any claims for environmental liabilities during the time period under investigation. Include any policies surrendered or cancelled by the Respondent or insurer.

f. Identify any and all insurance, accounts paid or accounting files that identify Respondent's insurance policies.

g. Identify Respondent's policy with respect to document retention.

6. <u>Compliance with This Request</u>

a. Describe all sources reviewed or consulted in responding to this request, including, but not limited to:

   i. the name and current job title of all individuals consulted;

   ii. the location where all documents reviewed are currently kept.

INSTRUCTIONS

1. Answer Each Question Completely. Provide a separate answer to each question and subpart set forth in this Information Request. Incomplete, evasive, or ambiguous answers shall constitute failure to respond to this Information Request and may subject the Respondent to the penalties set out in the cover letter.

2. Response Format and Copies. Provide the responses to this Information Request and at least one copy of all requested documents either electronically or on paper (hard copy). Your submission, whether electronic or hard copy, must include an index that lists all the responsive documents provided, and that indicates where each document is referenced in the written response, and to which question or questions each document is responsive. Additionally, please clearly identify and segregate any information you determine to be Confidential Business Information (CBI).

   If providing your response electronically, it must be submitted on a compact disc in Portable Document Format (PDF) and comply with the following requirements:

   a. CBI and personal privacy information should be provided on separate media (e.g., a separate CD) and marked as such to ensure information is appropriately handled and physically separated from the other response information in EPA's files.
   b. The declaration must be provided in hard copy with an original signature.
   c. All documents originally smaller than 11 by 17 inches can be submitted electronically; any documents originally larger than 11 by 17 inches must be submitted in hard copy.
   d. Electronic PDF files cannot be submitted in Adobe Acrobat versions above 6 (or above PDF format version 1.5 if not using Adobe).
   e. Electronic PDF files must be text-searchable.
   f. The document index must clearly identify any single electronic document which has been separated into multiple electronic files (because of size limitation or otherwise) and each component file that comprises the full document.

3. Number Each Answer. Number each answer with the number of the question to which it corresponds.

4. Provide the Best Information Available. Provide responses to the best of Respondent's ability, even if the information sought was never put down in writing or if the written documents are no longer available. Seek out responsive information from current and former employees/agents. Submission of cursory responses when other responsive information is available to the Respondent will be considered noncompliance with this Information Request.

5. Identify Information Sources. For each question, identify all persons and documents relied upon for the answer.

6. Confidential Information. The information requested herein must be provided even though the Respondent may contend that it includes confidential information or trade secrets. The Respondent may assert a confidentiality claim covering part or all of the information requested, pursuant to 42 U.S.C. §§ 9604(e)(7)(E) and (F), and 40 C.F.R. § 2.203(b). All information claimed to be confidential should be contained on separate sheet(s) and should be clearly identified as "trade secret" or "proprietary" or "company confidential." A confidentiality claim should be supported by the submission of information consistent with 40 C.F.R. Part 2. Information covered by a confidentiality claim will be disclosed by EPA only to the extent, and only by means of the procedures, provided in 40 C.F.R. §§ 2.201-2.311. **If no such claim accompanies the information received by EPA, it may be made available to the public by EPA without further notice.**

7. Disclosure to EPA Contractor. Information submitted in response to this Information Request may be disclosed by EPA to authorized representatives of the United States, pursuant to 40 C.F.R. § 2.310(h), even if the Respondent asserts that all or part of it is confidential business information. EPA may provide this information to its contractors for the purpose of organizing and/or analyzing the information contained in the responses to this Information Request. If submitting information and asserting it is entitled to treatment as confidential business information, the Respondent may comment on EPA's intended disclosure within 14 days of receiving this Information Request.

8. Personal Privacy Information. Personnel and medical files, and similar files the disclosure of which to the general public may constitute an invasion of privacy, should be segregated from responses, included on separate sheet(s), and marked as "Personal Privacy Information". Note, however, that unless prohibited by law, EPA may disclose this information to the general public without further notice.

9. Objections. The Respondent must provide responsive information notwithstanding objections to certain questions. To object without providing responsive information may subject Respondent to the penalties set out in the cover letter.

10. Privilege. If a privilege is asserted for any document responsive to this Information Request, identify (see Definitions) the document and provide the basis for assertion. If a privilege exists for only a portion of a document, provide the portion of the document that is not asserted be privileged, identify the portion that is asserted to be privileged, and provide the basis for asserting privilege. **Please note that regardless of the assertion of any privilege, any facts contained in the document which are responsive to the Information Request must be disclosed in your response.**

11. Declaration. The Respondent must complete the enclosed declaration, certifying the accuracy of all statements in your response.

DEFINITIONS

All terms not defined herein shall have their ordinary meaning, unless such terms are defined in Section 101 of CERCLA, 42 U.S.C. § 9601, *et seq.*, or Volume 40 of the Code of Federal Regulations (CFR), in which case such statutory or regulatory definitions shall apply.

The following definitions shall apply to the following words as they appear in this Enclosure:

1. The term "Respondent" shall mean the addressee of this Request, together with the addressee's agents, employees, and contractors.

2. The terms "document" and "documents" shall mean any method of recording, storing, or transmitting information. "Document" shall include, but not be limited to:

    a. writings of any kind, including, but not limited to, any of the following:

        i. letters, memoranda, fax transmittals;

        ii. meeting minutes, telephone records, notebooks;

        iii. agreements and contracts;

        iv. reports to shareholders, management, or government agencies;

        v. transportation manifests;

        vi. copies of any document.

    b. any film, photograph, or sound recording on any type of device;

    c. any blueprints or drawings;

    d. attachments to, or enclosures with, any document.

3. The term "identify" means, with respect to a natural person, to set forth: (a) the person's full name, (b) present or last known business and home addresses and telephone numbers; and (c) present or last known employer (include full name and address) with job title, position, or business.

4. The term "identify" means, with respect to a corporation, partnership, business trust, or other entity, to set forth: (a) its full name; (b) complete street address; (c) legal form (e.g., corporation, partnership, etc.); (d) the state under whose laws the entity was organized; and (e) a brief description of its business.

5. The term "identify" means, with respect to a document, to provide: (a) its customary business description (e.g., letter, invoice); (b) its date; (c) its number if any (e.g., invoice or purchase order number); (d) the identity of the author, addressee, and/or recipient; and (e) a summary of the substance or the subject matter. **Alternatively,** Respondent may provide a complete copy of the document.

6. The term "material" or "materials" shall mean any and all raw materials, commercial products, wastes, chemicals, substances, or matter of any kind.

7. The "period being investigated" and "the relevant time period" shall mean the date of Respondent's first involvement at the Site to present.

8. The term "property" shall mean any interest in real or personal property whatsoever, including fee interests, leases, licenses, rental, and mineral rights.

9. The "Site" shall mean any or all property or area described as or near 10600 West Marginal Way S; and King County Tax Parcels: 0423049186, 0423049187, 0423049189, 0423049190, and 0423049057.

10. The term "waste" or "wastes" shall mean and include trash, garbage, refuse, by-products, solid waste, hazardous waste, hazardous substances, and pollutants or contaminants, whether solid, liquid, or sludge, including, but not limited to, building debris and asbestos-containing material.

11. The term "business activities" shall mean all actions, endeavors, ventures, or financing arrangements related in any manner whatsoever to the use and development of the Site, including surveying, sampling, grading, documentation, photography, demolition, construction, and waste disposal, and sales.

DECLARATION

I declare under penalty of perjury that I am authorized to respond on behalf of Respondent and that the foregoing is complete, true, and correct.

Executed on _____, 2009.

_____
Signature

_____
Type or Print Name

_____
Title

Mailing Address:

Richard L. Desimone Jr.
(b) (6)
Browns Point, WA 98422