WAD 2917
FF# 3a
11-29-93

RCRA PERMIT
ADMINISTRATIVE RECORD
ITEM NUMBER _____
TOTAL NUMBER OF PAGES _____

STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

Northwest Regional Office, 3190 - 160th Ave. S.E. • Bellevue, Washington 98008-5452 • (206) 649-7000

FILE COPY

November 29, 1993

John Stiller
Burlington Environmental Inc.
Waterfront Place One, Suite 700
1011 Western Avenue
Seattle, Washington 98104

Doug Hotchkiss
Port of Seattle
P.O. Box 1209
Seattle, Washington 98111

Dear Mr. Stiller and Mr. Hotchkiss:

Re: Pier 91 Facility, EPA I.D. No. WAD 00081 2917

This letter is in response to the November 3, 1993 meeting among Burlington Environmental Inc. (BEI) and the Port of Seattle (together referred to as the Permittees), and the Washington Department of Ecology (Ecology) and the Environmental Protection Agency (EPA) (together referred to as the Agencies). At this meeting, the Agencies agreed to provide the Permittees with a decision regarding our use of corrective action authorities at the Pier 91 Facility.

After careful deliberation, the Agencies have decided to pursue ongoing corrective action at Pier 91 by both completing the BEI Resource Conservation and Recovery Act (RCRA) Facility Investigation (RFI) and initiating potential interim measures under the existing RCRA Section 3008(h) order. Remaining corrective action requirements will be outlined in a Hazardous and Solid Waste Amendments (HSWA) permit, however, permit conditions will "defer" facility-wide corrective action requirements to a timely and complete Model Toxics Control Act (MTCA) order or decree.

In the Agencies' view, the selected approach provides a mix of benefits for all parties. Naturally, the Agencies paramount responsibility is to ensure an expeditious and sound clean-up of the facility and the Agencies believe our approach avoids possible administrative delays that would be detrimental to the environment. The approach assures timely fulfillment of corrective action obligations by allowing EPA to continue work on site investigation and potential interim measures, while Ecology resolves interim status closure issues and manages the MTCA process. The approach also commits EPA to defer facility-wide corrective action to MTCA and establishes EPA's corrective action requirements up-front which will facilitate MTCA order negotiations and ensure that the MTCA

USEPA RCRA
3012875

order is complete. With this approach, the Permittees may negotiate cleanup conditions within the MTCA context, with which the Port of Seattle is more familiar, and may utilize MTCA's joint and severable liability powers. (Although the MTCA order may include RCRA terminology and provisions not typically associated with MTCA actions, the Agencies assure the Permittees that we intend for the MTCA order to remain as consistent as possible with previous MTCA actions.) Finally, Ecology will be able to recover, through a pre-paid oversight position or other mechanism, costs associated with corrective action oversight.

EPA must issue a HSWA permit for Pier 91, including corrective action provisions, regardless of the administrative approach selected. As the Permittees know, EPA is considering authorization of a state corrective action program in Washington which relies, in part, on the MTCA regulations to implement RCRA corrective action requirements. The Agencies believe that a MTCA cleanup of the Pier 91 Facility, which incorporates RCRA corrective action requirements, would fulfill both state and federal obligations. However, any scenario which involves deferral of RCRA corrective action authority to cleanup under an alternative authority carries some risk that the cleanup would not sufficiently address RCRA concerns or obligations. In such a case, EPA or Ecology could require additional cleanup under a federal or state RCRA corrective action authority. At the Pier 91 Facility, such requirements would likely be imposed by "triggering" corrective action permit conditions if, for example, implementation of a MTCA order at the facility was not timely, or did not address all RCRA corrective action requirements.

Given the various administrative uncertainties associated with Washington's corrective action authorization, the Agencies believe a HSWA permit can be completed more quickly than a MTCA order. EPA projects a draft permit by March 1994, and a final permit in July 1994. Potential interim measures could begin as early as February 1994. How quickly the MTCA process can be initiated is, in part, dependent on Ecology resources.

The Agencies hope this letter provides sufficient detail to be of assistance to the Permittees in their planning. If you have questions about how the approach will be coordinated, please contact Elizabeth McManus or Hideo Fujita at Ecology [206] 753-8071 and [206] 649-7068, respectively, or David Croxton at EPA [206] 553-8582.

Sincerely,

Julie Sellick, Supervisor
Haz. Waste & Toxics Reduction
Section - NWRO

Carrie Sikorski, Chief
RCRA Permits Section