MAR 2 7 2009
Washington State
Department of Ecology

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:	DRAFT AGREED ORDER
White Birch Group, LLC c/o Ms. Sandy Rovai and Mr. Brad Jones Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, LLP PO Box 1157 Tacoma, WA 98401-1157 E.I du Pont de Nemours and Company c/o Maria Angelo DuPont Legal DuPont Building D-7086 1007 Market Street Wilmington, DE 19898	No. DE 5940

TO:

White Birch Group, LLC
c/o Ms. Sandy Rovai and Mr. Brad Jones
Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, LLP
PO Box 1157
Tacoma, WA 98401-1157

E.I. du Pont de Nemours and Company
c/o Maria Angelo
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- Exhibit A: Site Location Map
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I. INTRODUCTION

The mutual objective of the **State of Washington, Department of Ecology (Ecology), White Birch Group, LLC, and E.I. du Pont de Nemours and Company (DuPont)** under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires White Birch Group, LLC and DuPont to **conduct a Remedial Investigation, Interim Action, and Feasibility Study.** Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the authority of the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each Party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such Party to comply with the Order. White Birch Group, LLC and DuPont agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the responsibility of White Birch Group, LLC and DuPont under this Order. White Birch Group, LLC and DuPont shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms used in this Order.

A. Site: The Site is referred to as **Superlon Plastics Company, Inc.** and is generally located at **2116 Taylor Way, Tacoma, WA 98421-4302 (Latitude N47°16'21", Longitude W122°23'11")**. This property is also referred to as Parcel A throughout the Agreed Order. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. Based upon factors currently known to Ecology, the Site is more particularly described in Exhibits A, B-1, B-2, and B-3 to this Order, which includes a detailed Site diagram. The Site constitutes a Facility under RCW 70.105D.020(4).

B. Parties: Refers to the State of Washington, Department of Ecology, White Birch Group, LLC, and DuPont.

C. Potentially Liable Person (PLP): Refers to White Birch Group, LLC and DuPont.

D. Agreed Order or Order: Refers to this Order and each of the exhibits to the Order. All exhibits are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits to the Order.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by White Birch Group, LLC and DuPont:

A. The Site boundaries are currently undefined, but include a property located at 2116 Taylor Way, Tacoma, WA (Exhibits A, B-1 and B-2). This property covers 3.1 acres and is listed as tax parcel number 0321351042. It is also referred to as Parcel A throughout Section V of this Agreed Order. This property is currently owned by White Birch Group, LLC and operated by Superlon Plastics Company, Inc., an extruded plastic pipe manufacturer. Taylor Way

borders the northeast edge of the property. Beyond Taylor Way is a Port of Tacoma property. The property is bounded to the north by curved rail road right-of-way owned by the City of Tacoma Public Works (Parcel D). Beyond this right-of-way is a vacant triangle shaped parcel of land owned by the Port of Tacoma (Parcel C). To the northwest is Lincoln Avenue and a warehouse operation. To the south and southwest is Port of Tacoma property, which is operated as Haub Log Yard. The property to the southeast (Parcel B) is owned by RTH Tacoma, LLC and leased and operated by Fields Products, a roofing and waterproofing products manufacturing business.

B. A history of property ownership is as follows:

1. In 1925, Latimer-Goodwin Chemical Company (Latimer-Goodwin) purchased an approximately 5 acre parcel from Buffelen Lumber & Manufacturing Company. Latimer-Goodwin developed this property and manufactured lead arsenate, a fruit orchard pesticide, on Parcel A of the Site (Exhibit B-1).

2. In 1944, Grasselli Chemicals Department (Grasselli), a subsidiary of DuPont, purchased Latimer-Goodwin's land parcel and lead arsenate manufacturing facility, including processes, inventories, select contracts, goodwill, and trademarks. In 1945, DuPont purchased another 1 acre land parcel from Buffelen Lumber & Manufacturing Company. Grasselli manufactured lead arsenate and calcium arsenate insecticides at the Site until 1946, performed dust mixing operations until 1949, and warehoused agricultural chemicals. Grasselli also used the Site as its western sales office. Documentation from DuPont (DuPont, 1992) indicates that Grasselli also operated a development program for insecticides in the northwest fruit growing area. According to DuPont, this was a market development program. Based on historical aerial photographs and Sanborn maps, the lead arsenate manufacturing facility has been confined to Parcel A of the Site. The extent of DuPont land holdings at this location was determined based

on a title search performed in 2007. In 1946 and 1951, portions of DuPont's land holdings were sold off to the City of Tacoma (Parcel C) and Buffelen Lumber Manufacturing Company (Parcel D), respectively. However, Parcels A and B remained in DuPont's possession. Refer to Exhibit B-1 for the known historical extent of DuPont land holdings at this location.

3. In 1951, DuPont sold the remaining land holding (Parcels A and B, totaling 6.07 acres), to V.C. Monahan, who operated as Cabin Creek Lumber Company. In 1968, V.C. Monahan divided the land holding and sold the 3.1 acre the Parcel A to Justus Company, Inc., which operated as a wood treatment facility.

4. In 1972, Frank B. Lynott, of Justus Cedar Homes and Lindal Cedar Homes, ceased operation of a wood treatment facility and sold the 3.1 acre Parcel A (Exhibit B-1) to Mr. Ragnar M. Nars, operating as Superlon Plastics Company, Inc. (Superlon). In 1976, Parcel B was sold to Scott and From Co., Inc.

5. From 1992 to present, ownership of Parcel A was subdivided evenly into thirds, all of which were re-consolidated and granted through a series of quit claim deeds to White Birch Group, LLC.

C. The Site is located in a highly industrial area of the Tacoma Tidal Flats between the Blair and Hylebos Waterways. Several known toxics cleanup sites are within a quarter mile of Parcel A.

D. The Tidal Flats were filled and developed beginning in the early 1900's. Fill materials in the general area include dredge materials, native soil, as well as various types of waste and

debris, such as slag. Parcel A shows evidence of historical filling activities; however, the nature and origin of fill material is unknown.

E. In 1983, a 12 square mile area including and surrounding the Parcel A was placed on the National Priorities List, due to widespread contamination of water, sediments, and upland areas. It is referred to as the Commencement Bay- Nearshore Tidal Flats Superfund Site.

F. In 1990, the United States Environmental Protection Agency (EPA) and Ecology's Urban Bay Action Team (UBAT) found 34 corroded, unmarked, and empty drums in the dirt floored basement of Superlon's Building B (located on Parcel A). Also in 1990, a 1,000-gallon gasoline underground storage tank (UST) was removed from the site. A 500-gallon aboveground storage tank (AST), which previously contained water for Superlon's cooling tower, is currently located in Building B (Exhibit B-2). The tank and cooling tower are no longer in use.

G. In 1991, Ecology and Environment (E&E) completed a site assessment for the Superlon property (Parcel A) finding elevated concentrations of polycyclic aromatic hydrocarbons (PAHs), lead, and arsenic in soil and surface water. No groundwater samples were collected.

H. In 2002, a Natural Resource Damage Assessment was conducted by various trustees, including Ecology. The Allocation of Injuries prepared for the trustees did not find a nexus between the Site and natural resource damages. The Site, although identified in the allocation process, was not assigned any cost for natural resource damages.

I. In 2007, an Initial Investigation was completed by the Tacoma/Pierce County Health Department (T/PCHD). According to the T/PCHD investigation, the condition of Building B appeared to be unchanged from the 1991 E&E investigation.

J. In 2007, Landau Associates completed a Phase I Environmental Site Assessment and a Soil and Groundwater Investigation (Exhibits C-1, C-2, C-3, and C-4) of the Site for the Port of Tacoma. Concentrations exceeding MTCA cleanup levels were detected in soil, groundwater, and surface water (well water, standing water, and sump water) for the following contaminants:

1. Metals: Arsenic, Cadmium, Lead, and Mercury
2. Petroleum hydrocarbons: gasoline and oil range
3. Semi-volatile organic compounds: pentachlorophenol
4. Volatile organic compounds: tetrachloroethylene, trichloroethylene, cis-1,2-dichloroethylene, vinyl chloride, and chloromethane

K. In 2008, the Washington Department of Labor and Industries, Occupational and Safety and Health Division performed sampling at the Superlon property (Parcel A). Wipe samples indicated elevated concentrations of lead and arsenic in dust on surfaces including flooring in Buildings B and C and manufactured product stored in Building B. Lead concentrations exceeded United States Department of Housing and Urban Development (HUD) guidelines for surface contamination in occupied buildings. In addition, asbestos was found in pipe insulation materials on Site. Actions have been taken by Superlon to reduce the potential of worker exposure to lead, arsenic, and asbestos.

L. Stormwater, process water from the plastic pipe extruder manufacturing system, and sump water pumped from the ground level of Building B (located on Parcel A) have, at times, all discharged to a ditch along the southeastern portion of the property, which ties into the Lincoln Avenue Ditch, and then the adjacent waterways. The historical and current configuration of this ditch system is unknown; however, it appears to have diverted water to the Blair and/or Hylebos

Waterways. The extent to which it served as a conduit for contaminant transport is unknown. The use of this sump was discontinued in 2008.

M. Port of Tacoma has developed a plan for redevelopment of the area that encompasses the Site. The 2008 Draft Environmental Impact Statement for the Blair-Hylebos Terminal Redevelopment Project specifies alternatives that under redevelopment alternative 1, the Superlon property (Parcel A) would be used for development of road and rail infrastructure, and that under redevelopment alternative 2, the Port would develop roadway and utility improvements near the property. However, on March 2, 2009, the Port of Tacoma indicated they are not pursuing or budgeting for property acquisition of the Superlon property.

VI. ECOLOGY DETERMINATIONS

A. **White Birch Group, LLC** is an "owner or operator" as defined in RCW 70.105D.020(12), of a "facility" as defined in RCW 70.105D.020(4).

B. **DuPont** is an "owner or operator" as defined in RCW 70.105D.020(12), of a "facility" as defined in RCW 70.105D.020(4).

C. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(20) and RCW 70.105D.020(7), respectively, has occurred at the Site.

D. Based upon credible evidence, Ecology issued potentially liable person status letters to White Birch Group, LLC and DuPont dated April 18, 2008, pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500. After providing for notice and opportunity for comment,

reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that White Birch Group, LLC and DuPont are potentially liable persons (PLPs) under RCW 70.105D.040 and notified White Birch Group, LLC of this determination by letter dated June 19, 2008. DuPont was notified of its status as a PLP by letter dated September 29, 2008.

E. Pursuant to RCW 70.105D.030(1) and -.050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial action(s) required by this Order is(are) in the public interest.

F. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study or design of a cleanup action. Data collected to date indicates an interim action is appropriate consistent with WAC 173-340-430.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that White Birch Group, LLC and DuPont take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

A. **Data Submittal Period:** Perform a detailed file review and reconciliation of the PLPs and the Department of Ecology's (Ecology) files (Exhibit D). Any environmental data collected to date that is not already on file at the Southwest Regional Office will be submitted to Ecology. Ecology and the PLPs will identify any data gaps not addressed in previous environmental studies for inclusion in a remedial action work plan.

B. Cooperate with the public outreach efforts in accordance with paragraph H of section VIII (Terms and Conditions of Order), including the preparation of documents requested by Ecology.

C. **Draft Remedial Investigation (RI) Work Plan:** Develop a Draft RI Work Plan to characterize the extent, distribution, and sources of all hazardous substances detected at the Site and submit to Ecology for review and approval in accordance with WAC 173-340-350(7). The RI Work Plan will specifically:

1. Include a plan for developing a hydrogeologic conceptual model for the Site.

2. Include a plan to fully delineate the lateral and vertical extent of contaminates in soil, groundwater, surface water, and sediments throughout the Site. Analysis should include, but not be limited to, contaminants typical of pesticides of the nature formerly manufactured or stored at the Site, and wood treating operations at the Site, and those previously found to be present on Site.

3. Include a soil and data screening plan to be performed during field investigations to determine if additional soil or groundwater sampling and analysis are necessary.

4. Describe the methods that will be used to characterize fill materials used on Site to determine any associated environmental impacts.

5. If a risk of vapor intrusion is determined to be likely, include a plan for evaluating the groundwater to indoor air pathway.

6. Include a plan for locating, decommissioning (if warranted), and investigating potential impacts of aboveground and underground storage tanks.

7. Include a plan for investigating potential impacts from past and present process water, sump pump, and stormwater discharges to the surrounding ditch system, in both its past and current configurations.

8. Include a plan for locating underground utility corridors to evaluate their potential for acting as preferential pathways for contaminate transport.

9. Include a schedule for implementing the associated work.

10. Include a Sampling and Analysis Plan (SAP) and a Health and Safety Plan (HASP) per WAC 173-340-350(7)(c)(iv). These plans shall be prepared and referenced as part of the RI, Feasibility Study, and Interim Action Work Plans and shall conform to the requirements specified in WAC 173-340-810 and WAC 173-340-820. The HASP shall be submitted to Ecology. The SAP shall be submitted to Ecology for review and approval. Analytical procedures shall be in accordance with WAC 173-340-830.

11. Identify, pursuant to WAC 173-340-710(2), all state and federal laws and permits and substantive requirements of those permits applicable to activities conducted under this

Order. Pursuant to WAC 173-340-710(9)(e) and paragraph P of Section VIII (Terms and Conditions of Order), the determination of whether additional permits or approvals or substantive requirements are required shall be a continuing obligation of White Birch Group, LLC and DuPont. Reports on initial and subsequent identifications shall be submitted to Ecology.

E. **Draft Feasibility Study (FS) Work Plan:** Develop a Draft FS Work Plan for Ecology review and approval in accordance with WAC 173-340-350(8).

F. **Draft Interim Action (IA) Work Plan:** An IA Work Plan shall be prepared and submitted to Ecology for review and approval in accordance with WAC 173-340-430. Timing for the Interim Action Plans will be negotiated with Ecology at a later date.

G. **Final RI, FS, and IA Work Plans:** Submit Final RI, FS, and IA Work Plans, for Ecology's approval, addressing Ecology's comments on the draft work plans. Any such deliverable, once approved by Ecology, will become an integral and enforceable part of the Order.

Ecology recognizes that more than one phase of the RI may be necessary based on data collected. If additional characterization is needed, work plans for additional investigation will be submitted to Ecology in draft form. Final work plans subsequently will be submitted with revisions incorporating Ecology's comments on the draft plans.

H. **Implement the Approved RI, FS, and IA:** Implement the RI, FS, and IA according to the approved Final RI, FS, and IA Work Plans.

I. **Draft RI, FS, and IA Reports:** Prepare Draft RI, FS, and IA Reports. The draft RI, FS, and IA Reports shall be completed in accordance with WAC 173-340-350 and WAC 173-340-430 to document the nature and extent of contamination at the Site and to provide recommendations for remedial actions.

The draft RI Report will present the results of the remedial investigations at the Site, including the vertical and lateral distribution of contaminants in soil and groundwater. A summary of all past investigations and interim remedial actions with respect to Site soil and groundwater also will be included.

The draft FS Report will evaluate remedial alternatives that are protective of human health and the environment, including terrestrial or aquatic receptors identified. Remedial alternatives shall eliminate, reduce, or otherwise control risks to human health and the environment posed through each potentially complete exposure pathway. Residual threats that accompany each alternative shall be evaluated to determine if remedies protective of human health are also protective of ecological receptors. The FS shall include at least one permanent cleanup alternative to serve as a baseline against which other alternatives shall be evaluated.

The draft IA report shall describe the interim action undertaken at the Site and include rationale for the choice of interim action activities. The draft IA report shall document how the interim action either reduced one or more exposure pathways to a hazardous substance, corrected a problem that would have otherwise become substantially worse, or enabled completion of remedial action activities.

J. **Final RI, FS, and IA Reports:** Submit Final RI, FS, and IA Report(s), for Ecology's approval, addressing Ecology's comments on the draft reports.

K. **Schedule of Deliverables:** Except as otherwise provided in Section VIII(K), the schedule of deliverables found in Exhibit E shall be followed. Any such deliverable, once approved by Ecology, will become an integral and enforceable part of the Order.

L. Monthly updates on progress and findings shall be communicated to Ecology.

M. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this Section (VII), Ecology may complete and issue the final deliverable.

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notices

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect.

B. Remedial Action Costs

White Birch Group, LLC and DuPont shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of the Order. The costs that have accrued through December 31, 2008 are $11,360.03. White Birch

Group, LLC and DuPont shall pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

C. Implementation of Remedial Action

Except where necessary to abate an emergency situation, White Birch Group, LLC and DuPont shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

D. Designated Project Coordinators

The project coordinator for Ecology is:

Laura Klasner, P.E.
Site Manager
Washington Department of Ecology
TCP-SWRO
PO Box 47775
Olympia, WA 98504-7775
(360) 407-6265

The project coordinators for White Birch Group, LLC are:

Ms. Sandy Rovai and Mr. Brad Jones
Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, LLP
PO Box 1157
Tacoma, WA 98401-1157
(253) 620-6508 Ms. Rovai
(253) 620-6485 Mr. Jones

The project coordinator for DuPont is:

Tim Bingman
DuPont Corporate Remediation
1108 Ohio River Blvd., Suite #801
Sewickley, PA 15143
(412) 749-5246

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. The Ecology project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology, White Birch Group, LLC, and DuPont and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinator(s).

Ecology, White Birch Group, LLC, and DuPont may change their respective project coordinator, but must provide ten (10) days advance written notification of the change to the other party.

E. Performance

All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a licensed professional engineer or licensed hydrogeologist, or equivalent as approved by Ecology, with experience and expertise in hazardous waste site investigation and cleanup. White Birch Group, LLC and DuPont shall notify Ecology in writing of the identity of such engineer(s), or hydrogeologist(s), or others, and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

Any construction work performed pursuant to the Order shall be under the supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered in the State of Washington, except as provided in RCW 18.43.130.

F. Access

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that White Birch Group, LLC and DuPont either own, control, or have access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing White Birch Group, LLC's and DuPont's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by White Birch Group, LLC and DuPont. White Birch Group, LLC and DuPont shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by White Birch Group, LLC and DuPont where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by White Birch Group, LLC and DuPont unless an emergency prevents such notice. All persons who access the Site pursuant to this paragraph shall comply with the approved health and safety plan, if any. Ecology employees and their representative shall not be required to sign any release or waiver as a condition of site property access.

G. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, White Birch Group, LLC and DuPont shall make the results of all sampling, laboratory reports, and/or test results generated by them or on their behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII

(Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, White Birch Group, LLC and DuPont shall allow split or duplicate samples to be taken by Ecology and/or its authorized representative of any samples collected by White Birch Group, LLC and DuPont pursuant to implementation of this Order. White Birch Group, LLC and DuPont shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order to be taken by White Birch Group, LLC and DuPont or its authorized representative provided it does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.F of this Order, Ecology shall notify White Birch Group, LLC and DuPont prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

H. Public Participation

A public participation plan is required for this Site. Ecology shall review any existing public participation plan to determine its continued appropriateness and whether it requires amendment, or if no plan exists, Ecology shall develop a public participation plan alone or in conjunction with White Birch Group, LLC and DuPont.

Ecology shall maintain the responsibility for public participation at the Site. However, White Birch Group, LLC and DuPont shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing list, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings;

2. Notify Ecology's project coordinator prior to any of the following: the issuance of all press releases; distribution of fact sheets; performance of other outreach activities; meetings with the interested public and/or local governments. Likewise, Ecology shall notify White Birch Group, LLC and DuPont prior to the issuance of all press releases and fact sheets, and before meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by White Birch Group, LLC and DuPont that do not receive prior Ecology approval, White Birch Group, LLC and DuPont shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology;

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions, or as a presenter;

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

a) Tacoma Public / Main Library
1102 Tacoma Avenue South
Tacoma, WA 98402
(253) 591-5666

b) Ecology's Southwest Regional Office
300 Desmond Drive, Lacey
P.O. Box 47775
Olympia, WA 98504-7775
(360) 407-6365

c) Citizens for a Healthy Bay
917 Pacific Avenue, Suite 100
Tacoma, WA 98402
Phone: (253) 383-2429

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

I. Retention of Records

During the pendency of this Order and for ten (10) years from the date of completion of work performed pursuant to this Order, White Birch Group, LLC and DuPont shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, White Birch Group, LLC and DuPont shall make all records available to Ecology and allow access for review within a reasonable time.

J. Resolution of Disputes

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII.B (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

a) Upon receipt of the Ecology project coordinator's decision or the itemized billing statement, White Birch Group, LLC or DuPont have fourteen (14) days within which to notify Ecology's project coordinator of its objection to the decision or itemized statement.

b) The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

c) White Birch Group, LLC or DuPont may then request Ecology management review of the decision. This request shall be submitted in writing to the Southwest Region Toxics Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's decision.

d) The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within sixty (60) days of White Birch Group, LLC's or DuPont's request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

K. Extension of Schedule

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify the reason(s) the extension is needed. The request shall specify:

a) The deadline that is sought to be extended;

b) The length of the extension sought;

c) The reason(s) for the extension; and

d) Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on White Birch Group, LLC and DuPont to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause includes, but is not limited to:

a) Circumstances beyond the reasonable control and despite the due diligence of White Birch Group, LLC and DuPont including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by White Birch Group, LLC and DuPont; or

b) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or

c) Endangerment as described in Section VIII.M. of this Order.

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of White Birch Group, LLC and DuPont.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give White Birch Group, LLC and DuPont written notification in a timely fashion of any extensions granted pursuant to the Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.L when a schedule extension is granted.

4. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:

a) Delays in the issuance of a necessary permit which was applied for in a timely manner;

b) Other circumstances deemed exceptional or extraordinary by Ecology; or

c) Endangerment as described in Section VIII.M of this Order.

L. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.N of this Order, substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of Ecology, White Birch Group, LLC, and DuPont. White Birch Group, LLC, and DuPont shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to the Order represents a substantial change, Ecology will provide additional public notice and opportunity to comment. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J. of this Order.

M. Endangerment

In the event Ecology determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct White Birch Group, LLC and DuPont to cease such activities for such period of time as it deems necessary to abate the danger. White Birch Group, LLC and DuPont shall immediately comply with such direction.

If, for any reason, White Birch Group, LLC and DuPont determine that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, White Birch Group, LLC and DuPont may cease such activities. White Birch Group, LLC and DuPont shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction White Birch Group, LLC and DuPont shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology

disagrees with White Birch Group, LLC's and DuPont's cessation of activities, it may direct White Birch Group, LLC and DuPont to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, White Birch Group, LLC and DuPont's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

N. Reservation of Rights

This Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against White Birch Group, LLC and DuPont to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against White Birch Group, LLC and DuPont regarding remedial actions required by this Order, provided White Birch Group, LLC and DuPont comply with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss

of natural resources resulting from the release or threatened release of hazardous substances at the Site.

O. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by White Birch Group, LLC without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to White Birch Group, LLC's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, White Birch Group, LLC shall provide a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, White Birch Group, LLC shall notify Ecology of said transfer. Upon transfer of any interest, White Birch Group, LLC shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

P. Compliance with Applicable Laws

1. All actions carried out by White Birch Group, LLC and DuPont pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. A list of the required permits known at the time of entry of this Order has been included in Exhibit F.

2. Pursuant to RCW 70.105D.090(1), Defendant is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws

requiring or authorizing local government permits or approvals. However, Defendant shall comply with the substantive requirements of such permits or approvals. A list of such permits and approvals and/or the substantive requirements of those permits and approvals as they are known to be applicable at the time of entry of this Order, has been included in Exhibit F.

White Birch Group, LLC and DuPont have a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology, White Birch Group, LLC, or DuPont determine that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology, White Birch Group, LLC, or DuPont shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, White Birch Group, LLC and DuPont shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by White Birch Group, LLC and DuPont and on how White Birch Group, LLC and DuPont must meet those requirements. Ecology shall inform White Birch Group, LLC and DuPont in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. White Birch Group, LLC and DuPont shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

3. Pursuant to RCW 70.105D.090(2) in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the state to administer any federal law, the exemption shall not apply and White Birch Group, LLC and DuPont shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

Q. Indemnification

White Birch Group, LLC and DuPont agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property arising from or on account of acts or omissions of White Birch Group, LLC and DuPont, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the White Birch Group, LLC and DuPont shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in implementing the activities pursuant to this Order.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon White Birch Group, LLC's and DuPont's receipt of written notification from Ecology that White Birch Group, LLC and DuPont have completed the remedial activity required by this Order, as amended by any modifications, and that the White Birch Group, LLC and DuPont have complied with all other provisions of this Agreed Order.

X. ENFORCEMENT

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for remedial actions and orders related to the Site.

C. In the event White Birch Group, LLC and/or DuPont refuse, without sufficient cause, to comply with any term of this Order, White Birch Group, LLC and/or DuPont will be liable for:

1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and

2. Civil penalties of up to $25,000 per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: _____

WHITE BIRCH GROUP, LLC

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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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Rebecca S. Lawson, P.E., LHG
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