

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:	AGREED ORDER
Port of Olympia	No. DE5471

TO: Port of Olympia  
c/o Jeff Lincoln, Engineering Director  
Port of Olympia  
915 Washington Street NE  
Olympia, WA 98501

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## **I. INTRODUCTION**

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the Port of Olympia (Port) 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. Specifically, this Agreed Order will:

1. Require the Port to develop a Remedial Investigation (RI) Work Plan for the Site, in accordance with the Model Toxics Control Act (MTCA), Chapter 70.105D RCW and Chapter 173-340 WAC. A Site diagram is shown in Exhibit A.
2. Require the Port to implement the RI Work Plan, after Ecology approves the RI Work Plan.
3. Require the Port to draft an RI report.
4. Require the Port to conduct additional RI work if Ecology determines additional data is necessary to understand the type and extent of contamination present at the Site.
5. Require the Port to develop an Interim Action Work Plan for the Site in accordance with Chapter 173-340 WAC.
6. Require the Port to implement the Interim Action Work Plan, after Ecology approves the Interim Action Work Plan.
7. Require the Port to draft an Interim Action Report.

Ecology believes the actions required by this Order are in the public interest.

## **II. JURISDICTION**

This Agreed Order is issued pursuant to 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 this Order. The Port agrees to undertake all actions required by the terms and

conditions of this Order. No change in ownership or corporate status shall alter the Port's responsibility under this Order. The Port 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 in this Order.

A. Site: The Site is referred to as East Bay Redevelopment and is generally located at 315 Jefferson Street NE in Olympia, Washington. As shown on Exhibit A, the East Bay Redevelopment Site includes, but is not limited to, part of Parcel 1 and all of Parcels 2, 3, 4, 5, 6, 7, and 9. The Site lies on the south end of the Port Peninsula adjacent to the East Bay of Budd Inlet. 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 the Site Diagram (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(5).

Additionally, the East Bay Site is adjacent to the LOTT Alliance Wastewater Treatment Plant Expansion ("LOTT Expansion") Site. The LOTT Expansion Site includes the area of the existing LOTT Alliance Budd Inlet Wastewater Treatment Plant (500 Adams Street NE), the parking lot south of the plant, and Parcel 8, as set out in Exhibit A. The LOTT Expansion Site is currently enrolled in Ecology's Voluntary Cleanup Program (VCP) because of residual soil and groundwater contamination from former lumber mills. The site is assigned VCP identification number SW0933. Former lumber mill operators on the LOTT Expansion site include the Olympia Door Company and the Springer Mill Company. Available historical information does not conclusively indicate whether the operational area of the St. Paul & Tacoma Lumber Company (one of the former operators of the East Bay Redevelopment Site) included the LOTT Expansion Site. Also, it is not currently believed that contamination from the LOTT Expansion Site and the East Bay Redevelopment Site are commingled. Therefore, the LOTT Expansion

Site is not included in the scope of this Agreed Order. However, if Ecology determines in writing that adequate evidence exists to support combining the two sites, the LOTT Expansion Site will become part of the East Bay Redevelopment Site.

B. Parties: Refers to the State of Washington Department of Ecology and the Port of Olympia (Port).

C. Potentially Liable Person (PLP): Refers to the Port of Olympia (Port).

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

E. Area of Concern (AOC): Potential sources of subsurface contamination identified in Phase I Environmental Site Assessment reports based on a search of historic documents and aerial photographs.

## V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by the Port:

A. Historic documents provided to Ecology show that the earliest documented activities on portions of the Site were related to several types of lumber milling operations (such as sawmill, planing mill, shingle mill, and veneer/plywood manufacture). Lumber milling operations were conducted under various owners/operators from at least 1888 until about 1968. Historic owners/operators included the St. Paul & Tacoma Lumber Company (mid-1940s through early 1970s, Parcels 2 through 7); Olympia Veneer Company (1924 to mid-1940s, Parcels 1 through 5); Olympia Planing Mill (owned/operated by Springer and White (1888-1891, Parcel 3)); Olympia Sawmill (owned/operated by Allen & Harknes, 1888, Parcel 3); G.S. Allen’s Saw Mill (1891, Parcel 3); Olympia Door and Lumber Company’s planing mill and the East Side Lumber Company’s saw mill (1896, Parcel 3); H.G. Richardson’s Shingle Mill (1908, Parcel 3); the Olympia Door Company Sash and Door Factory (1908-1924, Parcel 9); Puget Sound Pipe Company (wooden pipes, 1888-1896, Parcel 1), and the National Wood Pipe

Company (1908, Parcels 3 through 6). Exhibit C shows the locations of some of these former operations.

B. Based on historic maps, the lumber milling operations included various support facilities that may be AOCs including: machine/ electrical/repair shops, dry kilns, veneer driers, power plants, hog fuel boilers, transformers, engine rooms, bulk fuel storage areas, blacksmith shops, and tar dipping tanks (Exhibit D). Also, historic aerial photographs show that logs were rafted in the bay, presumably for transport along Budd Inlet to various sawmills.

C. Historic documents also revealed that dredged spoils from Budd Inlet have been placed on the peninsula since 1892. For example, a Sanborn Map dated 1888 indicated that several buildings were present. These buildings were likely constructed on piers that extended over the water and/or mudflats that existed prior to significant filling operations that occurred from 1896 to 1911. The newly reclaimed land is currently known as the Port Peninsula.

D. Since lumber milling operations ceased in 1968, the Port of Olympia and its tenants have used portions of the Site for commercial and light industrial activities and/or storage.

E. The Port voluntarily initiated an assessment of soil and groundwater at the Site. On January 4, 2007, the Port submitted an application to Ecology to enter a portion of what is now defined as the Site into the VCP. Included with the application were four technical reports prepared by GeoEngineers for the Rants Group: 1) "Environmental Site Assessment Reconnaissance Study, 1022 Marine Drive NE, Olympia, Washington" dated September 20, 2006; 2) "Phase II Environmental Site Assessment Report, 1022 Marine Drive NE, Olympia, Washington" dated November 3, 2006; 3) "Phase I Environmental Site Assessment, 1022 Marine Drive NE, Olympia, Washington" dated November 27, 2006; and, 4) "Remedial Investigation Work Plan, Proposed City of Olympia City Hall Site, 1022 Marine Drive NE, Olympia, Washington" dated November 28, 2006. The application was accepted by Ecology and the Site was enrolled into the VCP on January 5, 2007.

F. Ecology responded to the reports it had received in a January 18, 2007, VCP Opinion Letter. Ecology concluded that the boundary of the Site identified in the RI Work Plan

(Parcel 3, 2.8 acres) did not represent the entire Site. Therefore, the proposed work plan was judged to not likely be sufficient to characterize the entire extent of the Site. Accordingly, Ecology requested that the Phase I Environmental Site Assessment (ESA) report be expanded to include the entire area where various mill activities were historically conducted.

G. On February 14, 2007, Ecology received the “Phase II Environmental Site Assessment, Hands On Children’s Museum, Olympia, Washington” report prepared by GeoEngineers, dated February 6, 2007.

H. Ecology responded in a VCP Opinion Letter dated April 9, 2007, noting that the boundary of the Site identified in the report should be further expanded to include both the entire Phase I Environmental Site Assessment study area (Exhibit D), and a portion of the East Bay of Budd Inlet.

I. On March 30, 2007, Ecology received the “Phase I Environmental Site Assessment, East Bay Redevelopment Project, Olympia, Washington” report prepared by GeoEngineers, dated March 14, 2007. On this same date, Ecology also received two reports prepared by Brown and Caldwell, both dated March 15, 2007: 1) “Environmental Investigation, Port of Olympia East Bay Property, 316 Jefferson Street, Olympia, Washington”; and 2) “Phase II Environmental Site Assessment, East Bay Port of Olympia Property, 316 Jefferson Street, Olympia, Washington.”

J. On May 4, 2007, Ecology received the “Remedial Investigation/Feasibility Study (RI-FS) and Cleanup Action Plan, Potential City of Olympia City Hall, Port of Olympia East Bay Redevelopment, Olympia, Washington” report prepared by GeoEngineers, dated April 24, 2007.

K. Ecology reviewed the reports received in March and May 2007 and responded in a VCP Opinion Letter dated May 9, 2007. Ecology stated that the remedial action described in the report(s) were not sufficient for characterizing and addressing the releases at the Site. Ecology also determined that while the remedial alternatives described in the Feasibility Study (FS) and Cleanup Action Plan (CAP) submitted for the Proposed Olympia City Hall portion of the Site (Parcel 3) may be appropriate, Ecology could not approve these plans until the remedial

investigation for the entire East Bay Redevelopment Site is completed. Ecology noted that based on information received for the City Hall (Parcel 3), Hands On Children's Museum (Parcel 5), and LOTT Alliance parcels (Parcel 8), soil and groundwater samples have documented the presence of petroleum hydrocarbons, semi-volatile organic compounds (SVOCs), polychlorinated biphenyls (PCBs), and/or metals at concentrations exceeding MTCA Method A Cleanup Levels, the extent of which had not been defined. Ecology also commented that the one round of groundwater sampling that was provided is not adequate to provide enough information to determine if the proposed alternatives will provide a permanent solution. Additional quarterly groundwater monitoring was recommended by Ecology as part of the remedial investigation for the remainder of the Site to determine whether seasonal variations will affect concentrations in groundwater.

L. On August 6, 2007, Ecology received two work plans prepared by GeoEngineers, both dated July 31, 2007: 1) "Work Plan, Phase II Environmental Site Assessment, East Bay Redevelopment Project, Olympia, Washington" and, 2) "Work Plan, Soil Sampling for Dioxin/Furan Analysis, East Bay Redevelopment Project, Olympia, Washington."

M. Ecology reviewed these work plans and responded in a VCP Opinion Letter dated August 7, 2007, that the remedial action described in the report(s) were not sufficient for characterizing and addressing the releases at the Site and provided comments for the revision of these plans.

N. On August 13, 2007, Ecology received the "Supplemental Site Use History and Soil and Groundwater Clarifications, East Bay Redevelopment Property, Olympia, Washington" report prepared by GeoEngineers, dated August 3, 2007.

O. On August 15, 2007, Ecology responded in a VCP Opinion Letter that the LOTT Alliance may enter the former Springer Mill Company Area (Parcel 8 and the wastewater treatment plant area) in the VCP as a separate Site unless additional site characterization indicates that this area should be considered part of the East Bay Redevelopment Site. This is the same area referred to above in Section IV.A.

P. On December 21, 2007, Ecology received the “Draft Remedial Investigation/Feasibility Study and Conceptual Cleanup Action Plan, East Bay Redevelopment, Port of Olympia, Olympia, Washington” report prepared by GeoEngineers, dated December 20, 2007.

Q. On February 5, 2008, Ecology responded in a VCP Opinion Letter that the RI/FS and Conceptual Cleanup Action Plan are not sufficient because of several concerns. These concerns included: additional characterization is needed to define the extent of soil contamination; additional characterization of groundwater contamination, flow direction, and gradient is needed; additional detail is needed on the cleanup alternatives; and that additional alternatives need to be added to the Feasibility Study.

R. On February 21, 2008, Ecology notified the Port that the Site was being removed from the VCP because further action at the Site will occur under an agreed order, enforcement order, or decree under formal oversight from Ecology.

S. As noted above, based on reports prepared for the Port and submitted to Ecology, past operations on property that is part of the Site have resulted in the contamination of soil and/or groundwater at levels that exceed the MTCA cleanup standards for all of the following constituents: total petroleum hydrocarbons (TPH), carcinogenic polycyclic aromatic hydrocarbons (cPAHs), chlorinated dibenzo-p-dioxins and chlorinated dibenzofurans (dioxins/furans), PCBs, and metals.

## **VI. ECOLOGY DETERMINATIONS**

A. The Port is an “owner or operator” as defined in RCW 70.105D.020(17) of a “facility” as defined in RCW 70.105D.020(5). The Port currently owns property that is part of the Site.

B. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(25) and RCW 70.105D.020(10), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to the Port dated February 14, 2008, pursuant to RCW 70.105D.040, 70.105D.020(21) and WAC 173-340-500.

By letter dated February 21, 2008, the Port voluntarily waived its rights to notice and comment and accepted Ecology's determination that the Port is a PLP under RCW 70.105D.040.

D. Pursuant to RCW 70.105D.030(1) and 70.105D.050(1), Ecology may require the Port 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 actions required by this Order are in the public interest.

E. 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. The Port is currently in the design and permitting stages of infrastructure construction at the Site. Performing the Interim Action will result in a faster and more cost effective cleanup because the interim action cleanup will be performed in conjunction with infrastructure construction. Therefore, performance of this interim action is consistent with WAC 173-340-430. The schedules for deliverables related to this Interim Action are set forth below at VII.K.

## **VII. WORK TO BE PERFORMED**

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the Port 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. The PLP shall conduct all actions set out in the schedule of deliverables in Section VII.K (Schedule of Deliverables), and do so within the timeframes set out in that schedule. A summary of these actions appears below:

A. The Port shall submit a draft Interim Action Work Plan for the Site within sixty (60) days of the effective date of this Order, in accordance with Chapter 173-340 WAC. The draft Interim Action Work Plan will be made available for public comment during a designated

public comment period. The Interim Action shall be implemented in accordance with the schedule set out in the final Interim Action Work Plan.

B. The Port shall draft and submit an Interim Action Report after all laboratory data collected during implementation of the fieldwork is received, but no later than 60 days after completion of fieldwork. The Port shall incorporate Ecology's comments on the draft Interim Action Report and submit a Final Interim Action Report to Ecology within thirty (30) days of receiving comments.

C. The Port shall draft a RI Work Plan for the entire Site in accordance with Chapter 173-340 WAC, including WAC 173-340-350, within thirty (30) days of the effective date of this Agreed Order. The RI Work Plan shall incorporate and summarize all previous investigations done at the Site. The RI Work Plan shall include a sampling and analysis plan (SAP) and a site-specific health and safety plan (HASP). The SAP and HASP shall meet the requirements of WAC 173-340-820 and WAC 173-340-810, respectively. The Draft RI Work Plan shall be submitted to Ecology for review, comment, and approval. The Port shall incorporate Ecology's comments on all drafts of the RI Work Plan and submit a new draft to Ecology within 30 days of receiving comments.

D. The Port shall implement the actions in the RI Work Plan according to the schedule set out in the RI Work Plan.

E. The Port shall prepare a Draft RI Report in accordance with Chapter 173-340 WAC, including WAC 173-340-350, that provides information fully documenting the nature and extent of contamination at the entire Site when all laboratory data is received, but no later than sixty (60) days after completion of RI fieldwork. The RI Report shall report the results of the remedial investigations including the vertical and lateral distribution of contaminants in air, soil, surface water, groundwater, and sediments. The RI Report shall also address whether data gaps exist and whether further remedial investigations are necessary. The Draft RI Report shall be submitted to Ecology for review and comment. The Port shall incorporate Ecology's comments on all drafts of the RI Report and submit a new draft to Ecology within 30 days of receiving

comments. The draft RI Report will be made available for public comment during a designated public comment period.

F. If Ecology determines further RI work is needed to address data gaps in the previous remedial investigations, to understand the extent and nature of contamination at this Site, and/or to determine feasible cleanup alternatives, Ecology will issue a written request to the Port to conduct additional investigation. The Port shall draft a subsequent Supplemental RI Work Plan and submit the work plan for Ecology's review within sixty (60) days of receiving the written request. The Port shall incorporate Ecology's comments on all drafts of a subsequent Supplemental RI work plan and submit a new draft to Ecology within thirty (30) days of receiving comments.

G. The Port shall implement the actions in the subsequent Supplemental RI Work Plan according to the schedule in said Supplemental RI Work Plan.

H. The Port shall prepare a Supplemental RI report when all laboratory data is received, but no later than sixty (60) days after completion of RI fieldwork. The Draft Supplemental RI Report shall be submitted to Ecology for review and comment. The Port shall incorporate Ecology's comments on all drafts of the Supplemental RI Report and submit a new draft to Ecology within 30 days of receiving comments.

I. Preparation of a feasibility study (FS) and a draft cleanup action plan (CAP) are not a part of this Order. Ecology and the Port intend to negotiate a subsequent agreed order or consent decree requiring the Port to draft an FS and CAP.

J. In accordance with WAC 173-340-840(5) and Ecology Toxics Cleanup Program Policy 840 (Data Submittal Requirements), data generated for contaminated site investigations and cleanups shall be submitted in both a written and electronic format. For additional information regarding electronic format requirements, see the website <http://www.ecy.wa.gov/eim>. All laboratory analyses shall be performed by a State of Washington Certified Laboratory for each analytical method used.

K. Schedule of Deliverables:

Each deliverable, once approved by Ecology, becomes incorporated by reference and shall be an integral and enforceable part of the Order.

**Remedial Investigation/Schedule of Deliverables**

<b>Deliverable</b>	<b>Schedule</b>
Draft RI Work Plan, including Sampling and Analysis Plan, and Health and Safety Plan (HASP)	Within 30 days of the effective date of this Agreed Order.
Final RI Work Plan incorporating Ecology's comments.	30 days after Ecology's written comments on the draft RI Work Plan are received.
Complete RI field work.	According to schedule in RI Work Plan.
Draft RI Report	Within 60 days after field work is completed.
Public comment period on draft RI Report.	Held for 30 days after receipt of the draft RI Report from the Port.
RI Final Report incorporating Ecology's comments.	30 days after Ecology's written comments on the Draft RI Report are received.
Draft Supplemental RI Work Plan to fill data gaps, if necessary.	60 days after Ecology's written request to supplement data if deemed necessary.
Supplemental RI Work Plan incorporating Ecology's comments.	30 days after receipt of Ecology's written comments on supplemental work plan.
Complete Supplemental RI field work.	According to schedule in work plan.
Draft Supplemental RI Report	Within 60 days after field work completed
Final Supplemental RI Report	30 days after Ecology's written comments on the Draft RI Report are received.

**Infrastructure Interim Action/Schedule of Deliverables**

<b>Deliverable</b>	<b>Schedule</b>
Draft Interim Action Work Plan incorporating supplemental data.	Within 60 days of the effective date of this Agreed Order.
Public comment period on draft Interim Action Work Plan.	Held for 30 days after receipt of the draft Interim Action Work Plan.
Final Interim Action Work Plan	Within 30 days after receipt of Ecology's written comments on the draft IAP.
Implement Interim Action	According to schedule in IAP Work Plan.
Draft IAP Report	Within 60 days after field work is completed.
Final IAP Report	30 days after receipt of Ecology's written comments on the draft IAP Report.

L. 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, Ecology may complete and issue the final deliverable.

### **VIII. TERMS AND CONDITIONS OF ORDER**

#### **A. Public Notice**

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 this Order is inadequate or improper in any respect.

#### **B. Remedial Action Costs**

The Port 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 this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). The Port 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 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.

Pursuant to RCW 70.105D.055, Ecology has authority to recover unreimbursed remedial action costs by filing a lien against real property subject to the remedial actions.

#### **C. Implementation of Remedial Action**

If Ecology determines that the Port has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to the Port, perform any or all

portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of the Port's failure to comply with its obligations under this Order, the Port shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.B (Remedial Action Costs), provided that the Port is not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

Except where necessary to abate an emergency situation, the Port 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:

Steve Teel  
Toxics Cleanup Program  
Southwest Regional Office  
P.O. Box 47775  
Olympia, WA 98504-7775  
(360) 407-6247

The project coordinator for the Port is:

Joanne Snarski, Environmental Program & Project Manager  
Port of Olympia  
915 Washington Street NE  
Olympia, WA 98501  
(360) 528-8020

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the Port, 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 coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Decree.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

**E. Performance**

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist licensed in the State of Washington or under the direct supervision of an engineer registered in the State of Washington, except as otherwise provided for by Chapters 18.220 and 18.43 RCW.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct 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 otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrologic or engineering work shall be under the seal of an appropriately licensed professional as required by Chapter 18.220 RCW or RCW 18.43.130.

The Port shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

**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 the Port either owns, controls, or has 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 the Port'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 the Port. The Port shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the Port 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 the Port unless an emergency prevents such notice. All persons who access the Site pursuant to this Section shall comply with any applicable Health and Safety Plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

**G. Sampling, Data Submittal, and Availability**

With respect to the implementation of this Order, the Port shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its 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, the Port shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the Port pursuant to implementation of this Order. The Port shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the Port and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.F (Access), Ecology shall notify the Port 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 has been prepared for the site and is shown in Exhibit E. Ecology shall maintain the responsibility for public participation at the Site. However, the Port shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing lists, 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 the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify the Port prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the Port that do not receive prior Ecology approval, the Port 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. Olympia Timberland Library  
313 8<sup>th</sup> Ave. SE  
Olympia WA  
(360) 352-0595
- b. Ecology's Southwest Regional Office  
300 Desmond Drive  
Lacey, WA 98503  
(360) 407-6045

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 the central files of Ecology's Southwest Regional Office, Toxics Cleanup Program.

The Olympia Timberland Library shall only be used as a repository for the Agreed Order and Exhibits during the public comment period for this Agreed Order. Following the public comment period, the only repository used will be Ecology's Southwest Regional Office, Toxics Cleanup Program.

**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, the Port 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, the Port 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 Ecology's project coordinator's written decision or the itemized billing statement, the Port has fourteen (14) days within which to notify Ecology's project coordinator in writing 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. The Port may then request regional management review of the decision. This request shall be submitted in writing to the Southwest Regional Toxics Cleanup

Section Manager within seven (7) days of receipt of Ecology's project coordinator's written decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of the Port'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:

- 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 the Port 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 may include, but may not be limited to:

- a. Circumstances beyond the reasonable control and despite the due diligence of the Port 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 the Port;

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

c. Endangerment as described in Section VIII.M (Endangerment).

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 the Port.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the Port written notification of any extensions granted pursuant to this 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 (Amendment of Order) 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 (Endangerment).

**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 (Reservation of Rights), 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 both Ecology and the Port. The Port 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 this Order represents a substantial change, Ecology will provide

public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J (Resolution of Disputes).

**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 the Port to cease such activities for such period of time as it deems necessary to abate the danger. The Port shall immediately comply with such direction.

In the event the Port 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, the Port may cease such activities. The Port 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 the Port shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the Port's cessation of activities, it may direct the Port to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to Section VIII.M (Endangerment), the Port'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 in accordance with Section VIII.K (Extension of Schedule) 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 of Ecology's rights or authority. Ecology will not, however, bring an action against the Port to recover remedial action

costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the Port regarding remedial actions required by this Order, provided the Port complies 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 the Port 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 the Port's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the Port shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, the Port shall notify Ecology of said transfer. Upon transfer of any interest, the Port 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 the Port 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. The permits or specific federal, state or local permit requirements that the agency has determined are applicable and that are known at the time of entry of this Order, and the Port has to obtain, have been identified in Exhibit F.

2. Pursuant to RCW 70.105D.090(1), the Port 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, the Port shall comply with the substantive requirements of such permits or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this Section.

The Port has 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 or the Port determines 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 or the Port shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the Port 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 the Port and on how the Port must meet those requirements. Ecology shall inform the Port in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The Port shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

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 that is necessary for the State to administer any federal law, the exemption shall not apply and the Port 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**

The Port 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 to the extent arising from or on account of acts or omissions of the Port, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the Port shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

**IX. SATISFACTION OF ORDER**

The provisions of this Order shall be deemed satisfied upon the Port's receipt of written notification from Ecology that the Port has completed the remedial activity required by this Order, as amended by any modifications, and that the Port has 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 investigative and remedial actions and orders related to the Site.

C. In the event the Port refuses, without sufficient cause, to comply with any term of this Order, the Port will be liable for:

a. 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

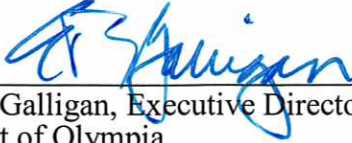
b. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

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: \_\_\_\_\_

**Port of Olympia**



\_\_\_\_\_  
Ed Galligan, Executive Director  
Port of Olympia

**STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY**

\_\_\_\_\_  
Rebecca S. Lawson, PE, LHG  
Regional Section Manager  
Toxics Cleanup Program  
Southwest Regional Office