



RESPONSIVENESS SUMMARY

**CENTRAL WATERFRONT
Bellingham, Washington**

AGREED ORDER DOCUMENTS

July, 2006

ISSUED BY:

WASHINGTON STATE DEPARTMENT OF ECOLOGY

TOXICS CLEANUP PROGRAM

Introduction

On May 18, 2006 the draft agreed order documents (draft agreed order and draft public participation plan) for the Central Waterfront site (Site) in Bellingham were issued for a 30-day public comment period. Public involvement activities related to this public comment period included:

- Distribution of a fact sheet describing the Site and the documents through a mailing to over 650 people, including neighboring businesses and other interested parties;
- Publication of a paid display ad in *The Bellingham Herald*, dated May 14, 2006;
- Publication of notice in the Washington State Site Register, dated May 18, 2006;
- Posting of the documents on the Ecology web site;
- Notification on Ecology's web calendar; and
- Providing copies of the documents through information repositories at Ecology's Bellingham Field Office and Northwest Regional Office, and the Bellingham Public Library – Downtown Branch.

A total of three (3) comment letters or e-mails were received regarding the draft agreed order documents, as follows:

1. **People for Puget Sound** (Trim; letter)
2. **Bellingham Bay Foundation** (Johnston; letter)
3. **Johnson** (e-mail)

The comment letters are summarized below along with Ecology's response to the comments. Copies of the comment letters are also attached.

Background

The Site is approximately 55 acres in size and is located on Bellingham's downtown waterfront, between the Whatcom Waterway, the I&J Waterway, Roeder Avenue, and the Aerated Stabilization Basin. The Site is currently owned primarily by the Port of Bellingham (Port) and the City of Bellingham (City), and has historically been used to support a variety of industrial activities including a municipal and wood waste landfill, boat yards, foundry activity, bulk petroleum storage, and pulp and paper mill product storage.

Previous environmental investigations of the Site indicate the presence of hazardous substances in groundwater, surface water, soil and/or sediments above state cleanup standards. As a result, the Site is subject to the investigation and cleanup requirements of the Model Toxics Control Act (MTCA) administered by Ecology. The primary contaminants of concern are solid waste, landfill gases, metals, and petroleum related substances.

This Site is one of several cleanup sites being addressed as part of the Bellingham Bay Demonstration Pilot; a bay-wide, multi-agency initiative integrating sediment cleanup, control of pollution sources, habitat restoration and aquatic/shoreline land use.

The draft agreed order requires the Port and City to complete a remedial investigation/feasibility study (RI/FS). This study will summarize existing environmental conditions at the Site, present and evaluate a range of cleanup alternatives, and identify a preferred cleanup approach. It will build on previous site investigations and will provide the information necessary for Ecology to select a preferred alternative for site cleanup. The RI/FS will detail:

- Results of previous investigations.
- The nature and extent of contamination for soil, sediment, groundwater and surface water.
- Other important information relevant to Site cleanup.
- Multiple alternatives for cleanup of the Site, including evaluation of those alternatives against MTCA criteria including effectiveness, implementability, and cost-effectiveness.
- Definition of a preferred alternative.

The RI/FS is scheduled to be issued for public review and comment in 2007.

Comments Received and Ecology Response

Comment # 1 – People for Puget Sound (Trim; letter)

First Comment:

1) Supports a high quality cleanup. 2) Uncertain if this Site includes contaminated sediment in the Whatcom Waterway. 3) Supports the removal of highly contaminated sediment from Puget Sound as a first choice in all cases, rather than capping. 4) Requests all new cleanup documents, including data and report files, be placed on the Internet or in electronic format for easier access.

Response:

1) Washington's hazardous waste cleanup law, MTCA, mandates that site cleanups protect the state's citizens and the environment. Cleanup actions for the Central Waterfront site will be required to; protect human health and the environment, comply with cleanup standards, comply with applicable state and federal laws, provide for compliance monitoring, use permanent solutions to the maximum extent practicable, provide for a reasonable restoration time frame and consider public concerns.

2) Preliminary environmental investigations indicate the presence of copper and zinc above state cleanup standards in surface sediments on the Whatcom Waterway shoreline. These metals are the same as those found within upland areas of the Central Waterfront site. Therefore, they will be further characterized and addressed as part of the Central Waterfront RI/FS.

Sediments in the Whatcom Waterway have also been impacted by historic mercury releases from Georgia Pacific's former pulp mill and chlor-alkali plant. Remediation of the mercury sediment contamination is part of a separate cleanup site called the Whatcom Waterway site. Due to the potential for overlapping sediment contamination at the two sites, cleanup activities will be closely coordinated.

3) Ecology has not yet developed or evaluated cleanup alternatives for this Site. The proposed agreed order requires the Port and City to conduct an RI/FS of the Site. The RI/FS will present and evaluate a range of cleanup alternatives and identify a preferred cleanup approach. The RI/FS will be released as a draft document for a 30-day public review and comment period. Ecology anticipates that the future RI/FS will include removal and capping as potential sediment cleanup methods.

4) Whenever feasible, cleanup documents for this Site will be placed in electronic format on the Internet at the following website
http://www.ecy.wa.gov/programs/TCP/sites/blhm_bay/sites/web%20shorts.htm#Central%20Waterfront%20Site

Comment # 2 - Bellingham Bay Foundation (Johnston; letter)

Comment Summary:

1) Supports the most protective possible cleanup of this Site. 2) Wants the agreed order modified to include the extent of contamination and the scope of the proposed cleanup. 3) Wants to know how to obtain and review cleanup documents. 4) Would like cleanup documents available online.

Response:

1) The remedy selection process under the MTCA involves an evaluation of a range of potential cleanup alternatives against the regulatory requirements articulated in response #1 above. The future RI/FS for the Central Waterfront site will present this evaluation for public review and comment.

2) The draft agreed order is a proposed legal agreement requiring the Port and City to conduct an RI/FS. The RI/FS will define the nature and extent of contamination, evaluate a range of cleanup alternatives, and identify a preferred cleanup approach. The RI/FS will be subject to public review and comment prior to finalization. Based upon the information presented in the final RI/FS, Ecology will then preliminarily select a cleanup alternative for the site which is articulated in a cleanup action plan (CAP). The CAP will be an exhibit to another legal agreement with Ecology called a consent decree. The consent decree, including the CAP, will be released by Ecology as a draft document for public review and comment.

3) As part of the Central Waterfront mailing list of interested parties and area residents, you will be notified when cleanup documents are available for public review and comment. The documents will be made available for review at information repositories:

- Bellingham Public Library, 210 Central Avenue, Bellingham
Phone: (360) 676-6860
- Department of Ecology, Bellingham Field Office, 1204 Railroad Avenue, Suite 200
Phone (360) 738-6250
- Department of Ecology, Northwest Regional Office, 3190 160th Avenue SE, Bellevue
Phone: (425) 649-7190

Ecology can also make copies of documents for a fee. Whenever feasible, cleanup documents will be posted on the following website

http://www.ecy.wa.gov/programs/TCP/sites/blhm_bay/sites/web%20shorts.htm#Central%20Waterfront%20Site

4) As stated above (see comment #1), whenever feasible, cleanup documents for this Site will be placed on the following website

http://www.ecy.wa.gov/programs/TCP/sites/blhm_bay/sites/web%20shorts.htm#Central%20Waterfront%20Site

Comment # 3 – Johnson (e-mail)

Comment Summary:

*1) Did not receive notification about the proposed agreed order for the Central Waterfront site
2) The State should commission an EPA oversight and compliance review committee
3) Cleanup decisions should be integrated with planning.
4) Natural recovery and capping are inadequate for mercury contaminated sediments.
5) Mercury vapor monitors should be used to examine mercury emissions from the former Chlor-Alkali plant.
6) Confined Aquatic Disposal near the Cornwall Avenue landfill should be reevaluated as a remedial alternative.*

Response:

1) Ecology distributed a fact sheet in May 2006 describing the Site and the proposed agreed order documents to area residents and interested parties. Ecology records indicate a fact sheet was mailed to Tip Johnson, 2719 Donovan Avenue, Bellingham, Washington 98225. Please notify Site Manager Sunny Becker with any corrections by mail at Ecology's Northwest Regional Office, 3190 160th Avenue SE, Bellevue, WA 98008-5452, by email at hlin461@ecy.wa.gov, or by phone at (425) 649-7187.

2) The Central Waterfront site is being addressed by Ecology under authority of the Model Toxics Control Act (MTCA, Chapter 70.105D RCW) which creates a comprehensive regulatory scheme to identify, investigate, and cleanup contaminated properties that are, or may be, a threat

to human health or the environment. MTCA was approved by state voters as an initiative in 1988 and adopted by the legislature in 1989. Ecology has promulgated detailed regulations that supplement MTCA. These regulations are found at Chapter 173-340 WAC.

While the cleanup is being compelled through state law, it must also adhere to all other applicable state and federal laws. The future RI/FS will discuss these other applicable laws. If a federal permit is ultimately required to implement the cleanup, federal and tribal oversight will occur via the permitting process.

3) This Site is one of several cleanup sites being addressed as part of the Bellingham Bay Demonstration Pilot; a partnership of 14 different federal, state, local and tribal agencies working cooperatively together to improve the environmental health of Bellingham Bay through comprehensive strategic environmental planning that integrates the cleanup of polluted sediments, the restoration of historically lost habitat, the control of pollution sources, and land use.

In 2000, the efforts of this partnership resulted in the Bellingham Bay Comprehensive Strategy, a guidance document that integrates cleanup, source control, habitat restoration and land use on a bay-wide scale. While the land use component of this document may need revision based upon the outcome of the New Whatcom planning, it provides invaluable information and context to waterfront decisions. Furthermore, core Pilot members including Ecology, the Department of Natural Resources, the Corps of Engineers, the Nooksack Tribe, the Lummi Nation, the Department of Fish and Wildlife, the Puget Sound Action Team, the City of Bellingham, and the Port of Bellingham continue to meet on a regular basis to coordinate waterfront activities related to the environmental health of Bellingham Bay.

4) To date, mercury has not been identified as a contaminant of concern at the Central Waterfront site. See Response #6 below.

5) The former chlor-alkali plant is part of the Chlor-Alkali cleanup site. Ecology has an existing agreed order with Georgia-Pacific to conduct an RI/FS of the Chlor-Alkali site. This agreed order will be amended to add the Port as a signatory late this year or early next year. The existing RI/FS will then be updated (in 2008) to include a planned change in land use from industrial to mixed use. The agreed order amendment and the RI/FS update will be issued for public review and comment.

6) This comment appears to pertain to the cleanup of the Whatcom Waterway site. A draft Supplemental RI/FS for the Whatcom Waterway site will be issued for public review later this summer. The range of remedial alternatives presented and evaluated in the draft Supplemental RI/FS will include dredging with disposal in a Confined Aquatic Disposal facility along the Cornwall Avenue Landfill shoreline. The range of remedial alternatives will also include monitored natural recovery and capping.

To ensure you are notified when the draft Supplemental RI/FS for the Whatcom Waterway is available for public review please provide Ecology with your correct mailing address.

PUBLIC COMMENTS



June 19, 2006

Sunny Lin Becker
Site Manager
Department of Ecology
3190 160th Ave
Bellevue, WA 98008-5452
Via email: hlin461@ecy.wa.gov

RE: Draft agreed order and draft public participation plan for Central Waterfront Site, Bellingham

Dear Sunny Lin Becker,

Thank you for the opportunity to comment on the draft agreed order and draft public participation plan for Central Waterfront Site, Bellingham.

People For Puget Sound is a nonprofit, citizens' organization whose mission is to protect and restore Puget Sound and the Northwest Straits, including a specific goal to protect and restore the 2,000 miles of Puget Sound shoreline by 2015.

- 1 The Central Waterfront Site includes a commingled contaminated groundwater plume. People For Puget Sound strongly supports a high quality cleanup at this site, both to protect human and environmental health at the site and to eliminate the flow of contaminated groundwater into the Sound.
- 2 It is not clear if this site includes adjacent sediment in Whatcom Waterway. People For Puget Sound supports the removal of highly contaminated sediment from the Sound as
- 3 the first choice in all cases, rather than capping.
- 4 As part of the public participation plan, we request that all new documents be placed on the Internet. It is difficult to access documents that are not electronic and we appreciate easier access. The consultants can, at the very least, provide electronic versions of all of the data and report files.

Please include People For Puget Sound as a party of record for this site. Thank you for your consideration. If you have any questions, please contact me at (206) 382-7007 or htrim@pugetsound.org.

Sincerely,

Heather Trim
Urban Bays Coordinator

MAIN OFFICE

911 Western Avenue, Suite 580
Seattle, WA 98104
(206) 382-7007
fax (206) 382-7006
people@pugetsound.org

NORTH SOUND

407 Main Street, Suite 201
Mount Vernon, WA 98273
(360) 336-1931
fax (360) 336-5422
northsound@pugetsound.org

SOUTH SOUND

1063 Capitol Way South, Suite 206
Olympia, WA 98501
(360) 754-9177
fax (360) 534-9371
southsound@pugetsound.org



OFFICE

1208 Bay Street
Suite 204
Bellingham, WA
98225

360.527.2733 (tel)
360.671.8429 (fax)

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James Johnston

www.bbayf.org
info@bbayf.org

June 19, 2006

Sunny Lin Becker
Site Manager
Department of Ecology
3190 160th Ave
Bellevue, WA 98008-5452
Via email: hlin461@ecy.wa.gov

**RE: Draft agreed order and draft public participation plan for Central
Waterfront Site, Bellingham**

Dear Ms. Becker,

Thank you for reviewing these comments from the Bellingham Bay Foundation. The Bellingham Bay Foundation is a group of local business people, civic leaders, conservationists and community members working for a clean bay and a publicly owned and prosperous waterfront. You can learn more about our organization at our web page (www.bbayf.org).

The Bellingham Bay Foundation strongly supports the most protective possible cleanup of this site. Unfortunately, the Agreed Order does not make it clear how extensive is the contamination at this site, or what the scope of the proposed cleanup will be. We believe the Order should be clarified and this information included.

We would like an opportunity to review all of the subsequent cleanup documents that are produced about this site. Please let us know how we can obtain them. Will they be available online? Can the Bay Foundation be provided hard copies of these documents?

Please include the Bellingham Bay Foundation as a party of record for this site. Feel free to contact me with any questions.

Sincerely,

James Johnston
Executive Director

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-----Original Message-----

From: Tip Johnson [<mailto:tip@skookum.us>]

Sent: Sunday, June 18, 2006 3:09 PM

To: Becker, Sunny (ECY)

Subject: Comment on Bellingham's Central Waterfront Process

Thank you for this opportunity to make comment on the proposed agreed order for the Central Waterfront RI/FS.

1 I have followed and commented on this process for many years. I am interested in preserving my standing in these proceedings and have made every effort to be included on the notification list. I was therefore surprised not to receive notification of this comment period.

Because of this oversight, my comments will be brief, but I would like to reserve the opportunity to supplement them with additional materials if necessary. I will elaborate on some overriding concerns and follow with a "laundry list" of topics for comment.

I am concerned that this project requires oversight and integration that is outside DOE's capability to reliably provide. I have previously submitted documents that suggest liable parties and regulatory agencies repeatedly colluded to allow pollution that was already known to be a threat to human health and the environment. This is particularly poignant with respect to the mercury emissions that were permitted to commence at a time, immediately following the Minimata tragedy, when all the world's environmental professionals knew that such facilities posed a direct threat to food and water supplies.

These most egregious discharges of mercury and dioxins were allowed to continue for more than three decades, directly upwind of Bellingham's population center, water supply and Whatcom County's agricultural lands. For example, NWAir's (NWAPA) three-year air quality study of downtown Bellingham during the last years of chlor-alkali production never once tested for mercury. Similarly, the State failed to supply the USGS with information about the roaster G-P used to remove, but not recover, mercury from chlor-alkali sludge at their downtown location. The USGS, evaluating the speciation of mercury in Lake Whatcom, consequently attributed the majority of mercury to local garbage incinerators rather than G-P. Also, the state has refused to commission an area-wide health survey even though it is well known that Whatcom County residents suffer a higher than ordinary incidence of several chronic health conditions now associated with mercury exposure.

Now the Port and City have taken the lead in shielding polluters from continuing liability and making the public responsible for remediation of the environmental impairments. This has stimulated a "race to the bottom", a comprehensive strategy of cost avoidance and a radical change in the environmental integrity of proposed remedial alternatives.

For instance, the Port of Bellingham, wanting to avoid the cost of removing contaminated sludge, is petitioning the U.S. Congress to decommission the upper reach of the Whatcom Waterway. Congress will likely comply, hoping to avoid any future responsibility for the

entrained burden of methylated mercury the Port intends to leave in place. For the same reasons, the State Department of Natural Resources is discussing abandoning their Harbor Area Lands jurisdiction on State Aquatic Lands adjoining the Port.

2 Mercury victims of Whatcom County deserve better regulatory representation. My first and overarching comment is that the State should commission an EPA oversight and compliance review committee wherein members of the community at-large may express and reasonably rely upon appropriate attention to concerns that are now more likely than ever to be marginalized or excluded from the local process.

3 A corollary comment has to do with integrating information from Adjoining uplands and other public policy frameworks. A propensity for piecemeal planning and overly-managed public process could obscure important interrelations as the review proceeds. For instance, current versus original levels of mercury in the chem-fix dump may have implications for evaluating the value of the log pond cap over time, or for assessing liability for illegal releases. Other aspects of the waterfront may be affected by policies outside the immediate scope of these proceedings.

As an example, nearshore habitat restoration efforts may necessitate stormwater treatment mandates that could radically affect the perceived value of the ASB. It would be pointless for the public to save money on marina development by breaching the ASB if the result is a large future expense for replacing the treatment capacity. It is in the community's best interests to share a format for review that is not embedded in Port's pointed development objectives. AN EPA oversight and compliance review committee could help serve this purpose.

Following is a list of other concerns and comments:

4 1) The Waterway and adjoining uplands

The highest level of remediation will still be inadequate to protect innocent citizens from exposure to methylated mercury. We recently spent effort and dollars educating the public on the dangers of mercury and collecting mercury thermometers and thermostats. Mercury already in the environment is far more dangerous than elemental mercury in a thermometer. Mercury and dioxins should be removed, not left to cycle through the environment and wreak neurotoxic damage or cause cancers.

Leaving large repositories of contaminated sludge in a deauthorized Waterway doesn't address the potential costs of possibly needing that marine access in the future. Who will then be responsible for its removal?

2) Natural Recovery and capping versus cleaning

The theory of natural recovery, pioneered by G-P's Chip Hillardes within the Sediments Management Group, relies upon the specious assumption that mercury releases from sediments at or below the so-called Nooksack River background levels are acceptable because they are essentially undetectable. Neurites, now known to actively degrade upon exposure to mercury, don't care whether releases can be detected by the equipment of environmental

professionals. The theory assumes that so far undiscovered deposits of cinnabar common to volcanic areas are responsible for the elevated background levels. More likely, today's high background levels may result from mercury laden sludge illegally disposed as dust suppressants on G-P's logging roads throughout the Nooksack watershed, or from G-P's atmospheric releases making a downgradient return to the bay. Masking the danger of these compounds with bogus theories does nothing to protect the developing brains of our community's children who will no doubt enjoy visiting our central waterfront in the future. We should clean it up.

Under Chip's theory, capping unavoidably becomes the most economically feasible remedial strategy. I have found no proof that the method is effective in the long-term. Engineering for seismic events, scour, wash or physical perturbations seems ludicrous at best. Capping is doomed to failure. To the extent that capping is initially successful, the reemerging biological communities will increasingly breach the cap through macro-turbation or vegetative uptake and attract severe trauma as with gray whales dredging for feed. Managing the slow release of potent, bio-accumulative neuro-toxins is not the best public health approach.

5 3) Mercury vapor monitoring

Tekran mercury vapor monitors should be immediately installed to acquire a summer baseline of continuing emissions. Mercury vapor emissions are known to increase as a function of insolation. Previous studies have shown ambient mercury vapor levels can spike to a hundred times normal - even miles UPWIND of decommissioned chlor-alkali facilities. Similarly, it is well known that demolition materials from buildings around chlor-alkali facilities can contain dangerous levels of mercury. In one case, the disposal of such materials around salt ponds resulted in elevated mercury levels in the tissue of neighboring fish populations. Demolition of the G-P site is proceeding without adequate monitoring or precautions against tainted fugitive dust or mercury vapor emissions.

6 4) Remedial Alternatives

After more than ten years of public and multi-jurisdictional effort, the Port's acquisition of the G-P site signalled a radical reversal in clean-up strategies. Even as mercury exposure is being increasingly implicated in an ever broader range of chronic health conditions, the Port is angling hard to find ways to leave G-P's toxic goo in place. This is a bad public health strategy. The remedial alternatives need to be reevaluated in total.

Specifically, the Port and State should revisit the previously Authorized CAD strategy for the Cornwall Avenue landfill. I initially opposed the plan because I thought it could set a dangerous precedent for public lands and let private polluters off the hook. But now that the Port has left the public holding the bag for G-P's toxic legacy, it could become a more feasible and attractive alternative - especially if the problem's analysis is taken out of its piecemeal context. A CAD between Boulevard Park and the foot of Cornwall Avenue could afford a proximal repository for chemically stabilized dredge spoils, help contain the landfill and wood treatment

facility, connect a public waterfront between Fairhaven and downtown, and possibly create better marina opportunities that would leave the ASB available for future water treatment.

In conclusion, it is my opinion that this process, now moving ahead Under both the ownership and environmental management of the Port and City, could become subject to determinations and decisions that will serve the development objectives of the Port and City more than the public health interests of its citizens or the environment. As project developers, the Port and City should not have unfettered rein over regulator considerations. Unfortunately, the State already shares the history of turning a blind eye toward the known health threats that created these problems. As such, their interest in limiting liability could interfere with their ability to preside over an unbiased review. I believe that a third party authority is needed that can review those determinations and decisions for compliance with the law and, more importantly in a broader policy context, for consistency with the community's best long-range interests in terms of public health and the environment. I think the EPA is best suited to this need, even if it is contracted for the purpose and operates solely on an advisory basis.

Sincerely,

Tip Johnson