

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

KIMBERLY-CLARK WORLDWIDE,  
INC., a Delaware Corporation and the  
PORT OF EVERETT, a municipal  
corporation.

SECOND AMENDMENT TO AGREED  
ORDER

No. DE 9476

TO: KIMBERLY-CLARK WORLDWIDE, INC.  
Attention: Lisa Morden, Senior Director  
Global Sustainability  
1400 Holcomb Bridge Road  
Roswell, Georgia 30076-2190

PORT OF EVERETT  
Attention: Erik Gerking  
Director of Environmental Programs  
PO Box 538  
Everett, Washington 98206

**EXHIBITS:**

EXHIBIT H	Property Ownership Diagram
EXHIBIT I	Third Interim Action Site Diagram
EXHIBIT J	Additional Interim Action Scope of Work and Schedule

**I. INTRODUCTION**

Agreed Order No. DE 9476 entered into by the State of Washington, Department of Ecology (Ecology) and Kimberly-Clark Worldwide, Inc. (K-C) on December 20, 2012, and amended November 25, 2019, (together, the Order) requires K-C to conduct a Remedial Investigation and Feasibility Study (RI/FS) per WAC 173-340-350 and develop a draft Cleanup Action Plan per WAC 173-340-350 through 173-340-380 addressing upland contamination for the Site.

On October 31, 2019, the Port of Everett (Port) acquired portions of the K-C mill property identified in Exhibit H. Pursuant to Section VIII. K of the Order, Ecology, K-C, and the Port hereby stipulate to amend the Order. By this amendment to the Order, the Port will be made a

party to the Order, and the Port and K-C will perform additional interim remedial actions at a facility where there has been a release or threatened release of hazardous substances.

This amendment does not attempt to recite all of the provisions of the Order. Provisions of the Order not specifically changed in this amendment remain in full force and effect. The following sections of the Order are amended as follows:

### **III. PARTIES BOUND**

This Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. All requirements of the Order imposed on K-C, as the potentially liable person (PLP), are modified to refer to the Port and K-C collectively as the PLPs, respectively, as circumstances indicate. 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. K-C and the Port agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter K-C or the Port's responsibility under this Order. K-C and 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**

B. Parties: Refers to the State of Washington, Department of Ecology, Kimberly-Clark Worldwide, Inc., and the Port of Everett.

### **V. FINDINGS OF FACT**

N. On October 31, 2019, the Port acquired portions of the K-C mill property identified in Exhibit H. The Port has designated the portion of the K-C mill property, which it owns, for maritime use under its Marine Terminal Master Plan.

### **VI. ECOLOGY DETERMINATIONS**

F. The Port is an "owner or operator" as defined in RCW 70A.305.020(17) of a "facility" as defined in RCW 70A.305.020(5).

G. Based upon credible evidence, Ecology issued a PLP status letter to the Port dated January 22, 2020, pursuant to RCW 70A.305.040, -.020(21) 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 the Port is a PLP under RCW 70A.305.040 and notified the Port of this determination by letter on March 10, 2020.

H. This Second Amendment to the Order requires the PLPs to conduct an interim action (Third Interim Action) to install a low-permeability cap at the Site. All ancillary work associated with the interim action requiring excavation into the subsurface (e.g., installation of underground utilities) shall be subject to an Ecology approved soil and groundwater management plan. The Third Interim Action may be conducted on portions of the Site where Ecology has approved all prior interim action work. To effectuate the work to be performed under this Second Amendment, the Port has elected to take the lead in performing the work required by this Second Amendment. However, the PLPs remain strictly, jointly, and severally liable for the performance of any and all obligations under this Second Amendment.

The additional interim action is being conducted to expedite the cleanup action for the Site, and will be designed to be consistent with the final cleanup action plan for the Site.

## VII. WORK TO BE PERFORMED

E. Scope of Third Interim Action: The PLPs shall perform the Third Interim Action to install a low-permeability cap at the area depicted in **Exhibit I** (Draft Interim Action Site Diagram). The PLPs shall develop a soil and groundwater management plan to address any contamination that may be encountered during excavations into the subsurface of the Site while performing the Third Interim Action and associated ancillary activities (e.g., installation of underground utilities). The Third Interim Action is more fully described in **Exhibit J** (Additional Interim Action Scope of Work and Schedule) to this Second Amendment.

The PLPs shall conduct the Third Interim Action in accordance with the scope outlined in **Exhibit J**, and provide Ecology with updates consistent with the schedule in **Exhibit J**.

F. The Port has elected to take the lead in completing both the draft Remedial Investigation/Feasibility Study (RI/FS) and the draft Cleanup Action Plan (DCAP) for the upland area of the K-C Site ("Site" as defined in the main Agreed Order). The RI/FS report and DCAP shall incorporate the work conducted under the Third Interim Action described herein.


**VIII. TERMS AND CONDITIONS OF ORDER**

C. The Project Coordinator for the Port is:

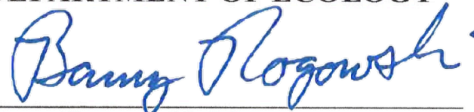
Erik Gerking  
Director of Environmental Programs  
PO Box 538  
Everett, WA 98206  
Phone: (425)259-3164  
E-mail: erikg@portofeverett.com

Effective date of this Order: 5/18/2021

**KIMBERLY-CLARK WORLDWIDE, INC.**

  
\_\_\_\_\_  
Lisa Morden, Vice President  
Safety, Sustainability and Occupational Health  
1400 Holcomb Bridge Road  
Roswell, Georgia 30076  
920-380-6755

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

  
\_\_\_\_\_  
Barry Rogowski, Manager  
Land and Aquatic Lands Cleanup Section  
Toxics Cleanup Program  
300 Desmond Drive Southeast  
Lacey, Washington 98503  
360-407-7226

**PORT OF EVERETT**

\_\_\_\_\_  
Lisa Lefebber  
Chief Executive Officer  
PO Box 538  
Everett, Washington 98206  
425-259-3164

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### VIII. TERMS AND CONDITIONS OF ORDER

C. The Project Coordinator for the Port is:

Erik Gerking  
Director of Environmental Programs  
PO Box 538  
Everett, WA 98206  
Phone: (425)259-3164  
E-mail: erikg@portofeverett.com

Effective date of this Order: 5/18/2021

#### KIMBERLY-CLARK WORLDWIDE, INC.

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#### STATE OF WASHINGTON DEPARTMENT OF ECOLOGY



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Barry Rogowski, Manager  
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360-407-7226

#### PORT OF EVERETT



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Lisa Lefebber  
Chief Executive Officer  
PO Box 538  
Everett, Washington 98206  
425-259-3164

# **EXHIBIT H**



CITY OF EVERETT

PROPERTY LINE

NORTON AVE

PORT GARDNER BAY  
EAST WATERWAY

PORT OF EVERETT

INNER HARBOR LINE

PROPERTY LINE

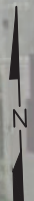
BNSF RAILROAD RIGHT-OF-WAY

WEST MARINE VIEW DRIVE (SR 529)

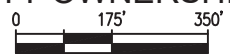
PROPERTY LINE

FEDERAL AVE

TERMINAL AVE



**EXHIBIT H**  
**PROPERTY OWNERSHIP DIAGRAM**



SOURCE: GOOGLE EARTH, IMAGE DATE: 8/13/2019  
PROPERTY LINE LOCATION IS ESTIMATED ON AERIAL PHOTO

# **EXHIBIT I**





3RD INTERIM ACTION  
MAXIMUM CAPPING AREA

PROPERTY LINE

CITY OF EVERETT  
PORT GARDNER  
STORMWATER FACILITY

FUTURE PUD SUBSTATION

NORTON AVE

EXISTING PUD  
SUBSTATION

PORT GARDNER BAY  
EAST WATERWAY

DEMOLISH AND REPLACE  
EXISTING OUTFALL M

INNER HARBOR LINE

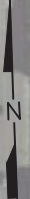
WEST MARINE VIEW DRIVE (SR 529)

BNSF RAILROAD RIGHT-OF-WAY

DEMOLISH AND REPLACE  
EXISTING OUTFALL A

FEDERAL AVE

TERMINAL AVE



**LEGEND**

3RD INTERIM ACTION MAXIMUM CAPPING AREA

**EXHIBIT I  
THIRD INTERIM ACTION SITE DIAGRAM**

SOURCE: GOOGLE EARTH, IMAGE DATE: 8/13/2019  
SITE BOUNDARY LOCATION IS ESTIMATED ON AERIAL PHOTO

# **EXHIBIT J**

# **Exhibit J: Scope of Work for the Third Interim Action**

## **Introduction**

The Kimberly Clark Worldwide, Inc. (K-C) Site (the Site) is located at 2600 Federal Avenue, Everett, Washington. The upland area of the Site includes approximately 56 acres of industrial property owned by the Port of Everett (Port) and the City of Everett. The Port also owns about 12 acres of adjacent East Waterway tidelands that are within the in-water area of the Site. The Site is generally located adjacent to East Waterway on the west side of West Marine View Drive between Everett Avenue and 21<sup>st</sup> Street (*see Figure 1*).

The Site is the former location of saw milling and pulp and paper manufacturing and was in operation since the late 1800s. Additionally, bulk petroleum storage operations were conducted on the Site. Manufacturing operations at the K-C facility ceased in 2012. Releases of hazardous substances occurred as a result of wood products manufacturing operations and petroleum bulk storage, and based on these releases, the Washington State Department of Ecology (Ecology) listed the Site under the Model Toxics Control Act (MTCA) and assigned it Cleanup Site ID No. 2569.

In December 2012, K-C entered into Agreed Order No. DE 9476 (the AO) to conduct remedial activities at the Site, including conducting a remedial investigation and feasibility study (RI/FS) and preparing a draft cleanup action plan (DCAP). Additionally, the AO required the implementation of an interim action to remove, as appropriate, contamination encountered during demolition of the mill facility (First Interim Action), and K-C removed contaminated soil and groundwater from a number of locations throughout the Site in 2013 and 2014, in conjunction with demolition of the Site structures.

In November 2019, K-C entered into the first amendment to the AO (AO First Amendment). The AO First Amendment provided for a Second Interim Action to remove additional soil and/or groundwater contamination, decommission inactive stormwater outfalls that pose a threat to release and transport to East Waterway, inspect and cleanup active stormwater lines, and monitor the pH in groundwater during the removal of crushed material. The Second Interim Action's construction activities were completed in November 2020.

In 2019 the Port purchased most of the K-C property (upland and in-water parcels) while the City of Everett (City) purchased the upland only parcel housing the mill's former wastewater treatment plant (Site Unit E), and in March 2020 Ecology named the Port and the City as potentially liable person's (PLPs) for the Site. While K-C is the lead PLP for completing the Second Interim Action, the Port will be the lead PLP for conducting the Third Interim Action described below in conjunction with initial Site development to put the Site back into productive use to support its marine terminal activities. The Port will also take over as the lead PLP for completing the RI/FS report and DCAP for the upland area of the Site.

## **Site Conditions**

The Site uplands slopes downward from east to west, towards the East Waterway, and Site upland elevations range from about elevation 17 to 19 feet (ft), North American Vertical Datum of 1988. Upland geologic conditions consist of about 10 to 15 ft of fill overlying former tide flat deposits. Site fill material is variable, but generally consists of sand to silty sand (dredge fill) with localized occurrences of wood and other debris, and gravel. Most of the Site surface was covered with about 1 to 5 ft of crushed material (CM) consisting primarily of crushed concrete and brick, with minor amounts of plastic,

fiberglass, metal and wood. The CM has been removed from the Site by K-C under the supervision of the Snohomish Health District and in accordance with the July 10, 2018 Plan of Operations for CM removal<sup>1</sup>.

A shallow, unconfined water-bearing zone occurs within the fill, overlying the native tide flat deposits. The water table is encountered at a depth of 1 to 5 ft below ground surface (bgs) in the eastern portion of the Site, and at a depth of between 6 to 12-ft bgs in the western portion of the uplands. Groundwater contamination is present at the Site, and largely results from stormwater infiltration through affected soil and other fill materials. The Site groundwater discharges to Puget Sound (the East Waterway), and groundwater preliminary cleanup levels are based on protection of surface water.

The First and Second interim actions have/will remove, where practicable, soil and/or groundwater contamination from the Site with the highest concentrations. Remaining residual soil contamination in the upland area is mostly at much lower concentrations that pose a threat primarily from the soil leaching transport pathway to groundwater, and then potential discharge to surface water. It is anticipated that following the Second Interim Action, further soil removal may not be needed<sup>2</sup>, but Site capping with a low permeability surface will be necessary to achieve groundwater cleanup standards and protect terrestrial ecological resources. Because the residual soil contamination that is anticipated to remain following the Second Interim Action is widely distributed throughout the Site and exceeds concentrations that are protective of groundwater, it is anticipated that most of the Site will require a low permeability cap. As discussed in the following section, the Third Interim Action will provide a low permeability cap over the majority of the portion of the Site owned by the Port to improve groundwater quality and protect ecological receptors.

## Scope of Work

The Third Interim Action at the Site will be completed to achieve the following goals:

1. Expedite cleanup of the Site;
2. Reduce storm water infiltration through residual soil contamination that could be leached into groundwater and transported to surface water;
3. Prevent wildlife exposure to residual soil contamination, and;
4. Integrate Port infrastructure improvements and cleanup elements to ensure consistency with future Site use as a marine terminal, and for long-term protection of human health and the environment.

The Third Interim Action will include, but is not limited to, the following general scope of cleanup construction elements associated with areas that have residual soil contamination above cleanup standards:

- Documented clean fill importation, grading and compaction to: 1) increase elevation of the Site to be protective of anticipated sea level rise, 2) to direct stormwater drainage, 3) reduce surface water infiltration, and 4) support construction of the low permeability cap.

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<sup>1</sup> Kimberly-Clark Worldwide (K-C), 2018. *Plan of Operations. Crushed Material Removal*. Kimberly-Clark Former Mill Property, Everett, Washington. July 10, 2018.

<sup>2</sup> Final cleanup requirements will be determined as part of the completion of the upland area RI/FS and CAP.

- Construction of a low permeability cap consisting primarily of low permeability pavement materials and compacted gravel surfaces to further reduce surface water infiltration and to prevent exposure of terrestrial ecological receptors.
- Installation of subgrade and interim above grade utilities (power, water, stormwater, sanitary sewer, etc.) to support stormwater treatment and conveyance, minimize future disturbance of the cap, and other potential cleanup action elements where a cap is required to contain contaminated soils. The stormwater system is directly related to the interim action. The stormwater system is related for the reasons listed above.
- Installation of new perimeter security fence. The existing site perimeter fence is adequate for preventing human contact with potentially contaminated soil, groundwater and sediment under current site use. However, the existing fence must be removed as part of the demolition of existing pavement necessary to prepare the Site for construction of the low permeability cap and a new, more secure fence installed for long term use of the property. Because perimeter fencing is required for the protection of human health and the environment, and the existing fence must be removed, the new fence is an appropriate element of the 3<sup>rd</sup> interim action. The Port, however, will not request MTCA grant funding for any costs associated with fence replacement.
- Reconstruct existing outfalls A and M for discharge from the new stormwater system.
- Management of contaminated soil and groundwater during construction of subgrade utilities in accordance with an Ecology approved soil and groundwater management plan.

The performance goal for the Third Interim Action is a 30 percent reduction in stormwater infiltration through contaminated soils that exceed concentrations that are protective of groundwater. The reduction in stormwater infiltration will be achieved through the construction of a low permeability cap, which will include the following:

- Site filling and grading to establish drainage for the collection, treatment, and discharge of stormwater.
- Placement and compaction of crushed rock surfacing to reduce infiltration in unpaved areas.
- Placement of a low permeability asphalt pavement, as needed to achieve the infiltration reduction performance goal.

The size and location of the area(s) to be paved as part of the Third Interim Action will be based on the aforementioned performance goal applied to areas with residual soil contamination. The specific areas to be paved will be determined during the design of the Interim Action and will be included in the Interim Action Work Plan described in the following section. It is anticipated that eventually the entire Port owned portion of the Site will be paved based on future use as a marine terminal, with the possible exception of limited areas like the future PUD substation. However, any areas of the Site not paved during the Third Interim Action that require capping with a low permeability surface to achieve soil cleanup standards will be evaluated for paving as part of the final cleanup action for the Site. The maximum area that may be paved as part of the interim action and other site features are shown on Figure 2. The existing PUD electrical substation, which is noted on Figure 2, was not sampled as part of

the RI due to access and safety concerns. Prior to paving the substation parcel, environmental sampling (to characterize potential releases) will be required at the existing PUD substation in the event it is re-located as shown on Figure 2. If the current PUD substation is demolished and re-located, this element will be included in the soil and groundwater management plan.

The reduction in infiltration accomplished through this Interim Action will reduce the flux of groundwater discharge to Puget Sound from the Site. Although the groundwater point of compliance will be selected for the Site by Ecology in the CAP, it is anticipated that a conditional point of compliance will be established at some point near the shoreline. It is anticipated that the reduction in groundwater flux, in conjunction with hydrodynamic dispersion at the shoreline induced by tidal action, will significantly improve groundwater quality at its point of discharge to surface water.

## Deliverables

The initial deliverable under the Third Interim Action will be an Interim Action Work Plan that will provide a detailed description of the scope, engineering design, and phasing for the Interim Action. The Plan will provide a similar level of detail as an engineering design report, including:

- The goals of the Interim Action
- Engineering justification and basis of design
- Design criteria, assumptions, and calculations
- A general description of construction procedures, methods, and materials
- A general description of compliance monitoring to be performed during and after construction.

Additional deliverables include a soil and groundwater management plan and an Interim Action Completion Report.

## Schedule of Work and Deliverables

The schedule for design and construction of the Third Interim Action is provided in Table J-1 below. Table J-1 also provides the schedules for submittal of the RI/FS report and DCAP to Ecology to provide a comprehensive schedule for all work and deliverables.

**Table J-1. Schedule of Work and Deliverables**

Deliverables		Due <sup>1</sup>
<i>A. 3<sup>rd</sup> Interim Action – Site Capping and Access Control</i>		
<b>A.1</b>	Submit Draft Interim Action work plan (IAWP) to Ecology for review. A soil and groundwater management plan will be prepared as an exhibit to the IAWP.	Within 45 days of K-C’s submittal of Final Second Interim Action Completion Report
<b>A.2</b>	Submit Final IAWP To Ecology	Within 30 days of receipt of Ecology’s Final comments on Draft IAWP (A.1)

<b>A.3</b>	Submit Schedule for Completing Third Interim Action	Within 45 days of Ecology approval of Final IAWP (A.2)
<b>A.4</b>	Submit Draft Third Interim Action Completion Report	Within 45 days of final completion of Third Interim Action (A.3)
<b>A.5</b>	Submit Final Third Interim Action Completion Report	Within 30 days of receipt of Ecology comments on draft Third Interim Action Completion Report (A.4)
<b>B. Upland RI/FS Submittal</b>		
<b>B.1</b>	Submit Revised Draft RI/FS Report	Within 180 days of K-C's submittal of Final Second Interim Action Completion Report
<b>B.2</b>	Submit Draft Final RI/FS report	Within 90 days of receipt of Ecology comments on Revised Draft RI/FS Report
<b>B.4</b>	Submit Final RI/FS Report	Within 45 days after Ecology's completion of the responsiveness summary to public comment on Draft Final RI/FS Report (B.3)
<b>C. Upland DCAP Submittal</b>		
<b>C.1</b>	Submit DCAP	Within 120 days after Ecology's completion of the Draft Final RI/FS Report responsiveness summary (B.4)
<b>C.2</b>	Submit Draft Final CAP	Within 60 days of receipt of Ecology comments on Draft CAP (C.1)

- 1) Schedule is in calendar days. Deliverable due date may be modified with Ecology concurrence without amendment to the Agreed Order. Submittal due dates falling on a weekend or holiday defer to the following business day.

# ONTASK

## SIGNATURE CERTIFICATE

Workflow Reference: 8fbd64cb-a158-11eb-b525-0242ac120002

### PARTICIPANT

### DETAILS

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**Process started**  
19-Apr-2021 5:46 PM EDT

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**lisal@portofeverett.com**  
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**Document viewed**  
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**lisal@portofeverett.com**  
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**Document accepted & signed**  
19-Apr-2021 5:59 PM EDT  
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**Document has been completed**  
19-Apr-2021 5:59 PM EDT

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