Fort Vancouver Plywood

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:	)	
	)	**AGREED ORDER**
Port of Vancouver	)	No DE 99TC-S108
3103 NW Lower River Road	)	
Vancouver, WA 98660	)	

TO: Port of Vancouver

I.
JURISDICTION

This Agreed Order ("Order") is issued pursuant to the authority of RCW 70 105D 050(1)

II.
FINDINGS OF FACT

Ecology makes the following Findings of Fact, without admission of such facts by the Port of Vancouver

1 The former Fort Vancouver Plywood (FVP) facility is located at the end of West Eighth Street and Port Way, in an industrial-zoned area along the bank of the Columbia River. Adjacent properties include Great Western Malting Company to the northwest, the former Brazier Forest Industries site to the northeast, and Burlington Northern Railroad tracks to the northeast and southeast across Port Way The Columbia River bounds the southwestern edge of the property Figure 1 (attached) shows the facility in relation to its surroundings

2. Available information indicates that the site had been used for industrial purposes for over 70 years Initially, wood cutting for a nearby ship building facility was done on the site Since 1930, the site has been used for the manufacture of plywood. FVP operated a plywood mill at the site from at least 1955. Site activities included all processes necessary for the production of plywood from raw logs or green veneer

The property consists of approximately 15 8 acres of paved and unpaved areas The property has been surveyed (see Attachment A) and divided into two (2) cells as illustrated in Figures 2 and 3. Cell 1 is comprised of the eastern half of the site and Cell 2 is comprised of the western half of the site. This Agreed Order addresses Cell 1 only (site)

Former site buildings included a warehouse/retail plywood store, and an office building (Figure 2). The majority of the site was used as a log sort yard for the former plywood mill located on Cell 2. The Port of Vancouver (Port) has owned the property since 1912

3. FVP maintained several permits as part of its operations. A review of the Washington State Department of Ecology (Ecology) records indicates that since the early 1970's the facility had violations of the effluent limits of its National Pollution Discharge Elimination System (NPDES) permit. Ecology issued notice of violation and notice of penalty letters which were responded to by FVP The facility also reported unintentional oil spills into the Columbia River on February 4, 1969 (2-4-69), December 17, 1969 (12-17-69), and July 24, 1989 (7-24-89). Due to the history of NPDES violations, the EPA added the FVP site to its preliminary NPL List The EPA conducted a Preliminary Site Assessment and published a Preliminary

Assessment Report in June 1988 (Ecology & Environment, Inc) which resulted in a site ranking of zero (0) and a recommendation of no further action Ecology, also due to the NPDES violations, included FVP on its list of sites to rank. but has not yet ranked the site.

4. Based on an Environmental Site Assessment (ESA) and Practices Review prepared by Geraghty & Miller, Inc. (G & M) for FVP (report dated May 1991), the majority of chemicals were used and stored on Cell 2 and consisted of liquid phenol-formaldehyde glue resins and petroleum products (primarily lubricating oils and diesel fuel) and smaller quantities of solvents Previous operations on Cell 2 also included for a period of time the storage and use of wood treating chemicals that contained pentachlorophenol (PCP) Although complete information regarding historical chemical use, storage, and disposal practices for the FVP site are unknown, the majority of chemical usage appears to have been associated with Cell 2 However, G & M noted two (2) former diesel fuel USTs and an above ground tank adjacent to the retail warehouse.

5. Hydrogeologic conditions in the vicinity of the site consist of an upper silty sand zone which typically contains shallow groundwater, an intervening clay and silt zone, and a deeper water-bearing unit composed of gravely sand The silt and clay zone form a local confining layer that is laterally continuous across the site, except directly adjacent to the Columbia River. The confining layer has also been encountered at two adjacent properties, Great Western Malting (GWM) and Brazier

6 Impact to the deeper saturated zone by VOCs, primarily trichloroethene (TCE) and tetrachloroethylene (PCE), has been documented in the immediate vicinity of the GWM site (Water from three Port wells in the immediate vicinity of the GWM property were sampled. Results in 1988 indicated the presence of 1,1,1-trichloroethane (111-TCA) in one well and 1,2-dichloroethane (1,2-DCA) in another well Detected concentrations were below drinking water standards) Based on Ecology files, a source of these contaminants appears to be a former dry cleaner in an industrial area located north of the site at 2001 NE Roosevelt Avenue in Vancouver, Washington. However, other offsite sources may also exist.

7. In January 1996, FVP discontinued production of plywood products and began the process of selling their production equipment and remaining plywood products In August 1996, FVP filed bankruptcy, dissolved and vacated the site. No waste disposal, environmental cleanup, demolition of unusable buildings and equipment, or other forms of site restoration were completed by FVP prior to vacating the site

8. A preliminary site evaluation (PSE) was performed for the Port to review available information regarding previous site activities and events and to assess the potential for impact to site media (soil and groundwater) In addition, the PSE included limited sampling of soil and groundwater at locations where chemical impact appeared likely The results of the PSE (Kennedy/Jenks Consultants 1996) identified several potential issues of concern at the site

The PSE concluded that further investigation of these and other site areas was necessary to evaluate potential impacts to site media and to assess potential threats to human health and the environment.

9 In addition, an asbestos and lead paint survey of the site buildings and structures was performed for purposes of demolition. The results of the asbestos and lead paint survey are summarized in a report prepared by Certified Environmental Consultants, Inc , in July 1996 Asbestos or lead paint issues that required corrective action were not identified at the site.

10 It is the intent of the Port to return this site to a usable condition as soon as possible The site will continue to be used for industrial purposes To adequately investigate the site, all structures and equipment but the office building were demolished and removed from the premises

11 A remedial investigation and feasibility study (RI/FS) was completed at the site (Kennedy/Jenks Consultants 1998) to characterize the distribution of impacted site media The results of the RI indicated the following:

- Two saturated zones were identified at the site: a shallow zone containing discontinuous perched layers and a deeper aquifer Groundwater in the shallow intermittently saturated zone discharges to the Columbia River along the southern property boundary and is also present in isolated perched zones at some upland locations of the site However, the shallow zone cannot be used as a potable water source due to its low yield The deeper aquifer is used locally as a potable water supply by the Port, and as a process water supply by its tenant, Great Western Malting Company The two saturated zones are separated by a silt confining layer that is approximately 30 to 40 feet thick A net downward vertical gradient exists between the two saturated zones
- Cleanup levels identified for site media include MTCA Method C cleanup levels for soil, MTCA Method B surface water cleanup levels, Ecology's acute freshwater surface water quality standards and the National Toxics Rule for shallow groundwater that discharges to the Columbia River, and MTCA Method B residential cleanup levels for deeper groundwater MTCA Method A cleanup levels for these media were used for lead
- Widespread fill material containing building debris, ash, and other anthropogenic materials was encountered over most of the site
- Four areas on the site were identified where COC exceed MTCA Method A/C soil cleanup levels
- Soils along the Columbia River bank contain debris and display leachable concentrations of metals (arsenic, barium, chromium, and lead) when subjected to aggressive extraction tests
- Shallow groundwater from the site collected during the first round of sampling contained low concentrations of 1,1-dichloroethane, 1,1-dichloroethene, bis(2-ethylhexyl) phthalate (BEP), total metals, and carcinogenic polycyclic aromatic hydrocarbons (cPAHs) at concentrations exceeding surface water protection standards However, with the exception of BEP and arsenic, these COC were not present at levels of concern in filtered groundwater samples The results of sampling during the second round of groundwater monitoring were substantially lower or below detectable levels for metals and SVOCs (BEP and cPAHs) but slightly higher for VOCs Consequently, the concentrations of these metals and cPAHs detected during the first sampling event appear to be attributable to turbid groundwater conditions and are not indicative of the shallow groundwater discharged to the Columbia River
- Groundwater from the deeper saturated zone (the Unconsolidated Aquifer monitored by well MW-6B) collected during the first groundwater sampling event contained total arsenic at concentrations exceeding the MTCA Method B residential groundwater cleanup level As with groundwater in the shallow zone, the slightly elevated arsenic concentration was not detected in a

filtered groundwater sample and appears to be associated with sample turbidity rather than existing groundwater conditions. During the second sampling event, both total and dissolved arsenic concentrations were below detectable levels in the samples from MW-6B

- Contaminant transport modeling indicates that it is not feasible for contaminants in the unsaturated zone soils and shallow saturated zone to migrate to the deeper aquifer used for water supply purposes at concentrations that would pose a threat to human health.

An FS was performed to evaluate potentially applicable remedial alternatives to address site conditions. Based on the results of the RI, soils from Cell 1 could pose a threat to both human health and the environment and, therefore, warrant remedial action in accordance with MTCA regulations. The selected remedial action for site soils includes soil removal from locations that exceed MTCA Method C soil cleanup levels and where soils are subject to leaching or erosion to the Columbia River. Excavated soils would be disposed of offsite at a permitted disposal facility under an interim action. In addition, an asphalt pavement surface would be placed over Cell 1 to reduce the mobility of COCs present in other portions of the site at levels that are below soil cleanup standards. The combined remedial action will provide a high level of protection for potential human and ecological receptors.

The RI indicated that remedial action for groundwater is not warranted for groundwater from both the shallow and deeper saturated zones. However, ongoing groundwater monitoring would be conducted to assess changing site conditions and evaluate the need for future remedial actions for groundwater. The monitoring schedule will be developed in cooperation with Ecology.

12 A draft Cleanup Action Plan (CAP) is included in this order as Attachment C. Prior to finalizing this order, Ecology will issue the draft order and CAP for a 30-day public comment period per WAC 173-340-600. The CAP requires the Port to remove and dispose of soils at the site that exceed cleanup levels or are subject to potential erosion and leaching of contaminants to the Columbia River. In addition, the CAP requires the Port to install an impermeable pavement surface over the entire site to manage potential risks that may be associated with contaminants present in the remaining soil at concentrations exceeding MTCA Method B residential soil cleanup levels.

13 Remediation of the site will be conducted under MTCA regulations with formal Ecology oversight.

III

ECOLOGY DETERMINATIONS

1 The Port of Vancouver is an "owner or operator" as defined at RCW 70.105D.020(11) of a "facility" as defined in RCW 70.105D.020(4).

2 The facility is known as the former Fort Vancouver Plywood (FVP) facility, and is located at 901 Port Way in Vancouver, Washington.

3 The substances found at the facility as described above are "hazardous substances" as defined at RCW 70.105D.020(7).

4 Based on the presence of these hazardous substances at the facility and all factors known to Ecology, there is a release or threatened release of hazardous substances from the facility, as defined at RCW 70 105D 020(19).

5. By a letter dated November 20, 1996, Ecology notified the Port of Vancouver of its status as a "potentially liable person" under RCW 70 105D 040 after notice and opportunity for comment. By a letter of December 18, 1996, the Port of Vancouver waived its rights to notice and comment and accepted Ecology's determination that the Port of Vancouver is a "potentially liable person" under RCW 70 105D 040.

6 Pursuant to RCW 70 105D 030(1) and 70 105D 050, Ecology may require potentially liable persons to investigate or conduct other remedial actions with respect to the release or threatened release of hazardous substances whenever it believes such action to be in the public interest

7 Based on the foregoing facts, Ecology believes the remedial activities required by this Order are in the public interest

IV.
WORK TO BE PERFORMED

Based on the foregoing Facts and Determinations, it is hereby ordered that the Port of Vancouver perform the following activities and that these activities be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein

The activities described in this Agreed Order are being performed under an Ecology Remedial Action Grant, demonstrating both Ecology's and the Port's support for the cleanup and reuse of existing industrial sites (i e , "brownfields" redevelopment)

The activities in this Agreed Order are designed to remediate the potential risks posed to human health and the environment from the site. These cleanup actions and reuse will be protective of the adjacent Columbia River and its sediments. However, this Agreed Order does not address potential contamination of sediments which may or may not have been caused by upland activities. Ecology retains the right at some future date to address sediment contamination on the Washington side of the lower Columbia River in general, and at this site, in specific

As stated in the previous Agreed Order (No. DE97TC-S163; 5-19-97; Section IV – Work to Be Performed), Ecology instructed the Port in a letter dated 18 June 1998 to conduct an interim cleanup action at the site to address impacted soils at the site that exceed MTCA Method A/C soil cleanup levels or are subject to erosion and leaching of contaminants to the Columbia River. The *Final Interim Action Plan* (Kennedy/Jenks Consultants 1998), which identified plans for excavation and disposal of these contaminated soils, was approved by Ecology. It is expected that the interim cleanup actions will be completed by February 1999

Based on the foregoing Facts and Determinations, it is hereby ordered that the Port conduct remedial activities at the site according to the requirements of this Order and the attached CAP (Attachment C), which is an integral and enforceable part of this Order and is incorporated by this reference. In order to carry out the

remedial actions in the CAP, the Port shall produce the reports and carry out the activities specified in this section and the attached CAP All activities shall be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein.

1. **DRAFT ENGINEERING DESIGN REPORT.** Within 60 days of the effective date of this order, prepare a draft engineering design report. This report shall be prepared by or under the direct supervision of a registered professional engineer and shall include any revisions required by Ecology in response to the draft Cap design and shall be submitted in accordance with WAC 173-340, Sections 400 and 410 The draft engineering design report shall include:

a. An introduction including a statement of the goals of the cleanup action with specific cleanup or performance requirements; a summary of general information and information from the RI/FS updated as needed to reflect current site conditions; identification of who will own, operate, and maintain the site and the cleanup action during and following construction; facility maps showing existing conditions and proposed location of the cleanup action; and a discussion of the characteristics, quantity and location of the materials to be remediated

b. Schedule for construction of the remedial action and monitoring systems. Remedial Action shall begin in accordance with the Ecology approved schedule within the Engineering Design Report Remedial action shall be substantially complete by December 31, 1999

c. Plans for site grading and drainage, including a map showing final site elevations and drainage patterns

d. Design for the pavement surface and associated stormwater control features This shall include plan and elevation drawings showing construction details for the base course, pavement section and stormwater control facilities; materials to be used; a surface water flow pattern diagram; outfall locations; and elevations of significant features, including relationship of the structure to Ordinary High Water The stormwater control facilities shall be designed to adequately convey and treat stormwater from at least a 6-month, 24-hour storm.

e. Engineering justification for design and operation parameters In particular, provide engineering justification that the cap is durable enough to remain viable throughout all proposed site uses

f. Procedures for minimizing the potential for hazardous materials spills and accidental discharge during excavation and construction This shall include a description of measures taken to protect the Columbia River and its sediments from physical disturbances or contamination, and shall include use of erosion control devices as needed. This shall also include a description of measures taken to prevent spills or spreading of contaminated materials on the upland areas of the site, including provisions for decontaminating equipment, preventing erosion from stockpiled soils, and spill prevention during loading of vehicles.

g. A discussion of site-specific characteristics that may affect design, construction, or operation of the cleanup action, including: relationship of the proposed cleanup action to existing or potential future facility operations, probability of flooding or erosion from wave action, settling/subsidence, and soil and groundwater characteristics

h□ A discussion of methods for management or disposal of any treatment residual and other waste materials containing hazardous substances generated as a result of the cleanup action

i□ A worker safety and health plan per requirements of WAC 173-340-810

j□ Copies of all permits obtained regarding performance of the cleanup action

k□ Any information not provided in the remedial investigation/feasibility study needed to fulfill all applicable requirements of the State Environmental Policy Act (Chapter 43 21C RCW), and any additional information needed to address the applicable state, federal, and local requirements

l□ Additional information as needed to fulfill the substantive requirements of any permits required by the Washington Department of Fish and Wildlife for Hydraulic Project Approval No work shall occur below the Ordinary High Water mark between1 March and 31 October of any years for protection of migrating juvenile salmonids

m□ Detailed final construction plans and procedural material specifications necessary for construction of the cleanup system as specified in the "Selected Cleanup Action" section of the Final Cleanup Action Plan (Attachment C) prepared in conformance with currently accepted engineering practices and techniques

n□ Specific quality control (QC) tests to be performed to document the construction as applicable, including specification for the testing or reference to specific testing methods, frequency of testing, acceptable results, and other documentation methods This section shall include QC testing during asphalt cap construction and monitoring system installation

o□ Operation and maintenance plan This shall present requirements to assure effective and permanent operation of the pavement surface and associated stormwater control facilities This plan shall include an inspection schedule of quarterly inspections for the first year and semi-annual inspection subsequent years, criteria for evaluating the need for repair or maintenance, repair procedures The operation and maintenance plan shall also identify who will be responsible for maintaining the remedial action and other relevant information identified in WAC 173-349-400(4)(c)

p□ Compliance monitoring plan per WAC 173-340-410 This shall include a description of performance monitoring to confirm that the cleanup action has attained cleanup standards, and confirmation monitoring to ensure that the remedial action is preventing contaminants from reaching the Columbia River All sampling and analysis shall be conducted under a sampling and analysis plan meeting the requirements of WAC 173-340-820 The compliance monitoring plan and sampling and analysis plan may be combined in one section and submitted with the Engineering Design Report or submitted as a separate document The compliance monitoring plan shall include:

1-1 Performance monitoring for upland site soils Sampling shall be conducted at the bottom and sidewalls of the excavated areas Enough samples shall be obtained to compare to borings and test pits from the RI/FS, and to show statistically that remaining soils meet the cleanup standards specified in the CAP Soils samples shall be analyzed for contaminants of concern utilizing EPA SW-846 methods and Ecology specified methods for petroleum hydrocarbons [Note: This information was provided to Ecology in the *Final Interim Action Plan* (Kennedy/Jenks Consultants 1998) and shall be referenced in the Engineering Design Report]

1-2 A methodology for additional excavation and verification sampling if original verification samples show that soils exceed cleanup standards. [Note: This information was provided to Ecology in the *Final Interim Action Plan* (Kennedy/Jenks Consultants 1998) and shall be referenced in the Engineering Design Report.]

1-4 Confirmation monitoring for site groundwater per WAC 173-340-410 (1)(c), including a description of the frequency and duration of monitoring, and monitoring parameters. Groundwater shall be monitored at least three times a year for a period of 5 years. Appropriate methods shall be utilized to compare to cleanup standards as specified in the CAP, Attachment C.

1-5 A methodology for evaluating sample results to determine whether cleanup standards have been met. Statistical analysis of samples shall be in accordance with Ecology *Publication No 94-49, Guidance on Sampling and Data Analysis Methods*.

1-6 Provisions for reporting results of performance and confirmation sampling to Ecology. Results of confirmation monitoring shall be provided to Ecology following each sampling event under the schedule identified in 1-4.

2. FINAL ENGINEERING DESIGN REPORT

The final Engineering Design Report shall incorporate Ecology's comments on the draft report. The final report shall be submitted to Ecology within 30 days of receiving Ecology's comments on the draft.

3. IMPLEMENT REMEDIAL ACTIONS

Implement cleanup actions as outlined in the Ecology-approved Final Engineering Design Report. During construction, detailed records including photographic documentation shall be kept of substantive aspects of the work performed, including construction techniques and materials used, items installed, and tests and measurements performed. The substantive requirements of WAC 173-340-400(7)(8) shall be met. During the construction of the Site cap segment of the remedial action, the Port's project coordinator or his/her designee will make oral reports at least every two weeks to the Ecology project manager or his/her on-site supervisor regarding progress. Any significant problems, deviation from plans, or emergency conditions will be reported to Ecology immediately.

4. CONSTRUCTION DOCUMENTATION

Within 90 days from the completion of construction, the engineer responsible for the supervision of cleanup activities shall prepare a final letter/report documenting the cleanup activities, including a description of where soils were removed, volumes removed, disposition of materials, performance sampling, backfill, grading, construction of the stormwater control features and the pavement surface, and other actions taken for the cleanup. If the final design of the pavement surface or associated stormwater control features differs from the plans in the Final Engineering Design Report, as-built drawings shall be prepared and submitted to Ecology. The report shall also contain an opinion from the project manager and the engineer, based on the testing results and inspections, as to whether the cleanup action has been constructed and performed in substantial compliance with the plans and specifications and related documents.

6. **RECORD RESTRICTIVE COVENANT**

Within 30 days of completing the remedial actions, a restrictive covenant functionally equivalent to the attached sample (Attachment D) shall be recorded in the Site property deed and a signed copy provided to Ecology Ecology shall review and approve of the covenant language prior to the Port's recording it at the Clark County Auditor's Office

7. **POST CONSTRUCTION COMPLIANCE MONITORING AND REPORTING**

In accordance with the plan and schedule in the Final Engineering Design Report, the Port shall implement the Compliance Monitoring Plan activities for post-construction groundwater monitoring

8. **SCHEDULE**

1. Draft Engineering Design Report	Within 60 days of the effective date of this Agreed Order
2 Final Engineering Design Report	Within 30 days of receiving Ecology's comments on the draft report.
3. Implement Remedial Actions	According to the schedule in the approved Final Engineering Design Report.
4. Construction Documentation	Within 90 days of completion of construction.
5. Record Restrictive Covenant	Within 30 days of completion of remedial actions.
6 Post-construction monitoring and reporting	According to the schedule in the approved Final Engineering Design Report.

V

TERMS AND CONDITIONS OF ORDER

1 Definitions

Unless otherwise specified, the definitions set forth in ch 70 105D RCW and ch 173-340 WAC shall control the meanings of the terms used in this Order

2 Public Notices

RCW 70 105 D,030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect.

3 Remedial Action Costs.

Port of Vancouver shall pay to Ecology costs incurred by Ecology pursuant to this Order These costs shall include work performed by Ecology or its contractors for investigations, remedial actions, and Order preparation, oversight and administration Ecology costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2) Port of Vancouver shall pay the required amount within 90 days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general description of work performed will be provided upon request Itemized statements shall be prepared quarterly Failure to pay Ecology's costs within 90 days of receipt of the itemized statement of costs will result in interest charges

4 Designated Project Coordinators

The project coordinator for Ecology is:

Name: Dan Alexanian

Address: Southwest Regional Office
PO Box 47775, Olympia, WA 98504-7775

The project coordinator for Port of Vancouver is:

Name: Heidi Rosenberg

Address: PO Box 1180
Vancouver, WA 98666-1180

The project coordinator(s) shall be responsible for overseeing the implementation of this Order To the maximum extent possible, communications between Ecology and Port of Vancouver, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order, shall be directed through the project coordinator(s) Should Ecology or Port of Vancouver change project coordinator(s), written notification shall be provided to Ecology or the Port of Vancouver at least ten (10) calendar days prior to the change

5 Performance

All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or similar expert, with appropriate training, experience and expertise in hazardous waste site investigation and cleanup The Port of Vancouver shall notify Ecology as to the identity of such engineer(s) or hydrogeologist(s), and of any contractors and subcontractors to be used in carrying out the terms of this Order in advance of their involvement at the site The Port of Vancouver 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 will be in compliance with this Order

Except where necessary to abate an emergency situation, the Port of Vancouver shall not perform any remedial actions at the former Fort Vancouver Plywood (FVP) leasehold site outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

WAC 173-340-400(7)(b)(i) requires that "construction" performed on the site must be under the supervision of a professional engineer registered in Washington

6 Access

Ecology or any Ecology authorized representative shall have the authority to enter and freely move about the site 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 progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator 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 of Vancouver. By signing this Agreed Order, the Port of Vancouver agrees that this Order constitutes reasonable notice of access, and agrees to allow access to the site at all reasonable times for purposes of overseeing work performed under this Order. Ecology

shall allow split or replicate samples to be taken by the Port of Vancouver during an inspection unless doing so interferes with Ecology's sampling. The Port of Vancouver shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before any sampling activity

7 Public Participation.

The Port of Vancouver shall prepare and/or update a public participation plan for the site. Ecology shall maintain the responsibility for public participation at the site. The Port of Vancouver shall help coordinate and implement public participation for the site

8 Retention of Records

The Port of Vancouver shall preserve in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of completion of the work performed pursuant to this Order, all records, reports, documents, and underlying data in its possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of the Port of Vancouver, the Port of Vancouver agrees to include in their contract with such contractors or agents a record retention requirement meeting the terms of this paragraph

9 Dispute Resolution

The Port of Vancouver may request Ecology to resolve disputes which may arise during the implementation of this Order. Such request shall be in writing and directed to the signatory, or his/her successor(s), to this Order. Ecology resolution of the dispute shall be binding and final. The Port of Vancouver is not relieved of any requirement of this Order during the pendency of the dispute and remains responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing

10 Reservation of Rights/No Settlement

This Agreed Order is not a settlement under ch. 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against the Port of Vancouver to recover remedial action costs paid to and received by Ecology under this Agreed Order. In addition, Ecology will not take additional enforcement actions against the Port of Vancouver to require those remedial actions required by this Agreed Order, provided the Port of Vancouver complies with this Agreed Order

Ecology reserves the right, however, to require additional remedial actions at the site should it deem such actions necessary

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the releases or threatened releases of hazardous substances from former the Fort Vancouver Plywood (FVP) facility

In the event Ecology determines that conditions at the site are creating or have the potential to create a danger to the health or welfare of the people on the site or in the surrounding area or to the environment, Ecology may order the Port of Vancouver to stop further implementation of this Order for such period of time as needed to abate the danger

11 Transference of Property.

No voluntary or involuntary conveyance or relinquishment or title, easement, leasehold, or other interest in any portion of the site shall be consummated by the Port of Vancouver 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 transfer of any legal or equitable interest the Port of Vancouver may have in the site or any portions thereof, the Port of Vancouver shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, the Port of Vancouver shall notify Ecology of the contemplated transfer

12 Compliance with Applicable Laws

A. All actions carried out by the Port of Vancouver 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 paragraph B of this section

B Pursuant to RCW 70 105D 090(1), the substantive requirements of chapters 70 94,70 95,70 105.75 20,90 48, and 90 58 RCW and of any laws requiring or authorizing local government permits or approvals for the remedial action under this Order that are known to be applicable at the time of issuance of the Order have been included in **Attachment B** and are binding and enforceable requirements of the Order

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

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

C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for the state to administer any federal law, the exemption shall not apply and the Port of Vancouver 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

VI

SATISFACTION OF THIS ORDER

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

VII

ENFORCEMENT

1 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 of Vancouver refuses, without sufficient cause, to comply with any term of this Order, the Port of Vancouver will be liable for:

(1) up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and

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

D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under Section 6 of ch. 70 105D RCW.

Effective date of this Order: _____

PORT OF VANCOUVER

By _____

Larry Paulson
Executive Director
Port of Vancouver
Vancouver, Washington

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By _____

David B. Jansen, P.E.
Section Manager
Toxics Cleanup Program
Southwest Regional Office