

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF:)	
)	U.S. EPA Region 10
)	CERCLA Docket No. 10-2001-0055
Lower Duwamish Waterway)	
Seattle, WA)	
)	
Port of Seattle, City of Seattle,)	
King County, The Boeing Company)	
)	
Respondents)	
)	
Proceeding Under Sections 104, 122(a))	FIFTH AMENDMENT
and 122(d)(3) of the Comprehensive)	
Environmental Response, Compensation,)	
and Liability Act, 42 U.S.C. §§ 9604,)	
9622(a) and 122(d)(3))	

Introduction

In December 2000, the City of Seattle, King County, the Port of Seattle, and the Boeing Company (“Respondents”) entered into an *Administrative Order on Consent for Remedial Investigation/Feasibility Study*, U.S. EPA, Region 10 Docket No. CERCLA 10-2001-0055, Ecology Docket No 00TCPNR-1895 (12/20/2000) (the “RI/FS AOC”) with the United States Environmental Protection Agency (“EPA”) and the Washington State Department of Ecology (“Ecology”). Respondents performed a remedial investigation and feasibility study for the Lower Duwamish Waterway Superfund Site (“Site” or “LDW”) under the oversight of EPA and Ecology pursuant to the RI/FS AOC. The RI/FS AOC has been amended Four times to provide for the performance of additional studies related to the Site. The First Amendment, effective March 19, 2013, provides for the performance of the Fisher Study for the LDW. The Second Amendment, effective July 17, 2014, provides for the performance of the Enhanced Natural Recovery (ENR)/Activated Carbon (AC) pilot study. The Third Amendment, effective April 27, 2016, provides for the performance of pre-remedial design studies. The Fourth Amendment, effective July 9, 2018, provides for remedial design (RD) of the LDW Upper Reach. The Respondents continue to perform these studies pursuant to the terms of the RI/FS AOC.

The EPA issued a record of decision for the Site on November 21, 2014 (the “Lower Duwamish Waterway ROD”). The Lower Duwamish Waterway ROD selected remedial actions for the in-waterway portion of the Site.

Source control is an integral part of the strategy for addressing contamination throughout the Site. An objective of the source control is to find and sufficiently control sources before commencing in-waterway remediation. Ecology is the lead agency for implementing source control actions and uses its existing regulatory authorities to control sources. For purposes of assessing adequacy of source control in the immediate source area to the LDW, Ecology has divided the LDW into three reaches: upper, middle, and lower. Consistent with Sections 4.2 and 13.2.7 of the LDW ROD, EPA intends to commence remedial action for the LDW Site or a segment thereof after a source control determination for the LDW Site or segment thereof is made.

The objectives of this Fifth Amendment are to: 1) design the remedy for river mile 1.6 to river mile 3 of the Lower Duwamish Waterway Superfund Site (the “LDW Middle Reach”), consistent with the Lower Duwamish Waterway ROD and CERCLA; (2) summarize available Puget Sound seafood data, identify data gaps, and recommend additional sampling, as necessary, to refine ROD background levels of contamination in seafood; (3) provide for timely periodic monitoring of clam tissues to correspond with fish and crab tissue sampling under the Fourth Amendment; and (4) continue support of the seafood consumption institutional controls for the Site following completion of the Fourth Amendment. The attached Scope of Work (SOW) provides an overview of the work to be performed, a list of deliverables, and a schedule for these deliverables.

Fifth Amendment

EPA, Ecology, and Respondents agree to amend the RI/FS AOC as follows:

1. The work performed pursuant to this Fifth Amendment shall comply with CERCLA and its implementing regulations, the National Contingency Plan, 40 C.F.R. Part 300 and shall be subject to the review and approval of EPA. With the exceptions of the authority to review (except as a support agency) and approve work, resolve disputes (excluding Ecology’s ability to resolve disputes related to its cost recovery), or enforce work performed under this Fifth Amendment and any subsequent amendment to the RI/FS AOC, Ecology shall retain all rights and obligations it has under the RI/FS AOC, including those rights of access and cost recovery conferred to it by Sections XIV and XXII of the RI/FS AOC. EPA will provide Ecology with an opportunity to review and comment on any submittal requiring EPA approval before EPA approves, modifies or disapproves the submittal. However, a failure by EPA to allow such an opportunity to Ecology shall not be a basis for Respondents to dispute an EPA decision to approve, modify or disapprove a submittal.
2. EPA and Respondents may by written agreement modify the work provided for by this Fifth Amendment.

3. For the purposes of this Fifth Amendment, Paragraph 3 of Section X (Modification of the Work Plan) of the RI/FS AOC shall be deleted and replaced by the following:

EPA may identify gaps in the work required under the Fifth Amendment that prevent the accomplishment of the objectives of the Fifth Amendment as defined above. In that event, EPA may request in writing that LDWG perform additional work under this Fifth Amendment, as necessary for the accomplishment of these objectives. Respondents shall confirm their willingness to perform such additional work, in writing, to EPA within twenty-one (21) days of receipt of the EPA request, or Respondents shall invoke dispute resolution. Subject to EPA resolution of any dispute, Respondents shall implement the additional work requested by EPA. The additional work shall be completed according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to a plan or written work plan supplement. EPA reserves the right to conduct the work at any point, to seek reimbursement from Respondents, and/or seek any other appropriate relief. If EPA determines that conditions at the Site are creating or have the potential to create a danger to human health or welfare on-site or in the surrounding area or to the environment, EPA may order Respondent to stop further implementation of this Order for such period of time in the judgement of EPA is needed to abate the danger.

4. The amounts paid by Respondents to the EPA Hazardous Superfund pursuant to the requirements of Section XXII (Payment of EPA Oversight Costs) of the RI/FS AOC shall be deposited by EPA into the Lower Duwamish Waterway Superfund Site Special Account pursuant to Section XXI (Reservations of Rights and Reimbursement of Costs) of the RI/FS AOC to be retained and used to conduct or finance response actions at or in connection with the Site. In addition, EPA has several other site-specific accounts related to the Site within the EPA Hazardous Superfund. Funds held in such site specific accounts may be transferred to the Lower Duwamish Waterway Superfund Site Special Account if EPA determines that the funds are no longer needed to finance or otherwise support the implementation of response actions related to response action for which such site specific account was created. After completion of response actions at or in connection with the Site, any funds remaining in the Lower Duwamish Waterway Site Specific Account may be transferred by EPA to the EPA Hazardous Substance Superfund.

5. Remove and replace Paragraph 1 of Section XV with the following:

All deliverables under this AOC shall be submitted in writing unless otherwise specified. All deliverables must be submitted by deadlines in

the SOW attached to this Amendment or as otherwise approved by EPA. Unless otherwise requested by the EPA Project Coordinator, Respondents shall submit all deliverables to EPA in electronic form (native format and web-ready pdf) with a single hard copy of the first draft and the final version of all documents subject to EPA comment. Technical specifications for sampling and monitoring data and spatial data are addressed in the SOW attached to this Amendment. If any deliverable includes maps, drawings, or other exhibits that are in color or larger than 8.5” by 11”, Respondents shall also provide EPA with paper copies of such exhibits.

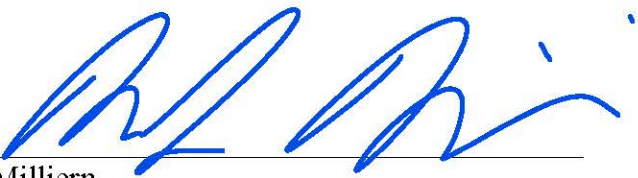
6. The list of deliverables identified in Paragraph 4 of Section XIX (Delay in Performance, EPA Stipulated Penalties, Enforcement) of the RI/FS AOC is amended to delete deliverables (3) through (6) and to include the original and revised Remedial Design Work Plan, and originals of the Preliminary Remedial Design, the Intermediate Remedial Design, the Pre-Final Remedial Design, and the Final Remedial Design.
7. The basis for violations identified in Paragraph 5 of Section XIX (Delay in Performance, EPA Stipulated Penalties, Enforcement) is amended to delete deliverables (1) through (9) and to include the original and final deliverables requiring EPA approval identified in the attached SOW except for a monthly progress report and those deliverables identified in Paragraph 6 above.
8. Respondents shall, subject to and conditioned upon the prior approval of EPA, implement the activities required by the attached SOW, which is incorporated into and enforceable under the terms of the RI/FS AOC as amended by this Fifth Amendment.

It is so ORDERED AND AGREED this _____ day of _____, 2021.

BY: _____ DATE: _____

KIRA LYNCH
 Kira Lynch
 Chief, Remedial Cleanup Branch Unit Manager of the Superfund and Emergency
 Management Division
 Region 10
 United States Environmental Protection Agency


Digitally signed by KIRA LYNCH
 Date: 2021.07.08 15:09:03 -07'00'

By: 

Brock Milliern
Program Manager
Toxics Cleanup Program
Washington Department of Ecology

DATE: 7/8/2021

EFFECTIVE DATE: _____
Agreed this 24th day of June, 2021
For Respondent Port of Seattle

By: Stephen P. Metruck  Digitally signed by
Stephen P. Metruck
Date: 2021.06.24
22:30:20 -07'00'

Name Stephen P. Metruck
Title Executive Director

Agreed this ___ day of _____, 2021
For Respondent City of Seattle

By: Jenny A. Durkan
Name
Title

Agreed this 1 day of JUNE, 2021
For Respondent King County

By: Daw Constantine
Name DON CONSTANTINE
Title EXECUTIVE

Agreed this 29 day of June, 2021
For Respondent The Boeing Company

By: SL Sifestas
Name STEVEN L. SIFESTAS
Title Senior Director
Environmental Sustainability
The Boeing Co.