

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

Port of Tacoma

Sound Mattress and Felt Co Site
1940 East 11th Street
Tacoma, WA 98421

AGREED ORDER

No. DE 19403

TO:

Port of Tacoma
One Sitcum Plaza
Tacoma, Washington 98421-3000
Attention: Eric Johnson
Executive Director

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and The Port of Tacoma (Port) (collectively referred to as Parties) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the Port to conduct certain work more specifically outlined in the attached Scope of Work and incorporated herein. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70A.305.050 (1)

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. The Port agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the Port's responsibility under this Order. The Port shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in RCW 70A.305, WAC 173-204, and WAC 173-340 shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as Sound Mattress & Felt Co. The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located. Based upon factors

currently known to Ecology, the Site is generally located at 1940 East 11th Street, Tacoma, Washington 98421 as shown in the Site Location Diagram (Exhibit A).

- B. Parties: Refers to the State of Washington-Department of Ecology (Ecology) and The Port of Tacoma (Port).
- C. Potentially Liable Persons (PLP(s)): Refers to Port of Tacoma (Port) and Wyeth LLC (Wyeth).
- D. Subject PLP(s): Refers to PLP(s) subject to this Order.
- E. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order.

All exhibits are integral and enforceable parts of this Order.

V. FINDINGS OF FACT

Solely for the purposes of this Order, Ecology makes the following findings of fact, without any express or implied admissions of such facts by the Port:

A. Based upon factors currently known to Ecology, the Site is generally located at 1940 East 11th Street, Tacoma, Washington 98421, latitude 47°15'54"N and longitude 122°24'36"W, and includes nearby properties at 1132 Thorne Road, One Sitcum Plaza, railway property adjacent to Milwaukee Way, as well as some street rights-of-way adjacent to these properties as shown in the general Site Location Diagram (Exhibit A).

B. Washington Steel Products, Inc. owned a parcel of land (Pierce County Parcel 2275200661) from approximately 1947 to 1964. The parcel was undeveloped until approximately 1948. In 1948, Washington Steel Products, Inc., constructed a building and began operations at that facility. The building was expanded in 1950, 1952, and 1953. Washington Steel Products, Inc. conducted various industrial processes related to the metal fabrication industry at Parcel 2275200661.

C. Pierce County Parcel 2275200661 was purchased by Sound Mattress & Felt Co in 1964. The property was leased to various businesses, including the Brown & Haley, Inc., candy company.

D. The Port of Tacoma is the current owner of the following parcels of land: Pierce County Parcels 2275200661, 6965000502, and 2275200633. The Port of Tacoma purchased Parcel 2275200661 from Sound Mattress & Felt Co in 2006. A portion of Parcel 2275200661 is currently vacant and fenced. The Port of Tacoma purchased Parcel 6965000502 from Sandra, LLC and Roann, LLC in 2007. The Port of Tacoma has owned Parcel 2275200633, which includes the Port's administration building, since at least 1984.

E. Several reports document the presence of hazardous substances at the Site. These documents are available at Ecology's Southwest Regional Central Records Office and are listed in Exhibit B.

F. Sound Mattress and Felt Co entered the Site in Ecology's Voluntary Cleanup Program (VCP) in 2007. Between 2010 and 2017, Sound Mattress & Felt Co completed various site investigations; and transmitted remedial investigation, data gap, and feasibility study reports to Ecology under the VCP. These reports are listed in Exhibit B. Ecology provided a Further Action opinion to Sound Mattress & Felt Co on September 27, 2017.

G. As documented in the reports listed in Exhibit B, soil and/or groundwater samples collected from the Site between approximately 2004 and 2014 contained concentrations of chlorinated volatile organic compounds including tetrachloroethylene (PCE), trichloroethylene (TCE), and vinyl chloride (VC); metals including arsenic, cadmium, copper, lead, nickel, and zinc; and polychlorinated biphenyls (PCBs).

H. Building materials and coatings containing PCBs were discovered in the warehouse building on Parcel 2275200661 in 2010. PCBs also were found to have leached into soil and groundwater surrounding the building, and were discovered in the property stormwater system. In late 2014 to early 2015, the Port demolished the buildings and slab-on-grade footings. As part of the demolition, the Port conducted a Toxics Substance Control Act cleanup of PCB-impacted soil under EPA oversight – building coatings were abated, shallow PCB-impacted soil surrounding the building was excavated and disposed offsite in Subtitle C and D landfills, and the

building foundation with embedded PCBs was removed and disposed offsite in a Subtitle D landfill.

VI. ECOLOGY DETERMINATIONS

Solely for the purposes of this Order, Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by the Port.

- A. The Site constitutes a facility under RCW 70A.305.020 (8).
- B. The Port of Tacoma, as current owner of property within the Site, is an “owner or operator” as defined in RCW 70A.305.020 (22) of a “facility” as defined in RCW 70A.305.020 (8).
- C. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70A.305.020 (32) and (13), respectively, has occurred at the Site.
- D. Based upon credible evidence, Ecology issued a PLP status letter to the Port of Tacoma dated September 15, 2020, pursuant to RCW 70A.305.040, .020 (26), 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 of Tacoma is a PLP under RCW 70A.305.040 and notified the Port of Tacoma of this determination by letter dated November 10, 2020.
- E. Ecology finds that during the time Washington Steel Products, Inc. (or a successor company) owned or operated the facility, there was a disposal or release of a hazardous substance under RCW 70A.305.040 (1) (b) and RCW 70A.305.020 (22). On May 5, 2017, the Superior Court of the State of Washington in Pierce County ruled that Wyeth LLC is the successor to Washington Steel Products, Inc.’s liabilities. *Port of Tacoma v. Sound Mattress & Felt Co., et al.*, No. 16 2 08637 9, (Wash. Super. May 5, 2017). Washington Steel Products, Inc. formerly owned and operated on a parcel of land (Pierce County Parcel 2275200661) as shown on the Pierce-County Assessor-Treasurer’s website, which constitutes a “facility” as defined in RCW 70A.305.020 (8).

F. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70A.305.020 (32) and (13), respectively, has occurred at the Site.

G. Based upon credible evidence, Ecology issued a PLP status letter to Wyeth LLC as a successor corporation to Washington Steel Products, Inc. dated September 15, 2020, pursuant to RCW 70A.305.040, .020 (26), and WAC 173-340-500. By letter dated October 14, 2020, Wyeth LLC voluntarily waived its rights to notice and comment and, without admitting liability, acknowledged that “Ecology has asserted that Washington Steel Products, Inc. is a Potentially Liable Person (PLP)” under RCW 70A.305.040. Ecology issued a determination that the Wyeth LLC is a PLP under RCW 70A.305.040 and notified Wyeth LLC of this determination by letter dated November 10, 2020.

H. Pursuant to RCW 70A.305.030 (1) and .050 (1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

I. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan. Any Party may propose an interim action under this Order. If the Parties are in agreement concerning the interim action, the Parties will follow the process in Section VII.E. If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70A.305, or to undertake the interim action itself.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the Port take the following remedial actions at the Site.

A. The Port will complete an Updated Conceptual Site Model Report, Remedial Investigation, and Feasibility Study; and submit a preliminary draft Cleanup Action Plan for the Site in accordance with the schedule and terms of the Scope of Work and Schedule, Exhibit C, and all other requirements of this Order.

B. If the Port determines that there has been a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in soil, groundwater, surface water, air, and/or sediments, the Port, within seven (7) days of determining there has been a change in condition, shall notify Ecology in writing of said change and provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.

C. The Port shall submit to Ecology written quarterly Progress Reports that describe the actions taken during the previous quarter to implement the requirements of this Order. All Progress Reports shall be submitted by the fifteenth (15th) day of the month in which they are due after the effective date of this Order. The Progress Reports shall include the following:

1. A list of onsite activities that have taken place during the quarter.
2. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests.
3. Description of all deviations from the Scope of Work and Schedule (Exhibit C) during the current quarter and any planned deviations in the upcoming quarter.
4. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.
5. All raw data (including laboratory analyses) received during the previous quarter (if not previously submitted to Ecology), together with a detailed description of

the underlying samples collected (for example: boring/well logs, field activity and sampling forms, survey data, and site drawing(s) showing the sample locations).

6. A list of deliverables for the upcoming quarter if different from the schedule.

D. All plans or other deliverables submitted by the Port for Ecology's review and approval under the Scope of Work and Schedule (Exhibit C) shall, upon Ecology's approval, become integral and enforceable parts of this Order.

E. If the Parties agree on an interim action under Section VI.I, The Port shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600 (16). The Port shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and the Port is required to conduct the interim action in accordance with the approved Interim Action Work Plan.

F. If Ecology determines that the Port has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to the Port, perform any or all portions of the remedial action or at Ecology's discretion allow the Port opportunity to correct. In an emergency, Ecology is not required to provide notice to the Port, or an opportunity for dispute resolution. The Port shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

G. Except where necessary to abate an emergency situation or where required by law, the Port shall not perform any remedial actions at the Site outside those remedial actions required by this Order to address the contamination that is the subject of this Order, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section VIII.J. (Amendment of Order). In the event of an emergency, or where actions are taken as required by

law, the Port must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

VIII. TERMS AND CONDITIONS

A. Payment of Remedial Action Costs

The Port shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550 (2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under RCW 70.105D, including remedial actions and Order preparation, negotiation oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550 (2). Ecology has accumulated \$21,290.59 in remedial action costs related to this Site as of August 31, 2021. For all Ecology costs incurred, the Port shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550 (4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will, result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70A.305.060, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

B. Designated Project Coordinators

The project coordinator for Ecology is:

Sandy Smith
Cleanup Project Manager
Southwest Regional Office – Toxics Cleanup Program
Washington State Department of Ecology
PO Box 47775 / 300 Desmond Drive SE
Lacey, Washington 98504
360.407.7269
sandy.smith@ecy.wa.gov

The project coordinator for the Port of Tacoma is:

Robert Healy
Senior Manager
Port of Tacoma
1 Sitcum Plaza
Tacoma, Washington 98421-3000
253.428.8643
rhealy@portoftacoma.com

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the Port, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

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

C. Performance

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

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

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

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

D. Access

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that the Port either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the Port's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the Port. The Port shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the Port where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the Port unless an emergency prevents such notice. All persons who access the Site pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

E. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the Port shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's

Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal. Policy 840 is included as Exhibit D.

If requested by Ecology, the Port shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the Port pursuant to implementation of this Order. The Port shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the Port and/or their authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.E (Access), Ecology shall notify the Port prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2) (a), all hazardous substance analyses shall be conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be conducted, unless otherwise approved by Ecology.

F. Public Participation

Ecology shall maintain the responsibility for public participation at the Site. However, the Port shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing lists and prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation reports, feasibility study reports, cleanup action plans, and interim action plans. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.
2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. Likewise, Ecology shall notify the Port prior to the issuance of all press releases and fact sheets

related to the Site, and before meetings related to the Site with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the Port that do not receive prior Ecology approval, the Port shall clearly indicate to their audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. Tacoma Public Library – Main Branch
Northwest Room
1102 Tacoma Avenue South
Tacoma WA 98402
253.280.2814
nwr@tacomalibrary.org
- b. Ecology's Southwest Regional Office
300 Desmond Drive SE
Lacey, WA 98503
360.407.6000

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Site shall be maintained in the repository at Ecology's Southwest Regional Office in Lacey, Washington.

G. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, the Port shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, the Port shall make all records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right the Port may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If the Port withholds any requested records based on an assertion of privilege, the Port shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

H. Resolution of Disputes

1. In the event that the Port elects to invoke dispute resolution, the Port must utilize the procedure set forth below.

a. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), The Port has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision (Informal Dispute Decision) stating: the nature of the dispute; the Port's position with regard to the dispute; Ecology's position with regard to the dispute; and the extent of resolution reached by informal discussion.

c. The Port may then request regional management review of the dispute. This request (Formal Dispute Notice) must be submitted in writing to the Southwest Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's

position with respect to the dispute; and the information relied upon to support its position.

d. The Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar days of receipt of the Formal Dispute Notice. The Decision on Dispute shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

4. In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section VII.E (Work to be Performed) or initiating enforcement under Section X (Enforcement).

I. Extension of Schedule

1. The Port's request for an extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

a. The deadline that is sought to be extended.

b. The length of the extension sought.

c. The reason(s) for the extension.

d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on the Port to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

a. Circumstances beyond the reasonable control and despite the due diligence of the Port including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the Port.

b. A shelter in place or work stoppage mandated by state or local government order due to public health and safety emergencies.

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

d. Endangerment as described in Section VIII.K (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of the Port.

3. Ecology shall act upon the Port's written request for extension in a timely fashion. Ecology shall give the Port written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.J (Amendment of Order) when a schedule extension is granted.

4. At the Port's request, an extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of one of the following:

a. Delays in the issuance of a necessary permit, which was applied for in a timely manner.

b. Other circumstances deemed exceptional or extraordinary by Ecology.

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

J. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.L (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of Ecology and the Port. Ecology will provide its written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

When requesting a change to the Order, the Port shall submit a written request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request is received. If Ecology determines that the change is substantial, then the Order must be formally amended. Reasons for the disapproval of a proposed change to this Order shall be stated in writing. If Ecology does not agree to a proposed change, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.H (Resolution of Disputes).

K. Endangerment

In the event Ecology determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct the Port to cease such activities for such period of time as it deems necessary to abate the danger. The Port shall immediately comply with such direction.

In the event the Port determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment, the Port may cease such activities. The Port shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction, the Port shall provide Ecology with documentation of

the basis for the determination or cessation of such activities. If Ecology disagrees with the Port's cessation of activities, it may direct the Port to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, the Port's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.I (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

L. Reservation of Rights

This Order is not a settlement under RCW 70A.305. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against the Port to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the Port regarding remedial actions required by this Order, provided the Port complies with this Order.

Ecology nevertheless reserves its rights under RCW 70A.305, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health or the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

By entering into this Order, the Port does not admit to any liability for the Site. Although the Port is committing to conducting the work required by this Order under the terms of this Order, the Port expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

M. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the Port without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to the Port's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the Port shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, the Port shall notify Ecology of said transfer. Upon transfer of any interest, the Port shall notify all transferees of the restrictions on the activities and uses of the property under this Order.

N. Compliance with Applicable Laws

1. *Applicable Laws.* All actions carried out by the Port pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits or approvals, except as provided in RCW 70A.305.090. The permits or specific federal, state, or local requirements that the agency has determined are applicable and that are known at the time of the execution of this Order have been identified in Exhibit E. The Port has a continuing obligation to identify additional applicable federal, state, and local requirements, which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or the Port, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and the Port must implement those requirements.

2. *Relevant and Appropriate Requirements.* All actions carried out by the Port pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. The relevant and appropriate requirements that Ecology has determined apply have been identified in Exhibit E. If additional relevant and appropriate requirements are

identified by Ecology or the Port, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and the Port must implement those requirements.

3. Pursuant to RCW 70A.305.090 (1), the Port may be exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, the Port shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70A.305.090 (1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Order to enforce those local government permits and/or approvals. The exempt permits or approvals and the applicable substantive requirements of those permits or approvals, as they are known at the time of the execution of this Order, have been identified in Exhibit F.

4. The Port has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70A.305.090 (1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the Port determine that additional permits or approvals addressed in RCW 70A.305.090 (1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or the Port shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the Port shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the Port and on how the Port must meet those requirements. Ecology shall inform the Port in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The Port shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Pursuant to RCW 70A.305.090 (2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70A.305.090 (1) would result in the loss of approval from a federal agency that is necessary for the state to administer any federal law, the exemption shall not apply and the Port shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70A.305.090 (1), including any requirements to obtain permits or approvals.

O. Indemnification

The Port agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions of the Port, their officers, employees, agents, or contractors in entering into and implementing this Order. However, the Port shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

IX. SATISFACTION OF ORDER

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

X. ENFORCEMENT

Pursuant to RCW 70A.305.050, 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. A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:

1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply.


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

D. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70A.305.070.

Effective date of this Order: April 7, 2022

PORT OF TACOMA


Eric D. Johnson (Jan 3, 2022 12:32 PST)

Eric Johnson
Executive Director
253-383-5841

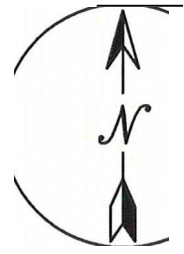
STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



Rebecca S. Lawson, P.E., L.H.G
Section Manager
Toxics Cleanup Program
Southwest Regional Office
360.407.6241

EXHIBIT A – SITE LOCATION DIAGRAM

Sound Mattress & Felt Co



Sitcum Waterway

Port of Tacoma

East Sitcum Way

East 11th Street

Thome Road

Ross Way

Manufacturing/Painting
Packing/Shipping

Painting &
Drying

Plating
Buffing

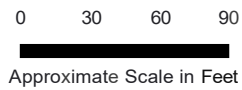
Warehouse

RevChem
Plastics

Castan
Trucking

Legend

- ◆ MW-9 Groundwater Monitoring Well
- B-4 Soil Boring
- A---i A' Cross-section location
- Road
- ▭ Building Exterior
- - - Property Boundary
- - - Pre-1965 Operations
- +ttt+t Railroad Tracks
- 55- Sanitary Sewer
- 6- Gas Line



PACIFIC CREST ENVIRONMENTAL
WWW.PCENV.COM 425-888-4990

Figure 2 Site Plan with Cross Section Location

Former Sound Mattress and Felt Company Property
1940 East 11th Street Tacoma, Washington

EXHIBIT B – PREVIOUS REPORTS

Sound Mattress & Felt Co

EXHIBIT B
Previous Reports
Sound Mattress & Felt Co

Date	Title	Author/From	PLP/To
2017-0301	Draft For Ecology Review Feasibility Study Report, Former Sound Mattress and Felt Property, 1940 East 11th Street, Tacoma, Washington	Pacific Crest Environmental, LLC	Sound Mattress
2015-0511	TSCA Self-Implementing Cleanup Completion Report	CRETE Consulting Inc., PC	Port of Tacoma
2013-0419	1940 East 11th Street Building Direct-Push PCB Groundwater Sampling	Pioneer Technologies Corporation	Port of Tacoma
2012-0913	1940 East 11th Street Building Soil Excavation Sampling and Documentation (soil removal)	Pioneer Technologies Corporation	Port of Tacoma
2012-0822	1940 East 11th Street Building Additional Soil Characterization Sampling	Pioneer Technologies Corporation	Port of Tacoma
2012-0606	1940 East 11th Street Building Materials and Soil/Sediment Characterization Sampling	Pioneer Technologies Corporation	Port of Tacoma
2012-0329	Brown & Haley Building Materials Characterization Sampling. Port of Tacoma, Washington	Pioneer Technologies Corporation	Port of Tacoma
2010-0315	Regulated Building Materials Assessment of the Brown and Haley Building	Argus Pacific, Inc.	Port of Tacoma
2010-0804	Data Gap Investigation Report, Former Sound Mattress and Felt Property, 1940 East 11th Street, Tacoma, Washington	Pacific Crest Environmental, LLC	Sound Mattress
2009-1209	Remedial Investigation Report, Former Sound Mattress and Felt Property, 1940 East 11th Street, Tacoma, Washington	Pacific Crest Environmental, LLC	Sound Mattress
2006-0613	Focused Site Investigation Report Shaub-Ellison Company, 1132 Thorne Road, Tacoma, Washington, Pacific Crest No. 105-001	Pacific Crest Environmental, LLC	Forsberg & Umlauf P.S.
2005-1110	Supplemental Characterization, Groundwater Monitoring Well Installation and July 2005 Groundwater Quality Monitoring Report, Former Automotive Tire Service Facility, 1132 Thorne Road, Tacoma, WA 98421	LSI Adapt Inc.	Goodstein Law Group, PLLC
2005-0720	Groundwater Sampling Report (incomplete copy)	Environmental Management Services, LLC	Robert Shea
2005-0211	Offsite Groundwater Plume Delineation, Former Automotive Tire Service Facility, 1132 Thorne Road, Tacoma, Washington	Environmental Associates, Inc. (EAI)	Steve Shaub

EXHIBIT C – SCOPE OF WORK AND SCHEDULE

Sound Mattress & Felt Co

EXHIBIT C – SCOPE OF WORK AND SCHEDULE

Sound Mattress & Felt Co

The Port shall coordinate with Ecology throughout the development of an Updated Conceptual Site Model, Remedial Investigation Report, Feasibility Study (FS), Interim Action (if required), and preliminary draft Cleanup Action Plan (dCAP). The Port shall keep Ecology informed of changes to any Work Plan or other project plans, and any issues or problems as they develop. The Port shall provide quarterly reports that provide a synopsis of activities during the previous quarter, initial findings and observations in the field, unexpected findings or events, and expected activities for the upcoming quarter. Work completed for this scope of work will meet the requirements of the Model Toxics Control Act Regulation and Statute, WAC 173-340 and RCW 70A.305.

The Scope of Work (SOW) is divided into eight major tasks as follows:

- Task 1. Updated Conceptual Site Model Report
- Task 2. Data Gaps Investigation Work Plan
- Task 3. Data Gaps Investigation and Remedial Investigation Report
- Task 4. Feasibility Study
- Task 5. Preliminary Draft Cleanup Action Plan
- Task 6. SEPA Support
- Task 7. Public Participation
- Task 8. Interim Action(s) (if required or agreed to by Ecology)

TASK 1 UPDATED CONCEPTUAL SITE MODEL REPORT

The Port shall prepare an updated conceptual site model report, utilizing the existing VCP Remedial Investigation Report, and incorporating subsequent data collected at the site. The Final VCP Remedial Investigation Report was submitted to Ecology on December 9, 2009. The updated conceptual site model report will:

- Summarize past site investigations and studies.
- Compile and evaluate existing site information including laboratory soil, groundwater, and soil vapor analytical data, aquifer tests, survey data, exploration logs, relevant field logs, and pilot study results.
- Present an updated conceptual site model showing contaminant sources, concentrations, transport pathways, exposure pathways, and potential receptors.
- Identify data gaps in the conceptual site model.

TASK 2 DATA GAPS INVESTIGATION WORK PLAN

The Port shall prepare a Data Gaps Investigation Work Plan (Work Plan). The Work Plan shall describe data gaps investigation activities, present the strategy for implementing and reporting activities, outline the responsibility and authority of all organizations and key personnel involved, and include a schedule.

- A. A Planning Meeting¹ will be held to discuss the Work Plan before it is submitted to Ecology. The main objectives of this key meeting are to:
 - Review Work Plan requirements.
 - Discuss the Updated Conceptual Site Model, chemicals of potential concern, and preliminary cleanup (screening) levels.
 - Identify project data gaps.
 - Identify and discuss possible interim actions.
- B. The Work Plan shall include:
 - Data gaps based on a review and evaluation of existing data, and the approach to fill the data gaps. The Work Plan will include activities identified in coordination with Ecology.
 - Activities necessary to fully delineate the lateral and vertical extent of groundwater, soil, and soil gas contamination; and potential contamination from the site to surface water and sediment of the Sitcum Waterway.
 - A well inventory that identifies the status and condition of site monitoring wells.
 - One round of groundwater monitoring that includes a full suite of chemical analyses including volatile organic compounds, semi-volatile organic compounds, polychlorinated biphenyls, EPA target analyte list metals, cyanide, total petroleum hydrocarbons (NWTPH-G and NWTPH-Dx), and 1,4-dioxane.
 - Compiled information on current and historical underground storage tanks (USTs), and potential data and documentation gaps associated with potential leaking USTs.
 - Compiled information on current and historical subsurface features such as sanitary sewers, current and historical combined sewers, current and historical storm sewers, and other subsurface features. The subsurface information shall be evaluated relative to the location and depth of groundwater and soil contamination on the Site.
 - Evaluation of man-made and natural preferential pathways for contaminant transport.
 - Preliminary cleanup (screening) levels
 - Sampling and Analysis Plan (SAP) and Quality Assurance Project Plan (QAPP) in compliance with WAC 173-340-820.
 - Include a copy of the Health and Safety Plan (HSP) for the project.

¹ Participants in the meetings may elect to participate telephonically, virtually, or in person.

- C. The Quality Assurance Project Plan (QAPP) will be prepared in accordance with Ecology's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies² (July 2004, revised December 2016). Laboratories must meet the accreditation standards established in WAC 173-50.
- D. At least two versions of the work plan shall be prepared: a Draft Data Gaps Investigation Work Plan for Ecology review, and a Final Data Gaps Investigation Work Plan for Ecology approval that incorporates Ecology comments on the Draft Data Gaps Investigation Work Plan.
- E. The Port shall submit to Ecology three printed copies, one electronic copy in Word (.docx), and one electronic copy in Adobe (.pdf) format of each version of the Data Gaps Investigation Work Plan.
- F. As with all environmental work at the site, sampling or work activity may not begin without written approval from Ecology.
- G. Per Section VIII. E. of the Agreed Order, the work plan schedule shall provide seven (7) days' notice to Ecology before fieldwork begins.
- H. The Port shall submit all new sampling data generated under this Work Plan and any recently collected data to Ecology for entry into the Environmental Information Management System (EIM) in accordance with WAC 173-340-840(5) and Ecology's Toxics Cleanup Program Policy 840: Data Submittal Requirements.
- I. Upon Ecology approval of the Data Gaps Investigation Work Plan, the Port shall implement the data gaps investigation as described in the work plan and in conformance with the schedule of deliverables below.

TASK 3 DATA GAPS INVESTIGATION AND REMEDIAL INVESTIGATION REPORT

The Port shall conduct a data gaps investigation that, in combination with usable existing data for the site, meets the requirements of WAC 173-340-350 (7) and WAC 173-204-560 (if applicable) according to the Data Gaps Investigation Work Plan approved by Ecology. The existing usable site data and information from the Data Gaps Investigation will determine the nature and extent of contamination exceeding preliminary Model Toxics Control Act (MTCA) cleanup levels, preliminary Sediment Management Standards (SMS) cleanup levels (if applicable), and other regulatory requirements. The investigations must provide sufficient data and information to define the nature and extent of contamination. The data gaps investigation and remedial investigation report will include the following:

- A. Field sampling and analysis will be completed in general accordance with the SAP and QAPP. Deviation(s) from the approved SAP and QAPP must be communicated to Ecology immediately and documented as required by Ecology.

² <https://apps.ecology.wa.gov/publications/documents/0403030.pdf>

- B. The Port shall provide updates and interim data reports to Ecology as new site data and information become available. Laboratory data will be provided to Ecology upon request and within 60 days of receipt of raw analytical data from the laboratory.
- C. Before submittal of the Agency Review Draft Remedial Investigation Report, a Pre-Report Check-In meeting will be held. During this meeting, Ecology and the Port will review available data, present the current conceptual site model, and discuss the content and organization of the Agency Review Draft Remedial Investigation Report.
- D. Using the results of the data gaps investigation, and previous reports and studies, the Port shall prepare a Data Gaps Investigation Report. The Data Gaps Investigation Report shall document the nature and extent of contamination at the Site. A minimum of two versions of the Report shall be prepared:
 - An Agency Review Draft Remedial Investigation Report will be submitted to Ecology for review.
 - A Public Review Draft Remedial Investigation Report will be submitted to Ecology that incorporates all Ecology comments and addresses Ecology concerns on the agency review draft. After an acceptable Public Review Draft Remedial Investigation Report has been submitted, it will be provided for public notice and opportunity for comment in accordance with WAC 173-340-600 (13) (c). A Final Remedial Investigation Report will be prepared following incorporation of comments from Ecology.
- E. The Port shall submit to Ecology three printed copies, one electronic copy in Word (.docx), and one electronic copy in Adobe (.pdf) format of each version of the Remedial Investigation Report.

TASK 4 FEASIBILITY STUDY

The Port shall use the information from the Updated Conceptual Site Model Report, Remedial Investigation Report and previously submitted Draft Feasibility Study to prepare a Feasibility Study (FS) that meets the applicable requirements of WAC 173-340-350 (8) according to the Schedule of Deliverables below. The FS Report will present an analysis of potential cleanup alternatives that meet MTCA requirements and expectations for cleanup actions outlined in WAC 173-340-350 through WAC 173-340-390, cost estimates, and time frames for completion.

- A. Before beginning the FS, an FS planning meeting will be held to review and discuss ARARs, potential remedial alternatives, cleanup levels, and points of compliance. The results of the FS planning meeting will be memorialized in a technical memorandum to be submitted to Ecology.
- B. The FS will provide a detailed analysis of each cleanup alternative according to the applicable requirements of WAC 173-340-350 and WAC 173-204-560. The cleanup alternatives will be evaluated for compliance with the applicable requirements of WAC 173-340-360, Selection of Cleanup Actions, and WAC 173-204-560 (4), including a detailed evaluation of remedial alternatives relative to the following criteria:

- Compliance with Cleanup Standards and Applicable State and Federal Laws
 - Protection of Human Health
 - Protection of the Environment
 - Provision for a Reasonable Restoration Time Frame
 - Use of Permanent Solutions to the Maximum Extent Practicable
 - The Degree to which Recycling, Reuse, and Waste Minimization are Employed
 - Short-term Effectiveness
 - Long-Term Effectiveness
 - Net Environmental Benefit
 - Implementability
 - Provision for Compliance Monitoring
 - Cost-Effectiveness
 - Anticipated Community Acceptance
- C. The preferred cleanup alternative will be identified. Justification for the selection will be provided, and the recommended cleanup alternative further developed, in the FS Report.
- D. A minimum of three versions of the FS Report shall be prepared:
- An Agency Review Draft FS Report will be submitted to Ecology for review.
 - A Public Review Draft FS Report will be submitted to Ecology that incorporates all Ecology comments and addresses Ecology concerns on the agency review draft. After an acceptable Public Review Draft FS Report has been submitted, it will be provided for public notice and opportunity for comment in accordance with WAC 173-340-600 (13) (c).
 - A Final FS Report will be prepared following public notice, consideration of comments from the public, and incorporation of revisions based on public comments. Ecology approval of the FS Report shall not be issued until after public notice and consideration of public comments.
- E. The FS Report submittals shall meet requirements of WAC 173 340 840. The Port shall submit to Ecology three printed copies, one electronic copy in Word (.docx), and one electronic copy in Adobe (.pdf) format of each version of the FS Report.

TASK 5 PRELIMINARY DRAFT CLEANUP ACTION PLAN

Upon Ecology acceptance of the Public Review Draft Remedial Investigation and Feasibility Study Report, the Port shall prepare for agency review a preliminary draft Cleanup Action Plan (dCAP) following the schedule below, and in accordance with WAC 173-340-380, for Ecology's use in preparing the Draft Cleanup Action Plan. The preliminary dCAP shall address the requirements for developing a cleanup action in WAC 173-340-350 through WAC 173-340-390, including Ecology's expectations for cleanup alternatives in WAC 173-340-370. If contaminated sediments are included in the cleanup action, the cleanup plan also will comply with WAC 173-204-580. The proposed cleanup action shall meet the requirements of WAC 173-340-360.

- A. A meeting will be held to review and discuss plans for developing the preliminary draft Cleanup Action Plan.
- B. The preliminary dCAP shall:
 - a. Include a description of the proposed cleanup action and rationale for its selection,
 - b. Summarize other cleanup action alternatives evaluated in the FS,
 - c. Cleanup standards from the FS and rationale regarding their selection,
 - d. Proposed schedule for implementation,
 - e. Description of institutional controls proposed, and
 - f. Summary of Federal, State and local laws that are applicable to the proposed cleanup action.
- C. One version of the preliminary dCAP shall be prepared:
 - A preliminary dCAP will be submitted to Ecology for review.
 - Using the preliminary dCAP, Ecology will prepare a dCAP that will be provided for public notice and opportunity for comment in accordance with WAC 173-340-600 (13) (c).
 - A Final CAP will be prepared following public notice, consideration of comments from the public, and incorporation of revisions based on public comment.
- B. The preliminary dCAP submittals shall meet requirements of WAC 173 340 840. The Port shall submit to Ecology three printed copies, one electronic copy in Word (.docx), and one electronic copy in Adobe (.pdf) format of each version of the dCAP.
- D. At Ecology's request, the Port may assist Ecology in further development of the Final Cleanup Action Plan.

TASK 6 SEPA SUPPORT

The Port shall assist Ecology, as requested, to comply with State Environmental Policy Act (SEPA) Rules, such as by preparing draft SEPA environmental checklists. The Port shall assist Ecology, as requested, with coordinating SEPA public involvement requirements with MTCA public involvement requirements whenever possible, such that public comment periods and meetings or hearings can be held concurrently.

TASK 7 PUBLIC PARTICIPATION

If public meeting(s) or hearing(s) are requested, the Port shall support Ecology in presenting the Investigation(s) results, Public Review Draft FS Report, and dCAP at a public meeting or hearing. The Port also will assist Ecology with presentations at any additional meetings or hearings that may be necessary for MTCA compliance, or as part of the Public Participation Plan.

TASK 8 INTERIM ACTIONS

If required by Ecology, or proposed by the Port and approved by Ecology, the Port will implement interim action(s). Interim actions will be implemented in accordance with WAC 173-340-430, WAC 173-204-550 (3) (d) (if applicable), and the Agreed Order. Interim actions are remedial actions that are implemented before completion of the FS, and include those that:

- Are technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance,
 - Correct a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or
 - Are needed to provide for completion of the remedial investigation report, feasibility study, or design of the cleanup action.
- A. If an interim action is to be performed, the Port will prepare and submit for Ecology approval an Interim Action Work Plan (IAWP) with detail commensurate with the work to be performed. The IAWP shall, as appropriate:
- Describe the interim action including its purpose, general requirements, and relationship to the (final) cleanup action (to the extent known).
 - Summarize relevant and available RI and/or FS information, including at a minimum existing site conditions and alternative interim actions considered.
 - Present design and construction requirements.
 - Include a proposed schedule.
 - Identify personnel, roles, and responsibilities.
 - Compliance Monitoring Plan.
 - SAP, QAPP, and a copy of the interim action Health and Safety Plan.
 - Identify Federal, State or local requirements applicable to this action, including any State or local permits or approvals that are procedurally exempt under RCW 70.105D.090.
- B. At least three versions of the work plan shall be prepared:
- a. A Draft IAWP for Ecology review.
 - b. A Revised Draft IAWP will be submitted to Ecology that incorporates all Ecology comments and addresses Ecology concerns on the Draft IAWP. After an acceptable Draft IAWP has been submitted, it will be provided for public notice and opportunity for comment in accordance with WAC 173 340 600 (16).
 - c. A Final IAWP will be prepared following public notice, consideration of comments from the public, and incorporation of revisions based on public comments, and SEPA determination. Ecology approval of the IAWP shall not be issued until after public notice and consideration of public comments.

- C. The IAWP submittals shall meet requirements of WAC 173 340 840. The Port shall submit to Ecology three printed copies, one electronic copy in Word (.docx), and one electronic copy in Adobe (.pdf) format of each version of the IAWP.
- D. As with all environmental work at the site, sampling or work activity may not begin without written approval from Ecology.
- E. Per Section VIII. E. of the Agreed Order, the work plan schedule shall provide seven (7) days' notice to Ecology before fieldwork begins.
- F. The Port shall submit all new sampling data generated under this Work Plan and any recently collected data to Ecology for entry into the Environmental Information Management System (EIM) in accordance with WAC 173-340-840(5) and Ecology's Toxics Cleanup Program Policy 840: Data Submittal Requirements.
- G. Upon Ecology approval of the IAWP, the Port shall implement the interim action as described in the work plan and the interim action schedule included in the IAWP.
- H. The Port will be responsible for complying with the State Environmental Policy Act (SEPA) Rules including preparing and submitting a draft environmental checklist for the interim action, and will assist Ecology with presentations at any additional meetings or hearings that may be necessary for SEPA compliance or as part of the Public Participation Plan.
- I. Upon successful completion of the work, a Draft Interim Action Report will be prepared as a separate deliverable.

SCHEDULE OF DELIVERABLES SOUND MATTRESS AND FELT CO

The schedule of deliverables for the Scope of Work is presented below. If the date for submission of any item or notification required by this Schedule of Deliverables occurs on a weekend, state or federal holiday, the date for submission of that item or notification is extended to the next business day following the weekend or holiday. Where a deliverable due date is triggered by Ecology notification, comments or approval, the starting date for the period shown is the date the Port received such notification, comments or approval by certified mail, return receipt requested, unless otherwise noted below. Where triggered by Ecology receipt of a deliverable, the starting date for the period shown is the date Ecology receives the deliverable by certified mail, return receipt requested, or the date of Ecology signature on a hand-delivery form.

Ecology may, at its discretion, combine public notice periods for those deliverables for which public notice is required per WAC 173-340-600. Documents subject to public notice will not be considered final until after the public notice requirement has been met and the documents have been revised to incorporate final Ecology comments.

Deliverable	Schedule
Draft Updated Conceptual Site Model Report	270 calendar days following effective date of the Agreed Order
Draft Data Gaps Investigation Work Plan	45 calendar days following Ecology's review and approval of the Draft Updated Conceptual Site Model Report
Final Data Gaps Investigation Work Plan	30 calendar days following receipt of Ecology's comments on the Draft Investigation Work Plan
Completion of Data Gaps Investigation Field Work	12 months following completion of the Final Work Plan
Agency Review Draft Remedial Investigation Report	90 calendar days following receipt of all laboratory data
Final Remedial Investigation Report	The Final Remedial Investigation Report shall be submitted after the public notice period, and no more than 30 calendar days following receipt of Ecology's final comments on the

Deliverable	Schedule
	Public Review Draft Remedial Investigation Report
Agency Review Draft FS	90 calendar days following completion of Public Review Draft Remedial Investigation Report
Public Review Draft FS	45 calendar days following receipt of Ecology's comments on the Agency Review Draft FS
Final FS Report	The Final FS Report shall be submitted after the public notice period, and no more than 30 calendar days following receipt of Ecology's final comments on the Public Review Draft FS
Preliminary draft Cleanup Action Plan (dCAP)	90 calendar days following completion of the Public Review Draft FS

EXHIBIT D – ECOLOGY POLICY 840

Sound Mattress & Felt Co



Toxics Cleanup Program

Policy 840: Data Submittal Requirements

Established: August 1, 2005

Revised: April 12, 2016

Contact: Policy & Technical Support Unit, Headquarters

Purpose: This Policy provides guidance on the submission of environmental monitoring data generated or collected during the investigation or cleanup of contaminated sites under the Model Toxics Control Act.

References: [WAC 173-340-840 \(5\)](#)
[Chapter 173-204 WAC](#)
[Environmental Information Management System Database](#)
[Sediment Cleanup Users Manual II](#)

Attachments: A - Model Grant and Permit Condition

Disclaimer: This Policy is intended solely for the guidance of Ecology staff. It is not intended, and cannot be relied on, to create rights, substantive or procedural, enforceable by any party in litigation with the state of Washington. Ecology may act at variance with this Policy depending on site-specific circumstances, or modify or withdraw this Policy at any time.

Approved by:

James J. Pendowski, Program Manager
Toxics Cleanup Program

Accommodation Requests: To request ADA accommodation, including materials in a format for the visually impaired, call Ecology's Toxics Cleanup Program at 360-407-7170. Persons with impaired hearing may call Washington Relay Service at 711. Persons with speech disability may call TTY at 877-833-6341.

Purpose and Applicability

The investigation and cleanup of contaminated sites generate a large volume of environmental monitoring data that need to be properly managed to facilitate regulatory decisions. The data also need to be accessible by Ecology staff, site owners, consultants, and the general public.

This Policy describes the requirements for submitting environmental monitoring data generated or collected during the investigation and cleanup of contaminated sites under Chapter 70.105D RCW, Model Toxics Control Act (MTCA).

This Policy applies to Ecology staff and any person who investigates or cleans up contaminated sites and submits related environmental sampling data to Ecology, including potentially liable persons, Voluntary Cleanup Program (VCP) customers, prospective purchasers, government agencies, and Ecology contractors.

1. Unless otherwise specified by Ecology, all environmental monitoring data generated during contaminated site investigations and cleanups are required to be submitted to Ecology in both written format and electronically through EIM.

Environmental monitoring data include biological, chemical, physical, and radiological data generated during site investigations and cleanups under the Model Toxics Control Act Cleanup Regulation (Chapter 173-340 WAC) and the Sediment Management Standards (Chapter 173-204 WAC).

The Environmental Information Management System (EIM) is a searchable database that contains data collected by Ecology (or by environmental contractors on behalf of Ecology), and by Ecology grant recipients, local governments, the regulated community, and volunteers.

Under this Policy, data are considered to be “environmental monitoring data” if generated or collected during:

- a. Site investigations and cleanups conducted under an order, agreed order or consent decree, permit, grant, loan, contract, interagency agreement, memorandum of understanding; or
- b. An independent remedial action.

Under this Policy, data are not considered to be environmental monitoring data if generated or collected for the following studies. This means that entering data into EIM, while encouraged, is optional for:

- a. Non site-specific studies;
- b. Site hazard assessments that result in no further action; and
- c. All initial site investigations.

2. Orders, agreed orders, consent decrees, or permits must include a condition that site-specific environmental sampling data be submitted in compliance with this Policy.

For those reports prepared and submitted for review under an order, agreed order, consent decree, or permit, the environmental sampling data must be entered into EIM at the time of report submittal. If reports for such work do not include documentation that data was submitted in compliance with this Policy, the reports shall be deemed incomplete and a notice will be provided to the submitter.

Generally, Ecology should not review such reports until that documentation is provided. The assistant attorney general assigned to the site should be consulted for an appropriate response when Ecology's review is delayed due to failure of data entry into EIM.

3. Site-specific environmental sampling data must be entered into EIM before Ecology will review independent remedial action reports under the Voluntary Cleanup Program.

For independent remedial action reports prepared and submitted under Ecology's Voluntary Cleanup Program (VCP), environmental sampling data must be entered into EIM at the time any report is submitted requesting an opinion on the sufficiency of the action under the VCP.

However, Ecology may establish an alternate deadline for entering data into EIM if this Policy creates undue hardship on the VCP customer and Ecology does not need the data in EIM to begin the review.¹ But in no case will Ecology issue a No Further Action (NFA) opinion letter under the VCP—either for the whole site or a property located within the site—until the data has been entered into EIM.

If sampling data has not been entered into EIM, Ecology may still review the report for the limited purpose of determining whether it contains sufficient information to provide an opinion. If the report is incomplete, Ecology may also respond to the VCP customer's request for an opinion by issuing an administrative letter rejecting the report and requesting additional information.

¹ For example, when a site has multiple groundwater sampling events over time, it may be more efficient to enter the data into EIM at one time after monitoring is completed, rather than for each monitoring event. Another example would be where a VCP consultant is using EIM for the first time and needs additional time to learn how to use the system.

4. Grants, contracts, interagency agreements or memoranda of understanding issued after the effective date of this Policy must include a condition that site-specific data be submitted in compliance with this Policy.

Reports on such work will not be accepted as complete until the data have been submitted in compliance with this Policy. If a payment or transfer of funds is involved in the transaction, the relevant payment or transfer shall be withheld until this requirement has been met. Attachment A contains example language to include in these documents.

5. Data generated during upland investigations and cleanups must be submitted electronically using Ecology's EIM.

The Environmental Information Management System is Ecology's main database for environmental monitoring data. Proper submission of data through this system meets the requirement of submitting such data in an electronic format.

Additional information about EIM, including instructions for data submittal, can be found on Ecology's EIM website at <http://www.ecy.wa.gov/eim/>. The Toxic Cleanup Program's (TCP) EIM Coordinator can also provide technical assistance to site managers and consultants who use EIM.

6. Data generated during sediment investigations and cleanups must be submitted electronically using Ecology's EIM.

Effective March 1, 2008, EIM is Ecology's data management system for sediment-related data. Proper submission of data through EIM meets the requirement of submitting such data in an electronic format. Electronic data must be submitted to Ecology simultaneously with the accompanying report.

For additional information on sediment sampling and analysis plan requirements, see Ecology's *Sediment Cleanup Users Manual (SCUM II)* Publication No. 12-09-057, available at: <https://fortress.wa.gov/ecy/publications/summarypages/1209057.html>

The Sediment Data Coordinator in TCP's Aquatic Land Cleanup Unit (ALCU) can also provide technical assistance with EIM.

7. Data submitted electronically using EIM must be checked by the Toxics Cleanup Program's EIM Coordinator before the data will be officially loaded into EIM.

Normally, TCP's EIM Coordinator will receive a notice that data have been submitted through EIM. Upon receipt of the notice, the EIM Coordinator should notify the Cleanup Project Manager. The EIM Coordinator then reviews the submittal for quality control and officially loads the data into the system.

Attachment A

Model Grant and Permit Condition

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Model Grant and Permit Condition

The following condition is to be inserted in grants, loans, contracts, interagency agreements, and memoranda of understandings where site-specific environmental monitoring data is expected to be generated:

All sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with WAC 173-340-840(5) and Ecology Toxics Cleanup Program Policy 840: Data Submittal Requirements. Electronic submittal of data is not required for site hazard assessments that result in no further action and initial site investigations. (FOR GRANTS, AND LOANS ADD: Failure to properly submit sampling data will result in Ecology withholding payment and could jeopardize future funding.)

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**EXHIBIT E – APPLICABLE STATE, FEDERAL, AND LOCAL LAWS
AND RELEVANT AND APPROPRIATE REQUIREMENTS**

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EXHIBIT E
APPLICABLE STATE, FEDERAL, AND LOCAL LAWS
AND
RELEVANT AND APPROPRIATE REQUIREMENTS

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- Model Toxics Control Act (Chapter 70A.305 RCW; Chapter 173-340 WAC)
- Sediment Management Standards (Chapters 90.48 RCW and 70A.305 RCW; Chapter 173-204 WAC)
- State Environmental Policy Act (SEPA) (Chapter 43.21C RCW, Chapters 197-11 WAC and 173-802 WAC)
- Solid Waste Management-Reduction and Recycling (Chapter 70.95 RCW) and Washington Solid Waste Handling Standards (Chapter 173-350 WAC)
- Hazardous Waste Management (Chapter 70.105 RCW) and Dangerous Waste Regulations (Chapter 173-303 WAC)
- Water Well Construction (Chapter 18.104 RCW)
 - Minimum Standards for Construction and Maintenance of Wells (Chapter 173-160 WAC)
 - Regulation and Licensing of Well Contractors and Operators (Chapter 173-162 WAC)
- Washington Industrial Safety and Health Act (WISHA) (Chapter 49.17 RCW); General Occupational Health Standards (Chapters 296-62 WAC), Hazardous Waste Operations (296-843 WAC), and others
- Accreditation of Environmental Laboratories (RCW 43.21A.230; Chapter 173-50 WAC)
- Governor's Executive Order 05-05 (cultural resources)

Additional Laws and Relevant and Appropriate Requirements
Potentially Applicable to Interim Actions

- State Water Pollution Control Act (Chapter 90.48 RCW)
 - Water Quality Standards for Surface Waters of the State of Washington (Chapter 173-201A WAC)
 - Water Quality Standards for Groundwaters of the State of Washington (Chapter 173-200 WAC) (relevant and appropriate)
 - Underground Injection Control (UIC) (Chapter 173-218 WAC) (relevant and appropriate)

- National Pollutant Discharge Elimination System (NPDES) Permit Program (Chapter 173-220 WAC)
- Washington Clean Air Act (RCW 70.94)
- Shoreline Management Act (RCW 90.48), Shoreline Guidelines (Chapter 173-26 WAC), and Shoreline Management Permit and Enforcement (Chapter 173-27 WAC)
- Fish and Wildlife or Natural Resource Conservation Areas (Various RCW Titles 77 and 79; Chapter 232-12 WAC)
 - Invasive species Chapter 77.135 RCW (RCW 77.135.110—clean and drain requirements)
- Construction Projects in State Waters (Chapter 77.55.100 RCW); Hydraulic Code Rules (Chapter 220-660 WAC)
- Federal Water Pollution Control Act (aka Clean Water Act [CWA]) (33 USC Chapter 26 §1251 et seq.; 40 CFR Chapter 1, Subchapter D); Sections 401, 402, and 404
- Rivers and Harbors Act (Section 10)
- Coastal Zone Management Act (Public Law 92-583; 16 USC Chapter 33)
- Endangered Species Act (16 USC §1361 et seq. 50 CFR 216)
- Magnuson-Stevens Fishery Conservation and Management Act (50 CFR Part 600.920)
- Marine Mammal Protection Act (16 USC §1531 et seq. 50 CFR 17)
- Migratory Bird Treaty Act (16 USC §703 50 CFR §10.12)
- National Historic Preservation Act 16 USC 470; et. Seq.; 40 CFR 6.301 (b); 36 CFR Part 800
- Archeological Resources Protection Act 16 USC 469; 40 CFR 6.301 (c)
- Clean Air Act (42 USC, Chapter 85 Air Pollution, Prevention and Control); National Ambient Air Quality Standards (40 CFR Part 50)

EXHIBIT F – LOCAL PERMITS

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**EXHIBIT F
LOCAL PERMITS**

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City of Tacoma

- TMC – Title 9 (Right-of-Way Permits)
 - Use and barricading (RUSE)
 - Construction (RCON)
 - Groundwater monitoring wells supplemental permit