

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

The Port of Seattle

AGREED ORDER

No. DE 24768

TO: Mr. Stephen P. Metruck  
Executive Director  
Port of Seattle  
P.O. Box 1209  
Seattle, WA 98121-1209

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EXHIBIT A Facility Diagram  
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## **I. INTRODUCTION**

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the Port of Seattle (the Port) 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 a Remedial Investigation (RI) per WAC 173-340-350 and WAC 173-204-550 of the Submerged Lands Area of the Terminal 91 Facility. The Parties anticipate that this Order will be amended in the future to require additional tasks, including conducting a feasibility study and developing a draft Cleanup Action Plan. Ecology believes the actions required by this Order are in the public interest.

## **II. JURISDICTION**

This Agreed Order is issued pursuant to the authority of the Model Toxics Control Act (MTCA), RCW 70.105D.050(1). This Order also satisfies the requirements of WAC 173-303-646 through -64630.

## **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 the 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 70.105D, WAC 173-204, and WAC 173-340 shall control the meanings of the terms used in this Order.

A. 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. The terms “Agreed Order” or “Order” shall include all exhibits to this Order.

B. Cleanup Standards: Refers to the standards promulgated under RCW 70.105D.030(2)(e) and includes (1) hazardous substance concentrations (cleanup levels) that protect human health and the environment, (2) the location at the Facility where those cleanup levels must be attained (points of compliance), and (3) additional regulatory requirements that apply to a cleanup because of the type of action and/or the location of the Facility.

C. Corrective Action: Refers to any activities including investigations, studies, characterizations, and corrective measures, including actions taken pursuant to RCW 70.105D and WAC 173-340, undertaken in whole or in part to fulfill the requirements of WAC 173-303-64620.

D. Corrective Measure: Refers to any measure or action to control, prevent, or mitigate release(s) and/or potential release(s) of dangerous constituents (including dangerous waste and hazardous substances) reviewed and approved by Ecology for the Facility and set forth in a Facility-specific cleanup action plan prepared in compliance with the requirements of WAC 173-340, including WAC 173-340-360. Corrective measures may include interim actions as defined by WAC 173-340. Interim actions will not necessarily be set forth in a Facility-specific cleanup action plan.

E. Dangerous Constituent or Dangerous Waste Constituent: Refers to any constituent identified in WAC 173-303-9905 or 40 C.F.R. part 264, appendix IX; any constituent that caused a waste to be listed or designated as dangerous under the provisions of WAC 173-303; and any constituent defined as a hazardous substance under RCW 70.105D.020(13).

F. Dangerous Waste: Refers to any solid waste designated in WAC 173-303-070 through -100 as dangerous or extremely hazardous or mixed waste. Dangerous wastes are considered hazardous substances under RCW 70.105D.020(13).

G. Facility: The Facility is referred to as the Port of Seattle, Terminal 91. The Facility includes areas where releases of Hazardous Substances originating from Terminal 91 have come to be located, and is generally located at 2001 West Garfield Street, Seattle, Washington. The Facility is defined by the extent of contamination caused by the releases of Hazardous Substances and includes both submerged lands and uplands. The Facility, as currently known to exist, is depicted in Exhibit A to this Order. The Facility is comprised of three separate and distinct areas: (1) the Tank Farm Affected Area; (2) the Submerged Lands Area; and (3) the Upland Area. "Facility" also includes the definition found in RCW 70.105D.020(8).

H. Parties: Refers to the State of Washington, Department of Ecology and the Port.

I. Potentially Liable Person (PLP(s)): Refers to the Port of Seattle.

J. Permit or Permitting Requirement: Unless otherwise specified, refers to the requirements of WAC 173-303 for applying for, obtaining, maintaining, modifying, and terminating Dangerous Waste Management Facility permits.

K. RCRA: Refers to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901–6992k.

L. RCRA Facility Assessment (RFA): Refers to the EPA conducted investigation of release(s) and potential release(s) at the Dangerous Waste Management Facility and the information contained in the 1994 Terminal 91 RCRA Facility Assessment report (RFA Report). The RFA Report is incorporated into this Order by this reference as if fully set forth herein.

M. Release: Refers to any intentional or unintentional spilling, leaking, pouring, emitting, emptying, discharging, injecting, pumping, escaping, leaching, dumping, or disposing of dangerous waste or dangerous constituents into the environment. It also includes the abandonment or discarding of barrels, containers, and other receptacles containing dangerous waste or dangerous constituents, and includes the definition of “release” in RCW 70.105D.020(32).

N. Remedial Investigation (RI): Refers to a facility-wide investigation and characterization performed in accordance with the requirements of WAC 173-340-350, WAC 173-204-550, and the Scope of Work attached to this Order, which includes the substantive requirements for a RCRA facility investigation, undertaken in whole or in part to fulfill the corrective action requirements of WAC 173-303-64620.

O. Submerged Lands Area: Refers to the parts of the Terminal 91 Complex covered by marine waters, generally located on the southern portion of the Terminal 91 Facility and adjacent to Piers 90 and 91, as generally depicted in Exhibit A.

P. Tank Farm Affected Area: Refers to the Tank Farm Lease Parcel and any areas where Hazardous Substances originating from the Tank Farm Lease Parcel have come to be located. The term “Tank Farm Affected Area” has the same meaning that the term “Site” was given under the 1998 Order. The Tank Farm Affected Area, as believed to be located as of the date of this Order, is depicted generally in Exhibit A.

Q. Tank Farm Lease Parcel: Refers to the approximately four acres within Terminal 91 shown in Exhibit A. The Tank Farm Lease Parcel formerly was the site of a tank farm, demolished in 2005, which had for a time operated as a Dangerous Waste facility.

R. Terminal 91 Owned Property: Means the real property owned by the Port encompassing approximately 210 acres and located at 2001 West Garfield Street, Seattle, Washington, as depicted in Exhibit A.

S. Terminal 91 Port Management Agreement (PMA) Area: means the subtidal land adjacent to the Terminal 91 Owned Property encompassing approximately ten acres that is owned by the State of Washington, Department of Natural Resources and managed by the Port under the PMA dated September 30, 1998 (as amended, February 20, 1999).

T. Terminal 91 Complex: means the Terminal 91 Owned Property and the Terminal 91 PMA Area.

U. Upland Area: Refers to that part of the Terminal 91 Complex other than the Submerged Lands Area and the Tank Farm Affected Area and the Terminal 91 Port Management Agreement (PMA) Area, as generally depicted in Exhibit A.

V. 1998 Order: Refers to Ecology Agreed Order No. DE 98HW-N108, entered in 1998 by Ecology, the Port, Burlington Environmental Inc., then a wholly owned subsidiary of Philip Services Corp. ("Philip"), and Pacific Northern Oil Corporation ("PNO").

W. 2010 Order: Refers to Ecology Agreed Order No. DE 7321, entered in 2010 by Ecology and the Port.

X. 2012 Order: Refers to Ecology Agreed Order No. DE 8938, entered in 2012 by Ecology and the Port. The 2012 Order was amended by the 2016 Amendment. The 2012 Order remains in effect but its requirements apply to the Upland Area and the Tank Farm Lease Parcel. It does not impose requirements regarding the Submerged Lands Area.

Y. 2016 Amendment: refers to the amendment to the 2012 Order (January 19, 2016). The 2016 Amendment required two actions: implementation of a seafloor regrade project and performance of a submerged lands preliminary investigation. Work under the 2016 Amendment has been completed and approved by Ecology, and the 2016 Amendment is accordingly terminated.

## V. FINDINGS OF FACT

Ecology makes the following Findings of Fact, without any express or implied admissions of such facts by the Port.

A. The Port is and has been the owner of Terminal 91 Owned Property since on or about 1976.

B. The Port owned the Tank Farm Lease Parcel, upon which other parties operated a Dangerous Waste Management Facility on or after November 19, 1980, the date which subjects facilities to RCRA permitting requirements, including interim status requirements pursuant to RCRA, 42 U.S.C. § 6925, and implementing regulations thereunder, and including authorized state regulations promulgated in WAC 173-303.

C. A tank farm was built on the Tank Farm Lease Parcel in or about 1926. The Tank Farm Lease Parcel was operated by various oil companies until December 1941 when the United States Navy took possession of the entire Terminal 91 Facility through condemnation. In about 1972, the Navy declared the Terminal 91 Facility as surplus. The Port began managing the Terminal 91 Facility, and in 1976 the Port acquired the Terminal 91 Facility. The Terminal 91 Facility remains under the Port's management and ownership at the present time. The Port removed all of the tanks and a number of buildings at the Tank Farm Lease Parcel as part of a MTCA independent interim remedial action reported in October 2005.

D. Burlington Environmental Inc. and its predecessors and successors will herein be referred to as "Philip." Philip operated the Tank Farm Lease Parcel as a regulated dangerous waste management facility on or after November 19, 1980, the date which subjects facilities to federal RCRA permitting requirements under 40 C.F.R. § 264, and Chapter 173-303 WAC, Washington's Dangerous Waste Regulations.

E. On November 14, 1980, the Port notified EPA of its dangerous waste management activities. In September 1988, Philip submitted to Ecology and EPA Region

10 Part A of the RCRA permit application. In the Part A application, Philip identified itself as a “waste oil reclamation facility” that utilized tank treatment of waste oil that may or may not contain contaminants including metals, phenolics, and solvents. The application goes on to state that the “Pier 91 facility is also a generator, storer, and marketer of used oil fuel and hazardous waste fuel (dangerous waste fuel).” The management units listed in the application are: two (2) dangerous waste storage tanks (one 600 gallon and one 675,950 gallon), one (1) dangerous waste treatment tank (241,500 gallon), and one (1) dangerous waste incinerator that treated 20 gallons per hour. EPA received a Part B portion of the RCRA permit application to obtain a final status permit for a dangerous waste treatment, storage, and disposal facility on November 8, 1988. There were numerous revisions to the Part B application, but the Final Status Facility Permit was issued July 22, 1992, with an effective date of August 22, 1992. The Port was named as a permittee since the Port owned the property. Active dangerous waste operations ceased at the permitted Tank Farm Lease Parcel in September 1995, and Ecology approved the above ground tank closure work in 2003.

F. Ecology issued Dangerous Waste Permit WAD980982706 to the Port in 2010 (T-91 DW Permit). The T91 DW Permit succeeds the 1992 Final Status Facility Permit. The Port, which never operated the dangerous waste treatment, storage, and disposal facility at Terminal 91, holds the T91 DW Permit as the owner. The dangerous waste treatment, storage, and disposal facility was demolished in 2005. The T91 DW Permit accordingly addresses only matters relating to Corrective Action. Because the Submerged Land Area is owned by the Port and is contiguous to the Tank Farm Lease Parcel, it is subject to Corrective Action under the T91 DW Permit.

G. Two RCRA Facility Assessments (RFAs) were conducted at the 124 acre Port of Seattle Terminal 91 Facility. The purpose of the RFAs were to identify those areas at the Dangerous Waste Management Facility where release(s) of hazardous substances, as



defined in RCW 70.105D.020(13), may have occurred or may be occurring. EPA conducted the first RFA, which it completed on April 28, 1988. That RFA assessed the contaminant release, migration, and exposure potential on the 4-acres being leased by Philip from the Port of Seattle. Because the corrective action requirements for a permit specify that all contiguous property under the same ownership be assessed, EPA completed a second RFA that evaluated the remaining 120 acres. Neither RFA identified contaminant release, migration, or exposure potential with respect to the Submerged Lands Area.

H. Hazardous Substances have been detected in soil, groundwater, and marine sediments at the Facility as detailed in reports generated under the pre-1998 Agreed Order Site Investigations, under the 1998 Agreed Order No. 98HW-N108, under Ecology's Voluntary Cleanup Program submitted March 10, 1999, under the 2010 Agreed Order No. DE 7321, under the 2012 Agreed Order DE 8938 as amended in 2013 and 2016. Those Hazardous Substances detected at the Facility included, but are not limited to, total petroleum hydrocarbons, volatile organic compounds, semi-volatile organic compounds, polychlorinated biphenyls, and metals.

I. On January 19, 2016, Ecology and the Port amended the 2012 Order through the 2016 Amendment. The 2016 Amendment required the Port to perform a Preliminary Site Investigation for the Submerged Lands Area. The Preliminary Site Investigation included a Historical Review Report as well as two phases of sampling results for chemical constituents in sediments in the Submerged Lands Area.

J. The Historical Review Report documents historical land uses on and near to the Submerged Land Areas. These included the construction of Piers 90 and 91 by the Port in 1919, and the Port's subsequent use of the Piers for loading lumber, coal and other materials. Pipelines were then constructed connecting the Piers to upland storage tanks, which initially handled vegetable and fish oils but were converted to petroleum transfer during the 1920's. The United States Navy took ownership of the entire Terminal 91 in

1942, and for a period spanning World War II through the Vietnam Conflict used the Piers (and adjacent Submerged Lands Areas) for naval craft mooring, repair and deactivation activities, including hull maintenance, sandblasting, painting, electrical work, plumbing work, mechanical repairs, and vessel loading and unloading. The Port resumed possession of parts of Terminal 91 in 1972, and took ownership in 1976. The Historical Review Report summarized the Port's refurbishment of the Piers and portions of the Terminal adjacent to the Submerged Lands Area, eventually facilitating warehousing, fishing fleet moorage, and, beginning in 2009, moorage of passenger cruise ships.

K. The Historical Review Report also documents:

1. Various potential pathways for contaminants from upland sources to have reached the Submerged Lands Area, including historic and current infrastructure and operations. For example, wastewater and other wastes from the Navy's operations (approximately 1942 - 1972) were dumped into the water or processed at upland facilities during the Navy's ownership and operations. Structures still discharging to the Submerged Lands Area include two large stormwater discharge outfalls owned by the City of Seattle (City), one of which also serves as a combined sewer overflow facility. Also still active are various deck drains from Piers 90 and 91 and other active outfalls, some Port- and some City-owned.
2. Historic and current land use activities such as a historic sanitary landfill, a railyard, and more recent mixed use development that are drained by outfalls discharging to the Submerged Lands Area.
3. Known historic fuel spills from vessel fueling and upland pipeline discharges.
4. The presence of discarded military munitions (DMMs), munitions debris (MD), and munitions constituents (MCs) in the Submerged Lands Area.

5. The U.S. Army Corps of Engineers (USACE) completed a final remedial investigation report dated September 2013 that focused on DMMs, MD, and MCs in the Submerged Lands Area.
6. The USACE issued an agency review draft feasibility study dated May 2016 that was circulated for limited review, but as of the date of this order, the USACE has not issued a subsequent draft or final version.
7. Various upland soil and groundwater cleanup actions carried out under the 2012 (and predecessor) Orders. The Historical Review Report noted that none of the various subsurface releases investigated in the upland have been found to have contributed to contamination in the Submerged Lands Area.
8. The results of previous investigations of the sediments in the Submerged Lands Area.

L. The Port and Ecology used the Historical Review Report's findings to plan two consecutive sampling efforts to investigate Hazardous Substances in the Submerged Lands Area. A report documenting results from Phase I was completed in April 2018, and the Phase II report is dated August 2018. Together, these reports document the presence of metals, polycyclic aromatic hydrocarbons (PAHs), semivolatile organic compounds (SVOCs), polychlorinated biphenols (PCBs), DMMs, MD, and MCs in the Submerged Lands Area.

M. Hazardous substances might continue to be released to the Submerged Lands Area from ongoing sources documented by the Historical Review Report, including, for example, via stormwater sheet flow and stormwater and combined sewer overflow (CSO) conveyance systems.

## **VI. ECOLOGY DETERMINATIONS**

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

A. The Port of Seattle is a person within the meaning of RCW 70.105D.020(24).

B. The Port is the owner of a former Dangerous Waste Management Facility that operated under a final facility permit, subject to RCRA, 42 U.S.C. §§ 6924 and 6925, and regulations promulgated thereunder, including authorized state regulations in WAC 173-303. The Port is also an “owner or operator” as defined by RCW 70.105D.020(22) of a “facility” as defined by RCW 70.105D.020(8).

C. Certain waste and constituents found at the Facility are dangerous wastes and/or dangerous constituents as defined by WAC 173-303 and in Section IV (Definitions) of this Order.

D. These dangerous wastes and dangerous constituents are considered hazardous substances within the meaning of RCW 70.105D.020(13).

E. Based on the Findings of Fact and the administrative record, Ecology has determined that release(s) and potential release(s) of hazardous substances at and/or from the Submerged Lands Area present a threat to human health or the environment.

F. Based on credible evidence, Ecology issued a PLP status letter to the Port pursuant to RCW 70.105D.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 is a PLP under RCW 70.105D.040 and notified the Port of this determination by letter dated August 15, 1996.

G. Pursuant to RCW 70.105D.030(l) 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.

H. 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. Either 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 70.105D, 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 action(s) at the Submerged Lands Area of the Facility. These remedial actions must be conducted in accordance with WAC 173-340 and 173-204:

A. The Port will complete a Remedial Investigation (RI) for the Submerged Lands Area of the Facility in accordance with the schedule and terms of the Scope of Work and Schedule, Exhibit B, and all other requirements of this Order.

B. If the Port learns of a significant change in conditions at the Submerged Lands Area, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in groundwater, surface water, and/or sediments, the Port, within seven (7) days of learning of the 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. Unless otherwise specified by Ecology, the Port shall submit to Ecology written monthly Progress Reports that describe the actions taken during the previous month to implement

the requirements of this Order. The Port shall submit all Progress Reports by the tenth (10th) day of the month in which they are due after the effective date of this Order. Unless otherwise specified by Ecology, the Port shall send Progress Reports and any other documents submitted pursuant to this Order by email, to Ecology's project coordinator. The Progress Reports shall include the following:

1. A list of activities that have taken place at the Facility during the month.
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 B) during the current month and any planned deviations in the upcoming month.
4. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.
5. All validated 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.
6. A list of deliverables for the upcoming month if different from the schedule.

D. Financial Assurance

1. Financial assurance for corrective action is required by WAC 173-303-64620. Ecology's Financial Assurance Officer shall determine when the Port's actions and submissions meet the requirements of WAC 173-303-64620.
2. Ecology's Financial Assurance Officer is:

Kimberly Goetz  
Washington State Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600  
Phone: 360-407-6754  
Fax: 360-407-6715  
Email: kgoe461@ecy.wa.gov

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

F. If the Parties agree on an interim action under Section VI.H, 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.

G. The Port shall notify Ecology's project coordinator in writing of any newly-identified SWMU(s), newly-discovered release(s) from known SWMU(s), and newly-discovered AOCs at the Submerged Lands Area no later than 15 days after discovery, and shall investigate and report on these areas as directed by Ecology's project coordinator. If required, the investigation (assessment) and reporting shall be done in accordance with attached Exhibit B (Scope of Work).

H. 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).

I. Except where necessary to abate an emergency situation or where required by law, the Port shall not perform any remedial actions at the Facility 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 Facility 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). 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 70.105D.055, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

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**B. Designated Project Coordinators**

The project coordinator for Ecology is:

Tom Mackie  
Department of Ecology, Central Regional Office  
1250 West Alder Street  
Union Gap, WA 98903-0009  
509-575-2803  
tmac461@ecy.wa.gov

The project coordinator for the Port is:

Joanna Florer  
Port of Seattle  
Pier 69  
2711 Alaskan Way  
206-787-4292  
Florer.J@portseattle.org

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 Facility. 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 party 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, hydrologic, 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 any 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 Facility.

**D. Access**

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Facility 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 Facility 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 Facility property owned or controlled by the Port unless an emergency prevents such notice. All persons who access the Facility 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 Facility 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.

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 Facility. Ecology shall, upon request, allow the Port and/or its 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 Facility. However, the Port shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing list, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action

plans, and engineering design reports. 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 Facility 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, and before and before meetings related to the Facility 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 its 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 Facility. 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) On Ecology's website which is freely accessible to the public
- (b) Department of Ecology-Northwest Regional Office  
3190 160th Avenue SE  
Bellevue, WA 98008-5452
- (c) Seattle Public Library  
1000 4th Avenue  
Seattle, WA 98104

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 Facility shall be maintained in the repository at Ecology's Northwest Regional Office in Bellevue, 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 Facility-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 regards 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. The Port must submit this request (Formal Dispute Notice) in writing to the Central Region Hazardous Waste and Toxics Reduction 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; and
- 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. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII.L (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 any 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.K (Amendment of Order) when a schedule extension is granted.

4. At the Port 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:

- 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; or
- c. Endangerment as described in Section VIII.L (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.M (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 both 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 Facility under this Order is creating or has the potential to create a danger to human health or the environment on or



surrounding the Facility, 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 Facility 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 70.105D. 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 70.105D, including the right to require additional or different remedial actions at the Facility should it deem such actions necessary to protect human health and 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 Facility.

By entering into this Order, the Port does not admit to any liability for the Facility. 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 Facility 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 Submerged Lands Area, 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 and incorporate any such use restrictions into the transfer documents.

**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 70.105D.090.

At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order. 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. At this time, no relevant and appropriate requirements have been identified as being applicable to the actions required by this Order. 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 70.105D.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 70.105D.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. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

4. The Port 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 either Ecology or the Port 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 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 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 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 70.105D.090(1), including any requirements to obtain permits or approvals.

**P. 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, its 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 corrective actions required by this Order, as amended by any modifications, and that the Port has complied with all other provisions of this Order.

### X. ENFORCEMENT


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 Facility.
- 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; and
  - 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.

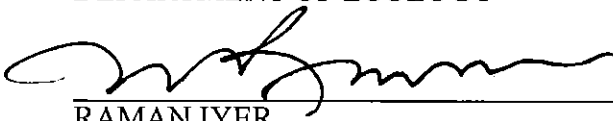
This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: JANUARY 31, 2020

PORT OF SEATTLE

  
STEPHEN P. METRUCK  
Executive Director  
206-787-3000

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

  
RAMAN IYER  
Section Manager  
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