

Port of Port Angeles
Marine Terminal
FSN 1005

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:)
)
The Port of Port Angeles) AGREED ORDER
338 West First Street)
P.O. Box 1350) No. DE 94TC-S342
Port Angeles, Washington 98362)

Potentially Liable Person

I.

Jurisdiction

This Agreed Order ("Order") is issued pursuant to the authority of RCW 70.105D.050(1).

II.

Findings of Fact

The Washington State Department of Ecology (Ecology) makes the following Findings of Fact, without admission of such facts by the Port of Port Angeles (Port).

1. The Port is a municipal corporation under the laws of Washington and owns the Marine Terminal and Log Yard property located west of downtown Port Angeles, Washington (Exhibit A). The Port of Port Angeles Marine Terminal (Site), previously known as the Port of Port Angeles Log Sort Yard, consists of several parcels owned by the Port (Exhibit B), and filled harbor area

owned by the state of Washington and managed by the Port of Port Angeles pursuant to RCW 79.90.475 and Port Management Agreement No. 22-080013, by and between the Port of Port Angeles and the State of Washington Department of Natural Resources. The Port's contiguous property embraces marine terminals No. 1 and 3 (northwest property area), the log yard (west-central property area), and the K-Ply plywood plant (formerly PenPly/Rayonier) in the central-eastern property area (Exhibit B). The Port of Port Angeles Marine Terminal site also includes a nonadjacent parcel south of the log yard and Marine Drive, which was the location of a Shell Oil bulk fuel plant until the Port purchased the parcel in 1983 (Exhibit B). Three former bulk fuel facilities were located in the log yard area of the Site; Standard Oil, ARCO, and D&D Distributors/Phillip 66. The Site is crossed by water and sewer pipelines required to service the surrounding area and, at various times, eight former and existing petroleum distribution pipeline systems. Each pipeline system consists of one or more individual pipelines. The pipeline systems were used to pump fuel from terminal facilities at the docks to the four former bulk plants on Port property, and to the two former and two existing bulk fuel facilities around the area (Exhibit B). The Port's property is located in Sections 3 and 4, Township 30 North, Range 6 West, Willamette Meridian in Clallam County. Legal descriptions are presented in Exhibit C.

2. By the early-1980's, five of the eight bulk fuel plants ceased operations,

and their aboveground fuel storage tanks were salvaged and removed. The Port purchased the D&D, ARCO, and Shell Oil sites by 1984. In the mid-to late-1980's, several environmental studies were conducted after encountering petroleum contamination and other hazardous substances on the various bulk plant sites and the PenPly site. By 1989, the majority of the fuel pipelines were removed from the Port's property by the Port and Chevron USA, Inc.

3. In 1990, petroleum hydrocarbon contamination was discovered in subsurface soils during a geotechnical exploration program in the log yard area of the site. The discovery of contamination was reported to Ecology. An Environmental Site Assessment (ESA) was independently performed by the Port in October 1990 to assess the site soil contamination and potential ground water contamination. The ESA included drilling four boreholes and installing a monitoring well in each borehole. Analytical results revealed the presence of petroleum hydrocarbons in site soil and ground water above Washington State Model Toxics Control Act (MTCA) Method A cleanup levels. Ground water samples from these four monitoring wells were also collected and analyzed in May 1992, September 1992, and April 1993.

In 1992, Ecology assessed a hazard ranking for the site, as required by MTCA. Ecology calculated a hazard ranking of 1 (with 1 being the highest relative risk and 5 being the lowest) for the site.

To identify probable sources and potential migration routes of petroleum

hydrocarbon contamination at the site, the Port independently had the Historical Environmental Summary Report for the Port of Port Angeles Marine Terminal property and adjacent areas prepared in January 1993. The report is a summary of historical data obtained from available records. Included in the report are a description of current site conditions, a detailed chronology of the activities conducted by tenants and oil companies on and surrounding the site, a generalized description of the geologic and hydrologic conditions within the study area, and a summarized description of the objectives and findings from previous environmental studies conducted on the Port's property and neighboring sites.

4. The Port has consulted with Ecology on a regular basis regarding the Site. Although substantial information has been developed on the Site and potential sources of contamination, the Port initiated a proposal to perform additional study to further characterize the nature, extent and sources of contamination at the Site under WAC 173-340-530(1). Ecology agreed that this study would provide timely and appropriate information on the scope of state remedial investigation and feasibility study or other remedial actions that may be needed, as well as on parties who should participate in such remedial actions. The purpose of this Order is to provide for the implementation of this study to further identify the extent of contamination at the site, as further described in Exhibit D.

III.

Ecology Determinations

1. The Port of Port Angeles is an "owner or operator" as defined in RCW 70.105D.020(6) of a "facility" as defined in RCW 70.105D.020(3).
2. The facility is known as the Port of Port Angeles Marine Terminal (formally known as the Port of Port Angeles Log Sort Yard) and is located at 202 N. Cedar, Port Angeles, Washington 98362.
3. The substances found at the facility as described above are "hazardous substances" as defined at RCW 70.105D.020(5).
4. Based on the presence of these hazardous substances at the facility and all factors known to the Department, there is a release or threatened release of hazardous substances from the facility, as defined at RCW 70.105D.020(10).
5. By a letter of November 23, 1994, the Port of Port Angeles voluntarily waived its rights to notice and comment and accepted Ecology's determination that the Port is a "potentially liable person" under RCW 70.105D.040 for purposes of this Order.
6. Pursuant to RCW 70.105D.030(1) and 70.105D.050, the Department may require potentially liable persons to investigate or conduct other remedial actions with respect to the release or threatened release of hazardous substances, whenever it believes such action to be in the public interest.
7. Based on the foregoing facts, Ecology believes the remedial action required by this Order is in the public interest.

IV.

Work to be Performed

1. Based on the foregoing Facts and Determinations, it is hereby ordered that the Port perform the remedial actions set forth in the scope of work and schedule attached to this Order as Exhibit D, and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein. Exhibit D is incorporated by this reference and is an integral and enforceable part of this Agreed Order.

2. The actions required in Exhibit D build upon the previous independent remedial investigations performed by the Port, which are described in Section II of this Agreed Order. Pursuant to WAC 173-322-100 (4)(d), the Environmental Site Assessment, monitoring well sampling, and the Historical Environmental Summary Report are formally included work items in this Agreed Order.

V.

Terms and Conditions of Order

1. Definitions

Unless otherwise specified, the definitions set forth in ch. 70.105D RCW and ch. 173-340 WAC shall control the meanings of the terms used in this Order.

2. Public Notices.

WAC 173-340-600(10)(c) requires a public comment period regarding this agreed order. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should

public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect.

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

4. Designated Project Coordinators. The project coordinator for Ecology is:

Rebecca S. Lawson, P.E.

Department of Ecology

Southwest Regional Office

P.O. Box 47775

Olympia, Washington 98504-7775

The project coordinator for the Port is:

Kenneth W. Sweeney, AICP

Port of Port Angeles

P.O. Box 1350

Port Angeles, Washington 98362

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. 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 coordinator(s). Should Ecology or the Port change project coordinator(s), written notification shall be provided to Ecology or the Port at least ten (10) calendar days prior to the change.

5. Performance. All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or similar expert, with appropriate training, experience and expertise in hazardous waste site investigation and cleanup. The Port shall notify Ecology as to the identity of such engineer(s) or hydrogeologist(s), and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the Site. The Port shall provide a copy of this Order to all agents, contractors and subcontractors retained to perform work required by this Order and shall ensure that all work undertaken by such agents, contractors and subcontractors will be in compliance with this Order.

Except where necessary to abate an emergency situation, the Port shall not

perform any remedial actions at the Port of Port Angeles Marine Terminal outside that required by this Order unless Ecology concurs, in writing, with such additional remedial actions.

6. Access. Ecology or any Ecology authorized representative shall have the authority to enter and freely move about the Site at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the Port. By signing this Agreed Order, the Port agrees that this Order constitutes reasonable notice of access, and agrees to allow access to the Site at all reasonable times for purposes of overseeing work performed under this Order. Ecology shall allow split or replicate samples to be taken by the Port during an inspection unless doing so interferes with Ecology's sampling. The Port shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before any sampling activity.

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

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

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

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

Port complies with this Agreed Order.

Ecology reserves the right, however, to require additional remedial actions at the Site should it deem such actions necessary. Such action shall not be considered within the scope of this Order, but may be included in a written mutually agreed upon amendment to this Order, or Ecology may unilaterally issue an Enforcement Order to require such additional remedial actions.

Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the releases or threatened releases of hazardous substances from the Port of Port Angeles Marine Terminal.

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

11. Transference of Property

No voluntary or involuntary conveyance or relinquishment 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 transfer of any legal or equitable interest the Port may have in the site or any portions thereof, the Port shall serve a copy of this Order upon any

prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, the Port shall notify Ecology of the contemplated transfer.

12. Compliance with Other 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.

VI.

Satisfaction of this 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 all other provisions of this Agreed Order have been complied with.

VII.

Enforcement

1. Pursuant to RCW 70.105D.050, this Order may be enforced as follows:
 - A. The Attorney General may bring an action to enforce this Order in a state or federal court.
 - B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
 - C. In the event the Port refuses, without sufficient cause, to comply with any term of this Order, the Port will be liable for:

- (1) up to three times the amount of any costs incurred by the state of Washington as a result of its refusal to comply; and
- (2) civil penalties of up to \$25,000 per day for each day it refuses to comply.


D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under Section 6 of ch. 70.105D RCW.

Effective date of this Order: 12/22/1994

Potential Liable Party:
Port of Port Angeles, a special
purpose district of the State of
Washington

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

By 
M. Christine Anderson
Executive Director

By 
David B. Jansen, P.E.
Southwest Region Section Supervisor
Toxics Cleanup Program

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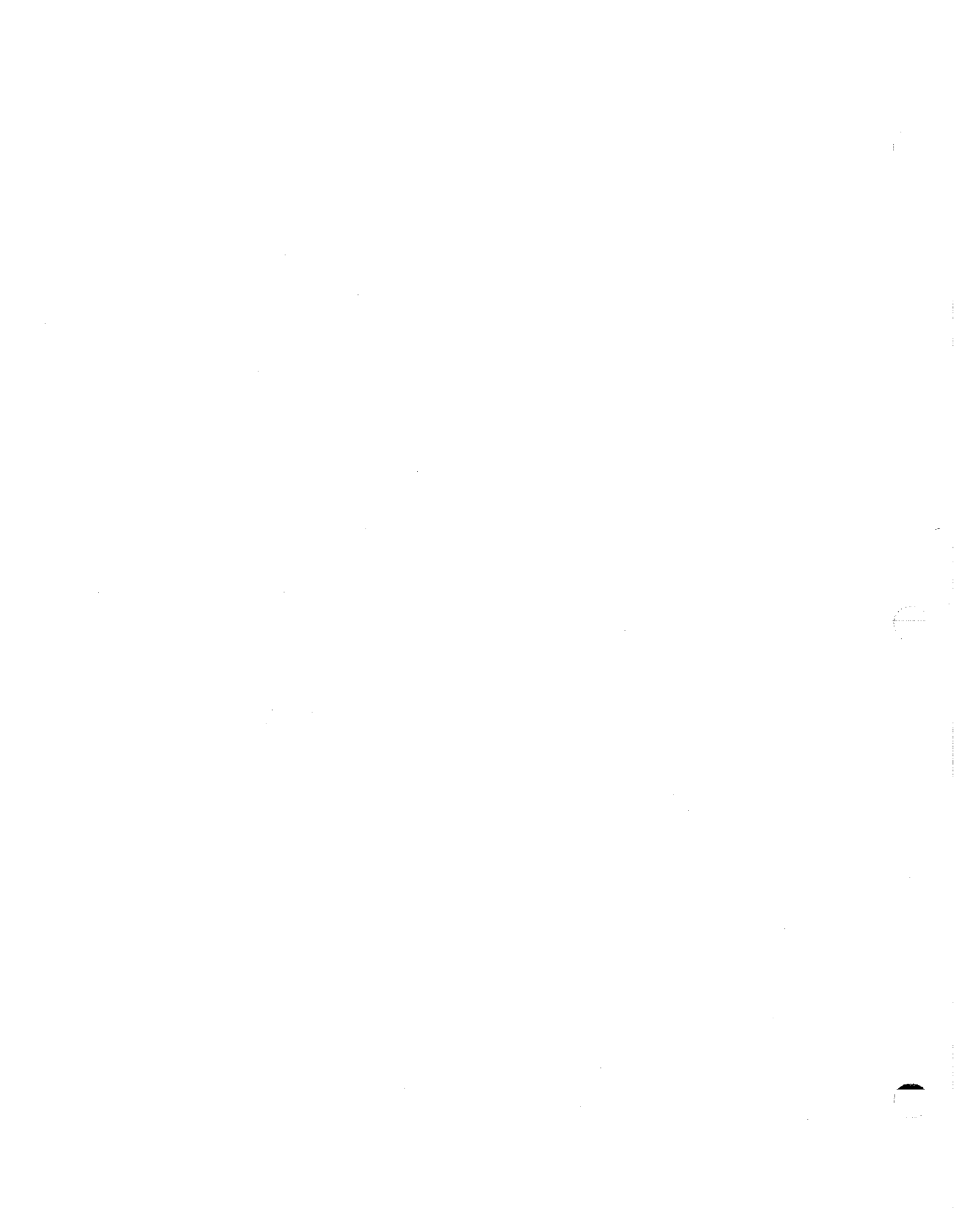


EXHIBIT C

LEGAL DESCRIPTIONS OF PARCELS COMPRISING
THE PORT OF PORT ANGELES MARINE TERMINAL SITE

PORT OF PORT ANGELES MARINE TERMINAL PROPERTY:

- (a) All of Blocks 10 and 37 in the original Townsite of Port Angeles, Clallam County, Washington.
- (b) All of those portions of vacated Cedar and Tumwater Streets lying north of Marine Drive.

SHELL OIL BULK FUEL TERMINAL
(CURRENTLY BAUMAN KARDLOCK)
(TITLE OWNER, PORT OF PORT ANGELES)
220 Tumwater Street
Port Angeles, WA

Lots 11, 12, 13, 14, 15, 16, and the westerly 15 feet of Lot 17, Block 48, Townsite of Port Angeles, Clallam County, Washington.

K-PLY, INC.
(TITLE OWNER, PORT OF PORT ANGELES)
439 Marine Drive
Port Angeles, WA

Tidelands: Beginning at the southeast corner of Lot 1, Block 3, Port Angeles Tidelands, (west of Laurel Street), on the northeasterly line of West Front Street; thence northeasterly along the southeasterly boundary of said Lot 1 to the northeast corner of said Lot 1, which point is on the Inner Harbor Line as shown on Plate 4, Supplemental Maps of Port Angeles Tidelands, filed May 1, 1935 in the Office of the Commissioner of Public Lands; thence northwesterly along said Inner Harbor Line to a point on the produced northwesterly line of Pine Street (vacated) identified as g³ on said Plate 4; thence southwesterly along said Inner Harbor line to g⁴ as shown on said Plate 4; thence northwesterly along said Inner Harbor Line to its intersection with the northwesterly line of Cedar Street (vacated); thence southwesterly along the said northwesterly line of Cedar Street (vacated) to its intersection with the northeasterly line of the alley in Block 36, Port Angeles Townsite; thence southeasterly along the said northeasterly line of said alley to its intersection with the northwesterly line of Marine Drive; thence southeasterly along the said northwesterly line of Marine Drive to its intersection with the northeasterly line of West Front Street; thence southeasterly along the said northeasterly

line of West Front Street to the point of beginning.

Harbor Area: That part of the harbor area in front of the following described property, to-wit: Blocks 9, 10 and 11 of the original townsite of Port Angeles; Block 4 and the west half of Lot 10, Block 3 and Lots 1, 2 and 3, Block 8, and vacated Tumwater Creek waterway, Port Angeles tidelands, west of Laurel Street, together with intervening vacated streets, more particularly described as follows: Beginning at the point on the inner harbor line, said point lying on the northeast corner of the west half of Lot 10, Block 3 of said tidelands west of Laurel Street; thence along said inner harbor line, north $58^{\circ}31'34''$ west, a distance of 675.00 feet; thence continuing along said inner harbor line south $31^{\circ}28'26''$ west, a distance of 220.00 feet; thence continuing along said inner line north $58^{\circ}31'34''$ west, a distance of 1640.00 feet; thence continuing along said inner line south $31^{\circ}28'26''$ west, a distance of 370.00 feet; thence continuing along said inner harbor line north $71^{\circ}28'34''$ west, a distance of 407.87 feet to the westerly margin of said vacated Tumwater Creek waterway; thence along the westerly margin of said waterway north $31^{\circ}28'26''$ east, a distance of 865.66 feet; thence south $66^{\circ}31'01''$ east, a distance of 1295.80 feet; thence north $31^{\circ}28'26''$ east, a distance of 675.00 feet; thence running parallel and 300.00 feet distant from the outer harbor line south $68^{\circ}13'34''$ east, a distance of 1450.00 feet; thence south $31^{\circ}28'26''$ west, a distance of 1283.70 feet to the point of beginning.

Except a strip of land 34.50 feet wide having 9.5 feet of width on the northerly side and 25.00 feet of width on the southerly side of the following described line: Beginning at the northeast corner of the west half of said Lot 10, Block 3; thence north $31^{\circ}28'26''$ east, a distance of 55.68 feet to the true point of beginning; thence north $66^{\circ}27'34''$ west, a distance of 106.02 feet to the westerly margin of the northerly projection of vacated Valley Street; thence continuing along said strip of land 44.00 feet in width having 9.5 feet of width on the northerly side and 34.5 feet of such width on the southerly side north $66^{\circ}27'34''$ west, a distance of 1164.00 feet; thence on the arc of a talbot spiral to the left, with an "A" value of 10, through a central of 5° , a distance of 100.00 feet; thence on the arc of 10° curve to the left, through a central angle of $27^{\circ}14'00''$, a distance of 272.3 feet; thence on the arc of a talbot spiral to the left with an "A" value of 10, through a central angle of 5° , a distance of 100.00 feet to the tangent line bearing south $76^{\circ}18'26''$ west, and the end of said exception.

The above harbor area is as shown on the 1971 supplemental map of Port Angeles harbor by the State of Washington, Commissioner of Public Lands, filed April 26, 1971. Bearings and distances are related thereto.

EXHIBIT D

SCOPE OF WORK AND SCHEDULE

Task 1 - Draft Source Investigation Work Plan

The Environmental Site Assessment performed by the Port revealed the presence of petroleum hydrocarbon contamination in the log yard area of the Port of Port Angeles Marine Terminal property. The subsequent Historical Environmental Summary Report presented a complex scenario of potential on and off site sources of petroleum hydrocarbon contamination. To better identify potential contaminant sources, it is necessary to augment the investigative work performed by the Port to date.

The Port shall perform a source investigation to evaluate the extent and potential source(s) of petroleum hydrocarbon contamination in soil and ground water at the site. The source investigation shall include the following tasks: install a maximum of 24 ground water monitoring wells; collect soil samples from each boring; collect ground water samples from the new and existing wells; analyze the soil and ground water samples for total petroleum hydrocarbons as gasoline and diesel, and for benzene, toluene, ethylbenzene, and xylenes; measure water levels and survey the new and existing wells, including selected off-site wells. The results of the source investigation shall be presented in a summary report for Ecology approval. A work plan outlining the details of the source investigation shall be submitted to Ecology for comment and approval. The work plan shall include a schedule for implementing the source investigation.

Schedule: The draft Source Investigation Work Plan shall be submitted to Ecology within 30 days after the effective date of this Agreed Order.

Task 2 - Final Source Investigation Work Plan

Submit a final Source Investigation Work Plan, for Ecology approval, addressing Ecology's comments on the draft work plan.

Schedule: Within 30 days after Ecology provides comments on the draft Source Investigation Work Plan.

Task 3 - Implement the Approved Source Investigation

Schedule: In accordance with the schedule in the approved Source Investigation Work Plan.

Task 4 - Draft Source Investigation Summary Report

Submit a draft report summarizing the implementation and the results of the source investigation for Ecology review.

Schedule: In accordance with the schedule in the approved Source Investigation Work Plan.

Task 5 - Final Source Investigation Summary Report

Submit a final Source Investigation Summary Report, for Ecology approval, addressing Ecology's comments on the draft summary report.

Schedule: Within 30 days after Ecology provides comments on the draft Source Investigation Summary Report.