Project 1106

Work Copy
Final

Site #1127
Guy Barrett
JSA26

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:	MODEL AGREED ORDER
Port of Grays Harbor **Post Office Box 660** **Aberdeen, Washington 98520**	No. DE **3812**

TO: **Port of Grays Harbor**
Post Office Box 660
Aberdeen, Washington 98520

TABLE OF CONTENTS

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Port of Grays Harbor 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 Port of Grays Harbor to complete a remedial investigation and feasibility study which may include field aquifer testing, contaminate fate and transport modeling, and pilot testing. Ecology will then draft the cleanup action plan in conjunction with the Port of Grays Harbor. 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).

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. Port of Grays Harbor agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Port of Grays Harbor's responsibility under this Order. Port of Grays Harbor 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 Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms used in this Order.

1. Site: The Site is referred to as Hungry Whale and is generally located at 1680 N. Montesano Street, Westport, Washington. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. The Site is more particularly described

in Exhibit A to this Order, which includes a detailed Site diagram. The Site constitutes a Facility under RCW 70.105D.020(4).

2. Parties: Refers to the State of Washington, Department of Ecology and Port of Grays Harbor.

3. PLP: Refers to Port of Grays Harbor.

4. Agreed Order or Order: Refers to this Order and each of the exhibits to the Order. All exhibits are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits to the Order.

5. MTCA: Refers to Model Toxics Control Act Cleanup Regulation, Chapter 173-340 WAC.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by Port of Grays Harbor (Port):

(1) In October 1990, soil samples collected from areas surrounding two underground storage tanks (USTs) revealed contamination in excess of MTCA Method A cleanup standards for Total Petroleum Hydrocarbons as gasoline (TPH-G) and benzene, ethylbenzene, toluene, and xylene (BTEX).

(2) In March 1991, the two USTs were properly closed and a preliminary site assessment was conducted in accordance with Chapter 173-360 WAC. One 2,000 gallon tank was removed and a second tank, approximately 6,000 gallons capacity, was closed in place. During the tank removal, a thin layer of free product was found floating on the water table in one of the excavations. Soil samples collected during the site activities revealed contamination in excess of MTCA Method A cleanup standards.

(3) In November 1991, Ecology contracted Science Applications International Corporation (SAIC) to conduct a Remedial Investigation/Feasibility Study (RI/FS) for the site. A total of six monitoring wells were installed to determine the extent of the contamination.

Ground water samples collected confirmed contamination in excess of MTCA Method A cleanup standards for TPH-G and BTEX.

(4) In May 1992, SAIC installed three additional monitoring wells to further characterize the site and aid in the design of a remediation system. During this phase of investigation, the presence of floating petroleum product on the water table was discovered.

(5) In August 1993, Ecology approached the Port to request that they take over responsibility for site cleanup. Ecology informed the Port that financial assistance in the form of Local Toxics Account funding was available if the Port entered into an Agreed Order with Ecology. The Port obtained proposals from consultants to explore other options for site cleanup other than what was evaluated by SAIC in the RI/FS.

(6) In June 1997, an innovative bio-sparging remediation system was installed by Hobby, Ltd. and 21st Century began operating the system in July 1997. The system was shut down in October 1999 and groundwater monitoring continued until November 2000.

(7) In January 2004, Ecology measured elevated levels of hydrocarbon vapors in the head space of existing monitoring wells. Subsequent water samples collected from the deli sink confirmed the presence of petroleum hydrocarbons. The water line was replaced and confirmation water samples indicated that petroleum hydrocarbons were no longer present in the deli sink water.

(8) Beginning in February 2005, the Port of Grays Harbor used Ecology's Remedial Action Grant program to fund additional subsurface investigations by the Port's consultant, including maintenance of existing wells and installation of new monitoring wells with resultant groundwater sampling and analysis.

(9) Results of the subsurface investigations by the Port of Grays Harbor, indicate elevated concentrations of TPH-G and benzene in groundwater at several of the thirteen monitoring wells. The majority of the contaminant mass appears to be located in and around the current UST locations.

VI. ECOLOGY DETERMINATIONS

1. Port of Grays Harbor is an "owner or operator" as defined in RCW 70.105D.020(12), of a "facility" as defined in RCW 70.105D.020(4) because substances found at the facility as described above are "hazardous substances" as defined at RCW 70.105D.020(5).

2. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(20) and RCW 70.105D.020(7), respectively, has occurred at the Site.

3. Based upon credible evidence, Ecology issued a potentially liable person status letter to Port of Grays Harbor dated November 8, 1993, pursuant to RCW 70.105D.040, -.020(16) 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 Port of Grays Harbor is a potentially liable person (PLP) under RCW 70.105D.040 and notified Port of Grays Harbor of this determination by letter dated December 17, 2003.

4. Pursuant to RCW 70.105D.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.

5. 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.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that Port of Grays Harbor take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

1. A remedial investigation will be completed by summarizing existing environmental and hydrogeologic data, evaluating existing environmental conditions by including contaminant fate/transport concepts, attenuation parameters, and other applicable remedial investigation findings. This will also include evaluation of hydrogeologic conditions using existing data, including field aquifer testing for groundwater flow velocity, permeability and transmissivity, and groundwater gradient and direction. A site conceptual model as well as contaminant fate and transport modeling will be developed using concepts and criteria associated with environmental and hydrogeologic conditions.

2. Within ninety (90) days of receiving all analytical data, submit to Ecology for review a draft remedial investigation report. Ecology's comments on the draft report shall be incorporated into a final remedial investigation report within thirty (30) days of the comments.

3. Within sixty (60) days of the approval of the remedial investigation report, the Port of Grays Harbor will be required to submit a work plan with a schedule to implement the work plan for a feasibility study (FS), per the requirements of Chapter 173-340 WAC. Upon approval by Ecology of the FS work plan, the FS shall be performed and a FS report will be submitted for Ecology's review and approval. Ecology's comments on the draft FS report shall be incorporated into a Final FS Report within thirty (30) days of the comments.

   a) The feasibility study will be written using the site conceptual model and assembling a list of applicable remedial technologies for consideration at the

Site. This will include a detailed analysis of each technology in relation to the known Site conditions. Based on the findings of the feasibility study analysis and the remedial investigation, pilot testing of selected technologies will be performed to support the selection and design of a remedial technology. The appropriate technologies will be selected and assembled into applicable remedial alternatives for consideration, and a preferred remedial alternative will be selected and the analysis presented in a written report.

4. Within sixty (60) days after completion and approval of the FS, Ecology shall draft a Cleanup Action Plan (CAP) to satisfy the requirements of WAC 173-340-400.

5. After public review and comment, the draft CAP will be finalized by Ecology. Ecology and the Port of Grays Harbor will enter into discussions for a consent decree or agreed order as determined by the parties hereto or an enforcement order as determined by Ecology to design, construct, operate, and monitor the selected cleanup.

6. In accordance with WAC 173-340-840(5), environmental sampling data shall be submitted on paper within ten (10) working days of receipt from the laboratory.

7. Once approved, or modified and approved in writing by Ecology, all Ecology-approved submittals are incorporated by reference and become enforceable parts of this Order as if set forth herein.

8. The Port of Grays Harbor shall provide a written monthly progress report, which will include the following:

- activities that happened in the past month;
- activities planned for the next month;
- a written summary of all lab data required by this Order; and
- all lab data required by this order or requested by Ecology shall be provided in an Ecology-approved electronic format (see Section G).

This progress report frequency may be revised by Ecology if adequate justification is provided by the Port of Grays Harbor, or if Ecology provides justification for a change.

9. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this section, Ecology may complete and issue the final deliverable.

VII. TERMS AND CONDITIONS OF ORDER

A. Public Notices

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that the Order is inadequate or improper in any respect.

B. Remedial Action Costs

Port of Grays Harbor 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 Chapter 70.105D RCW, 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 the Order. Port of Grays Harbor shall pay the required amount within ninety (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 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.

Ecology hereby reserves its right to place a lien on the Site property consistent with Substitute Senate Bill (SSB) 5449, passed in the 2005 legislative session. Ecology may file a lien against property in order to recover Ecology's investigative and remedial action costs when Ecology is unable to recover these costs from a liable party. For more information regarding this new law, see http://www.leg.wa.gov/wsladm/billinfo1/dspBillSummary.cfm?billnumber=5449

C. Implementation of Remedial Action

Except where necessary to abate an emergency situation, Port of Grays Harbor shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

D. Designated Project Coordinators

The project coordinator for Ecology is:

Guy Barrett
Department of Ecology
Southwest Regional Office
PO Box 47775
Lacey, WA 98504-7775

The project coordinator for Port of Grays Harbor is:

Leonard Barnes
Port of Grays Harbor
PO Box 660
Aberdeen, WA 98520

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. The Ecology project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and Port of Grays Harbor, 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).

Ecology and Port of Grays Harbor may change their respective project coordinator, but must provide ten (10) days advance written notification of the change to the other party.

E. Performance

All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a licensed professional engineer or licensed hydrogeologist, or equivalent as approved by Ecology, with experience and expertise in hazardous waste site investigation and cleanup. Port of Grays Harbor shall notify Ecology in writing of the identity of such engineer(s), or hydrogeologist(s), or others, 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.

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

F. Access

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that Port of Grays Harbor 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 Port of Grays Harbor'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 Port of Grays Harbor. Port of Grays Harbor shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by Port of Grays Harbor 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 Port of Grays Harbor unless an emergency prevents such notice. All persons who access the Site pursuant to this

paragraph shall comply with the approved health and safety plan, if any. Ecology employees and their representative shall not be required to sign any release or waiver as a condition of site property access.

G. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, Port of Grays Harbor 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, Port of Grays Harbor shall allow split or duplicate samples to be taken by Ecology and/or its authorized representative of any samples collected by Port of Grays Harbor pursuant to implementation of this Order. Port of Grays Harbor shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order to be taken by Port of Grays Harbor or its authorized representative provided it does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.F. of this Order, Ecology shall notify Port of Grays Harbor 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 Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

H. Public Participation

A public participation plan is required for this Site. Ecology shall review any existing public participation plan to determine its continued appropriateness and whether it requires amendment, or if no plan exists, Ecology shall develop a public participation plan alone or in conjunction with Port of Grays Harbor.

Ecology shall maintain the responsibility for public participation at the Site. However, Port of Grays Harbor 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 any of the following: the issuance of all press releases; distribution of fact sheets; performance of other outreach activities; meetings with the interested public and/or local governments. Likewise, Ecology shall notify Port of Grays Harbor prior to the issuance of all press releases and fact sheets, and before meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by Port of Grays Harbor that do not receive prior Ecology approval, Port of Grays Harbor 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 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) Westport City Hall
506 North Montesano Street, Westport, WA

(b) Ecology's Southwest Regional Office
300 Desmond Drive, Lacey, WA

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports; supplemental remedial planning documents,

and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

I. 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, Port of Grays Harbor 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, Port of Grays Harbor shall make all records available to Ecology and allow access for review within a reasonable time.

J. Resolution of Disputes

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII.B (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

(a) Upon receipt of the Ecology project coordinator's decision or the itemized billing statement, Port of Grays Harbor has fourteen (14) days within which to notify Ecology's project coordinator of its objection to the decision or itemized statement.

(b) The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

(c) Port of Grays Harbor may then request Ecology management review of the decision. This request shall be submitted in writing to the Southwest Region Toxics Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's decision.

(d) The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within sixty (60) days of Port of Grays Harbor's request for review. The Section Manager's decision 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.

K. Extension of Schedule

1. 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 the reason(s) the extension is needed. 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 Port of Grays Harbor 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 includes, but is not limited to:

(a) Circumstances beyond the reasonable control and despite the due diligence of Port of Grays Harbor 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 Port of Grays Harbor; or

(b) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or

(c) Endangerment as described in Section VIII.M. of this Order.

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 Port of Grays Harbor.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give Port of Grays Harbor written notification in a timely fashion of any extensions granted pursuant to the 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.L when a schedule extension is granted.

4. 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.M of this Order.

L. 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.N of this Order, 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 Port of Grays Harbor. Port of Grays Harbor shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to the Order represents a substantial change, Ecology will provide additional public notice and opportunity to comment. If Ecology does not agree to a

proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J. of this Order.

M. Endangerment

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

If, for any reason, Port of Grays Harbor determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, Port of Grays Harbor may cease such activities. Port of Grays Harbor 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 Port of Grays Harbor shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Port of Grays Harbor's cessation of activities, it may direct Port of Grays Harbor to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, Port of Grays Harbor'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 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.

N. Reservation of Rights

This Order is not a settlement under Chapter 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 Port of Grays Harbor to recover

remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against Port of Grays Harbor regarding remedial actions required by this Order, provided Port of Grays Harbor complies with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site 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 Site.

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

P. Compliance with Applicable Laws

1. All actions carried out by Port of Grays Harbor pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. A list of the required permits known at the time of entry of this Order have been included in Exhibit B.

2. Pursuant to RCW 70.105D.090(1), Defendant is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, Defendant shall comply with the substantive requirements of such permits or approvals. A list of such permits and approvals and/or the substantive requirements of those permits and approvals as they are known to be applicable at the time of entry of this Order, have been included in Exhibit C.

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

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

3. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary for

the state to administer any federal law, the exemption shall not apply and Port of Grays Harbor 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.

Q. Land Use Restrictions

The Port of Grays Harbor shall record a Restrictive Covenant (example in Exhibit D) with the office of the Grays Harbor County Auditor within ten (10) days of the completion of the remedial action. The Restrictive Covenant shall restrict future uses of the Site. The Port of Grays Harbor shall provide Ecology with a copy of the recorded Restrictive Covenant within thirty (30) days of the recording date.

R. Financial Assurances

Pursuant to WAC 173-340-440(11), the Port of Grays Harbor shall maintain sufficient and adequate financial assurance mechanisms to cover all costs associated with the operation and maintenance of the remedial action at the Site, including institutional controls, compliance monitoring, and corrective measures.

Within sixty (60) days of the effective date of this Order, the Port of Grays Harbor shall submit to Ecology for review and approval an estimate of the costs that it will incur in carrying out the terms of this Order, including operation and maintenance, and compliance monitoring. Within sixty (60) days after Ecology approves the aforementioned cost estimate, the Port of Grays Harbor shall provide proof of financial assurances sufficient to cover all such costs in a form acceptable to Ecology.

The Port of Grays Harbor shall adjust the financial assurance coverage and provide Ecology's project coordinator with documentation of the updated financial assurance for:

1. Inflation, annually, within thirty (30) days of the anniversary date of the entry of this Order; or if applicable, the modified anniversary date established in accordance with this Section, or if applicable, ninety (90) days after the close of the Port of Grays Harbor's fiscal year if the financial test or corporate guarantee is used, and

2. Changes in cost estimates, within thirty (30) days of issuance of Ecology's approval of a modification or revision to the cleanup action plan (CAP) that result in increases to the cost or expected duration of remedial actions. Any adjustments for inflation since the most recent preceding anniversary date shall be made concurrent with adjustments for changes in cost estimates. The issuance of Ecology's approval of a revised or modified CAP will revise the anniversary date established under this Section to become the date of issuance of such revised or modified CAP.

S. Periodic Review

As remedial action, including groundwater monitoring, continues at the Site, the Parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of monitoring the Site as often as is necessary and appropriate under the circumstances. At least every five (5) years after the initiation of cleanup action at the Site the Parties shall meet to discuss the status of the Site and the need, if any, for further remedial action at the Site. At least ninety (90) days prior to each periodic review, the Port of Grays Harbor shall submit a report to Ecology that documents whether human health and the environment are being protected based on the factors set forth in WAC 173-340-420(4). Ecology reserves the right to require further remedial action at the Site under appropriate circumstances. This provision shall remain in effect for the duration of this Order.

T. Indemnification

Port of Grays Harbor 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 for death or injuries to persons or for loss or damage to property arising from or on account of acts or omissions of Port of Grays Harbor, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the Port of Grays Harbor shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in implementing the activities pursuant to this Order.

VIII. SATISFACTION OF ORDER

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

IX. ENFORCEMENT

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

1. The Attorney General may bring an action to enforce this Order in a state or federal court.

2. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for remedial actions and orders related to the Site.

3. In the event Port of Grays Harbor refuses, without sufficient cause, to comply with any term of this Order, Port of Grays Harbor will be liable for:

(a) 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

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

4. 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: Sept. 21, 2006

PORT OF GRAYS HARBOR

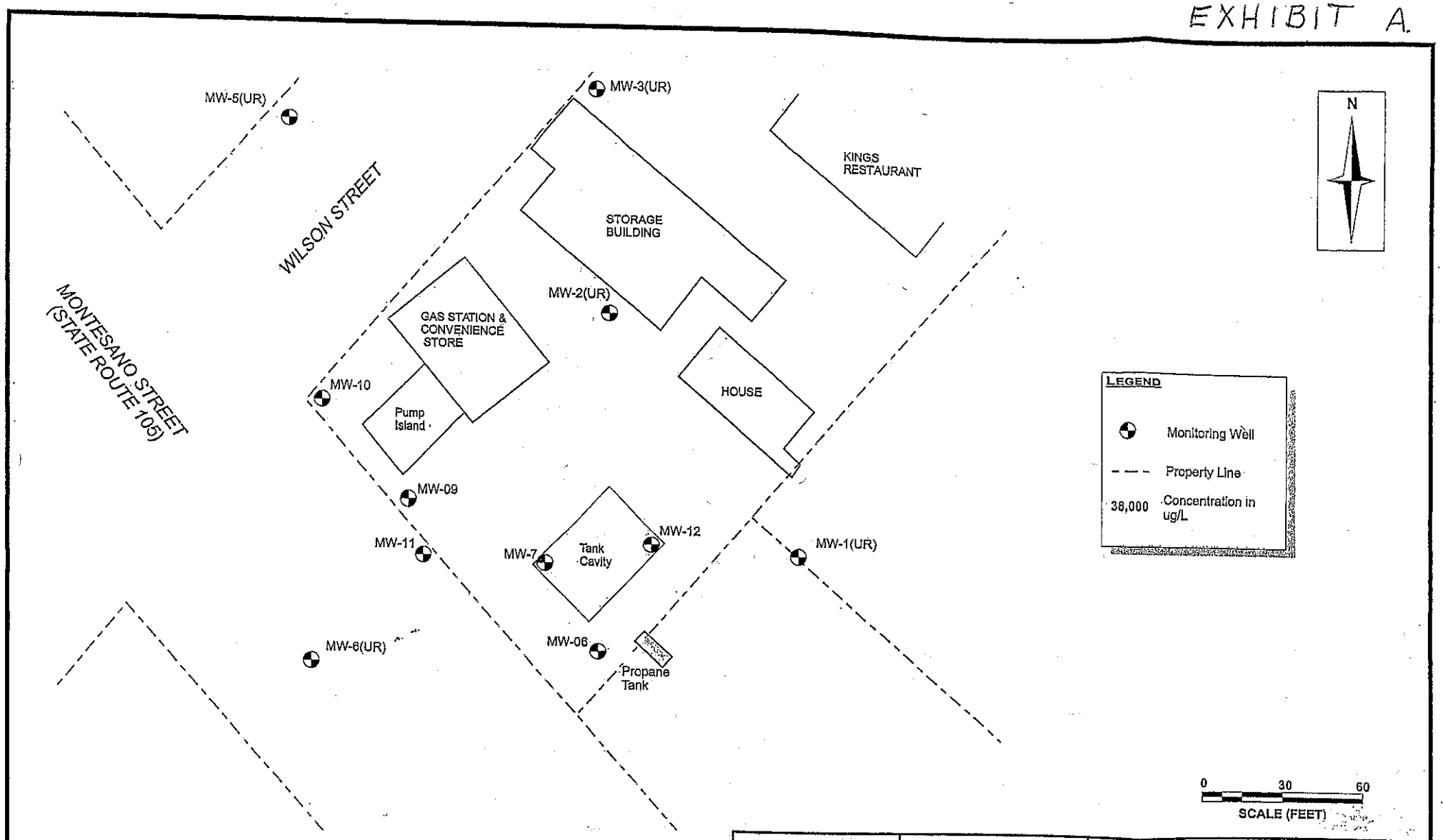
Gary Nelson
Executive Director
PO Box 660
Aberdeen, WA
(360) 533-9515

STATE OF WASHINGTON DEPARTMENT OF ECOLOGY

Rebecca Lawson
Section Manager

Toxics Cleanup Program
Southwest Regional Office
(360) 407-6241

EXHIBIT A.



URBAN REDEVELOPMENT, LLC

Hungry Whale Site
1680 N. Montesano Street
Westport, Washington

Date: March, 2005
Drawn by: WHR
Chk by: RK
File ID: Figure #2

Figure 2
Site Features
Exploration Plan

EXHIBIT B

Hungry Whale Permits

- Street Use Permit – City of Westport
- Notice of Intent for Well Installation/Decommissioning - Washington State Dept. of Ecology

EXHIBIT C

The known permits and rules that are pertinent to this Order and their respective substantive requirements are listed below. A contact and phone number are provided for the state agency or local government that would typically administer each permit or applicable regulation. Ecology will make a final determination regarding which substantive requirements will apply in situations where requirements conflict.

Permits pertinent to this action:

1. Street Use Permit – City of Westport
2. Notice of Intent for Well Installation – Washington State Dept. of Ecology

Other regulations pertinent to this action:

1. City of Westport Street Use Permit (Contact: Greg Barnes, 360-268-9091)
   - Pursuant to RCW 35A.47.030 & 040, petitioners must be granted the right and authority to enter the right of way of the City road, street, alley, public place or structure to conduct approved work.

2. Notice of Intent to Install, Ecology (Contact: Igor Vern, 360-407-0281)
   - The property owner, owner's agent, or water well operator shall notify the department of their intent to begin well construction, reconstruction-alteration, or decommissioning procedures at least seventy-two hours before starting work.

3. State of Washington, Hazardous Waste Management, Ecology (Contact: Joe Cason, 360-407-6360)
   - The remedial action shall provide for management or disposal of dangerous wastes or hazardous wastes in a manner in compliance with regulations under Chapter 173-303 WAC. Wastes shall be designated and managed in compliance with the site work plans. Hazardous waste manifests shall be used to track the transfer and disposal of hazardous wastes.

4. State of Washington, Minimum Standards for Construction and Maintenance of Wells, Chapter 173-160 WAC, Ecology (Contact Igor Vern, 360-407-0281)
   - The investigation shall use the minimum standards established under this chapter to construct and decommission wells.

5. Washington Industrial Safety and Health Act (WISHA), Chapter 49.17 RCW

- WISHA requires employers to provide safe and healthful workplaces for all employees. It gives L&I the responsibility to establish and enforce workplace safety and health rules. (Contact 360-533-8200)

EXHIBIT D

RESTRICTIVE COVENANT

[NAME OF PROPERTY OWNER, AND NAME OF PROPERTY]

This Declaration of Restrictive Covenant is made pursuant to RCW 70.105D.030(1)(f) and (g) and WAC 173-340-440 by [NAME OF PROPERTY OWNER], its successors and assigns, and the State of Washington Department of Ecology, its successors and assigns (hereafter "Ecology").

An independent remedial action (hereafter "Remedial Action") occurred at the property that is the subject of this Restrictive Covenant. The Remedial Action conducted at the property is described in the following document[s]: [INSERT THE DATE AND TITLE FOR EACH DOCUMENT[1] LISTED INCLUDING THE NAME OF THE PERSON OR BUSINESS WHO PREPARED THE DOCUMENT(S)]. [THIS or THESE] document[s] [IS or ARE] on file at Ecology's [SWRO, NWRO, ERO, or CRO].

+++++++Select the appropriate scenario for the property+++++++

SCENARIO 1:

This Restrictive Covenant is required because the Remedial Action resulted in residual concentrations of [SPECIFICALLY LIST SUBSTANCE(S)] which exceed the Model Toxics Control Act Method [LIST APPLICABLE METHOD A OR B] Residential Cleanup Level(s) for [SOIL, GROUNDWATER, ETC.] established under WAC 173-340-____.

[1] The term 'document' means reports prepared regarding the remedial action as well as Ecology's NFA letter.

++++and/or++++

SCENARIO 2:

This Restrictive Covenant is required because a conditional point of compliance has been established for [SOIL, GROUNDWATER, ETC.].

SCENARIO 3:

If the Remedial Action does not fit within Scenarios 1 and/or 2 and you believe that the property still needs a Restrictive Covenant, contact the AG's office.

++

The undersigned, [NAME OF PROPERTY OWNER], is the fee owner of real property (hereafter "Property") in the County of [NAME OF COUNTY], State of Washington, that is subject to this Restrictive Covenant. The Property is legally described [AS FOLLOWS: (*insert legal description language)*] -or- [IN ATTACHMENT A OF THIS RESTRICTIVE COVENANT AND MADE A PART HEREOF BY REFERENCE (*attach document containing legal description)*].

[NAME OF PROPERTY OWNER] makes the following declaration as to limitations, restrictions, and uses to which the Property may be put and specifies that such declarations shall constitute covenants to run with the land, as provided by law and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of or interest in the Property (hereafter "Owner").

Section 1. *(This Section must describe with particularity the restrictions to be placed on the property.)*

1. *If the property was remediated to Industrial Cleanup Standards use the following sentence:* "The Property shall be used only for traditional industrial uses, as described in RCW 70.105D.020(23) and defined in and allowed under the [CITY -or- COUNTY] of [_____'s] zoning regulations codified in the [OFFICIAL NAME OF ZONING REGULATION] as of the date of this Restrictive Covenant."

2. *If the groundwater contains hazardous substances above Method A or B Residential Cleanup Levels use the following sentence:* "No groundwater may be taken for [LIST THE PROHIBITED USES, E.G., DOMESTIC, AGRICULTURAL, OR ANY USE] from the Property."

3. *If contaminated soil remains that is above Method A or B Residential Cleanup Levels describe prohibited activities.*

a. *For contaminated soil under a structure use the following sentence:* "A portion of the Property contains [SPECIFICALLY LIST SUBSTANCE(S)] contaminated soil located [SPECIFICALLY DESCRIBE WHERE THE SOIL IS LOCATED, I.E., UNDER THE SOUTHEAST PORTION OF BUILDING 10]. The Owner shall not alter, modify, or remove the existing structure[s] in any manner that may result in the release or exposure to the environment of that

contaminated soil or create a new exposure pathway without prior written approval from Ecology."

b. Example language for contaminated soil under a cap: "Any activity on the Property that may result in the release or exposure to the environment of the contaminated soil that was contained as part of the Remedial Action, or create a new exposure pathway, is prohibited. Some examples of activities that are prohibited in the capped areas include: drilling, digging, placement of any objects or use of any equipment which deforms or stresses the surface beyond its load bearing capability, piercing the surface with a rod, spike or similar item, bulldozing or earthwork."

Section 2. Any activity on the Property that may interfere with the integrity of the Remedial Action and continued protection of human health and the environment is prohibited.

Section 3. Any activity on the Property that may result in the release or exposure to the environment of a hazardous substance that remains on the Property as part of the Remedial Action, or create a new exposure pathway, is prohibited without prior written approval from Ecology.

Section 4. The Owner of the property must give thirty (30) day advance written notice to Ecology of the Owner's intent to convey any interest in the Property. No conveyance of title, easement, lease, or other interest in the Property shall be consummated by

the Owner without adequate and complete provision for continued monitoring, operation, and maintenance of the Remedial Action.

Section 5. The Owner must restrict leases to uses and activities consistent with the Restrictive Covenant and notify all lessees of the restrictions on the use of the Property.

Section 6. The Owner must notify and obtain approval from Ecology prior to any use of the Property that is inconsistent with the terms of this Restrictive Covenant. Ecology may approve any inconsistent use only after public notice and comment.

Section 7. The Owner shall allow authorized representatives of Ecology the right to enter the Property at reasonable times for the purpose of evaluating the Remedial Action; to take samples, to inspect remedial actions conducted at the property, and to inspect records that are related to the Remedial Action.

Section 8. The Owner of the Property reserves the right under WAC 173-340-440 to record an instrument that provides that this Restrictive Covenant shall no longer limit use of the Property or be of any further force or effect. However, such an instrument may be recorded only if Ecology, after public notice and opportunity for comment, concurs.

_____

[NAME OF PROPERTY OWNER]

_____

[DATE SIGNED]

[NOTE: The Property Owner must have this Restrictive Covenant notarized.]