

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

The Boeing Company
Boeing Commercial Airplanes,
Fabrication Division – Auburn Plant
700 15th St SW
Auburn, Washington

ENFORCEMENT ORDER

No. DE _21533

TO: The Boeing Company
c/o Steven Shestag
Global Enterprise Sustainability
PO Box 3707, MC 46-202
Seattle, WA 98124-2207

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EXHIBIT A Cleanup Action Plan

I. INTRODUCTION

The objective of the State of Washington, Department of Ecology (Ecology) under this Enforcement Order (Order) is to require remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires The Boeing Company (Boeing) to implement a cleanup action plan at the Site. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Enforcement Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70A.305.050(1). This Order also satisfies the requirements of WAC 173-303-646 through - 64630.

III. PLP BOUND

This Order shall apply to and be binding upon Boeing. To the extent allowed by law, changes in ownership or corporate status shall not alter Boeing's responsibility under this Order. Boeing shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in RCW 70A.305, WAC 173-340, and WAC 173-303 shall control the meanings of the terms in this Order.

A. Area of Concern (AOC): Refers to any area of the Facility where a release of dangerous constituents (including dangerous waste and hazardous substances) has occurred, is occurring, is suspected to have occurred, or threatens to occur.

B. Cleanup Action Plan (CAP): Refers to the document issued by Ecology under WAC 173-340-380 which selects Facility-specific corrective measures and specifies cleanup standards (cleanup levels, points of compliance, and other requirements for the corrective measures).

C. Corrective Action: Refers to any activities including investigations, studies, characterizations, and corrective measures, including actions taken pursuant to RCW 70A.305 and WAC 173-340, undertaken in whole or in part to fulfill the requirements of WAC 173-303-64620.

D. 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 70A.305.020(13).

E. 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 70A.305.020(13).

F. Dangerous Waste Management Facility: Used interchangeably in this document with the term "Facility."

G. Dangerous Waste Management Unit (DWMU): Refers to a contiguous area of land on or in which dangerous waste is placed, or the largest area in which there is a significant likelihood of mixing dangerous waste constituents in the same area, as defined in WAC 173-303-040.

H. Enforcement Order or Order: Refers to this Order and each of the exhibit to the Order. The exhibit is an integral and enforceable part of this Order.

I. Facility or Site: Refers to the Boeing Auburn Site. The Site includes the tax parcels affected by releases of hazardous substances within the Boeing Commercial Airplanes, Fabrication Division - Auburn Plant (BCA-Auburn Plant) which is currently controlled by Boeing, located at 700 15th Street Southwest, Auburn, Washington (State Dangerous Waste Identification [ID] Number [No.] WAD041337130); and all property, regardless of control, affected by release(s) or threatened release(s) of hazardous substances, including dangerous

wastes and dangerous constituents, at and from these areas. “Facility” also includes the definition found in RCW 70A.305.020(8). Based upon factors currently known to Ecology, the Facility description and remedial action locations are described in the CAP (Exhibit A).

J. Feasibility Study (FS): Refers to the investigation and evaluation of potential corrective action performed in accordance with the FS requirements of WAC 173-340-350, which includes the substantive requirements for a Resource Conservation and Recovery Act Corrective Measures Study, and which is undertaken in whole or in part to fulfill the corrective action requirements of WAC 173-303-64620.

K. Parties: Refers to the State of Washington, Department of Ecology and The Boeing Company.

L. Potentially Liable Persons (the PLPs): Refers to entities named as potentially liable person by Ecology for this Site: The Boeing Company.

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

N. 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 report entitled *The Boeing Company, Auburn Fabrication Division, Resource Conservation and Recovery Act Facility Assessment, Final Report, June 19, 1998, Prepared by Tetra Tech EM Inc.* (RFA Report). The RFA Report is incorporated into this Order by this reference as if fully set forth herein.

O. Remedial Investigation (RI): Refers to a facility-wide investigation and characterization performed in accordance with the requirements of WAC 173-340, 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.

P. Solid Waste Management Unit (SWMU): Refers to any discernible location at the Dangerous Waste Management Facility where solid wastes have been placed at any time,

irrespective of whether the location was intended for the management of solid or dangerous waste. Such locations include any area at the Dangerous Waste Management Facility at which solid wastes, including spills, have been routinely and systematically released, and include regulated units as defined by WAC 173-303.

V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by Boeing:

A. Boeing is, and has been, the owner and operator of the Boeing Auburn Plant since 1966. Boeing has used the Boeing Auburn Plant for airplane skin and spar manufacturing, machine fabrication, tooling, emergent manufacturing, welding, sheet metal work, process assembly, and other work related to the manufacturing of airplane tools and parts. This included owning and operating the Boeing Auburn Plant as a dangerous waste management facility on or after November 19, 1980.

B. On August 11, 1980, Boeing notified the U.S. Environmental Protection Agency Region 10 of its dangerous waste management activities. In the notification, Boeing identified itself as managing the following dangerous wastes at the Boeing Auburn Plant under WAC 173-303-082 and WAC 173-303-9904: F001, F002, F003, F005, F006, F007, F008, F009, F010, F011, F017, F018, D001, D002, D003, D006, D007, and K054. Boeing was issued identification number WAD041337130 by US Environmental Protection Agency Region 10.

C. On November 17, 1980, Boeing submitted Part A of the RCRA permit application to the US Environmental Protection Agency Region 10. In the Part A application, Boeing identified itself as managing the following dangerous wastes under WAC 173-303-082 and WAC 173-303-9904 at the Boeing Auburn Plant: F001, F002, F003, F005, F006, F007, F008, F009, F010, F011, F017, F018, D001, D002, D003, D006, D007 and K054.

D. On July 13, 1987, Ecology and the US Environmental Protection Agency Region 10 issued a final status RCRA permit to Boeing for the Boeing Auburn Plant. Other than dangerous

wastes treated by its wastewater treatment unit under permit-by-rule, the Boeing Auburn Plant will not store, treat, or land-dispose of dangerous wastes under the State of Washington Dangerous Waste Management Permit No. WAD041337130.

E. On September 24 and 25, 1997, Tetra Tech EM Inc., a contractor for the U.S. E.P.A. Region 10, performed a RCRA Facility Assessment (RFA) inspection at the Boeing Auburn Plant. The report was finalized on June 19, 1998. The purpose of an RFA is to identify those areas at the Dangerous Waste Management Facility where release(s) of hazardous substances, as defined in RCW 70A.305.020(13), may have occurred or may be occurring.

F. Boeing submitted a Part B renewal application for storage of 220 gallons of dangerous waste within the 17-66 building on September 30, 1998. However, Ecology did not issue a RCRA permit to cover the storage and Boeing withdrew its application.

G. On August 14, 2002, Boeing and Ecology entered into Agreed Order No. 01HWTRNR-3345, where Boeing agreed to complete a remedial investigation, a feasibility study, a CAP, and perform interim actions and necessary to remediate the Site.

H. On July 14, 2004, under the terms of the Agreed Order and approved Interim Action Work Plan, Boeing implemented an interim action at the Site to slow the migration and to remediate trichloroethene in groundwater underneath Solid Waste Management Unit S-12b and Area of Concern A-08.

I. On December 16, 2005, the AMB Property Corporation purchased parcels of property which are part of the Site, known as the Area 1 Property as shown in CAP, from Boeing. Ecology named AMB Property Corporation a PLP in December 2005. By a letter dated December 20, 2005, the AMB Property Corporation (now Prologis) voluntarily waived its rights to notice and comment and accepted Ecology's determination that the AMB Property Corporation is a "potentially liable person" under RCW 70.105D.040.

J. On April 7, 2006, Boeing, AMB Property Corporation, and Ecology entered into First Amended Agreed Order No. 01HWTRNR-3345 which superseded and replaced the August 14, 2002, order.

K. On April 7, 2006, Ecology reissued the state dangerous waste permit for corrective action to Boeing and AMB to conduct the remedial action work set forth in the Boeing/AMB Agreed Order issued on the same day. AMB became a permittee as a result of their purchase of the Area 1 property from Boeing on Dec 16, 2005. Ecology required Boeing and AMB Property Corporation to fulfill corrective action responsibilities for the Site, using MTCA (Chapter RCW 70.105D).

L. In June 2011, the AMB Property Corporation purchased Prologis. The merged corporation assumed the Prologis name.

M. On September 15, 2017, Boeing completed the Remedial Investigation with approval from Ecology in accordance with the requirements of the First Amended Agreed Order.

N. On September 21, 2018, Boeing, Prologis, and Ecology entered into Second Amended Agreed Order No. 01HWTRNR-3345 which superseded and replaced the April 7, 2006, First Amended Agreed Order.

O. Also on September 21, 2018, Ecology reissued the state dangerous waste permit for corrective action to Boeing and Prologis.

P. On November 29, 2021, Ecology determined that Boeing had completed the Feasibility Study in accordance with the requirements of the Second Amended Agreed Order.

Q. Dangerous constituents which have been released or have the potential to be released to soils, groundwater, and/or surface water at the Facility, include, but are not limited to: xylene, ethyl benzene, cadmium, copper, cyanide, trichloroethylene, petroleum hydrocarbons.

R. Similar to Federal RCRA and its amendments, state regulations (WAC 173-303-646) require that all dangerous waste treatment, storage, and disposal (TSD) facilities that

operated under a RCRA permit to manage dangerous wastes must conduct corrective action as necessary to protect human health and the environment for all releases of dangerous wastes and dangerous constituents at and from a TSD facility. Since the Boeing Auburn Plant obtained a RCRA TSD permit, it is subject to the corrective action requirements under WAC 173-303-646.

S. On March 11, 2022 Boeing indicated to Ecology a preference for an Enforcement Order for implementing a cleanup action plan at the Site. This Enforcement Order No. DE 21533 dated January 10, 2023 fully supersedes the previous Agreed Orders.

T. For this Enforcement Order, Prologis, who was previously identified as an “owner or operator,” was removed from the state dangerous waste permit for corrective action and as a PLP. A covenant between Boeing and Prologis gives Boeing access to wells on Prologis property, and no actions other than routine groundwater monitoring are expected to be required on the Prologis property.

VI. ECOLOGY DETERMINATIONS

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

A. Boeing is the owner and operator of a Dangerous Waste Management Facility that has operated, is operating, or should have been operating under final status subject to Section 3005 of RCRA, 42 U.S.C. §§ 6924 and 6925, and regulations promulgated thereunder, including authorized state regulations in WAC 173-303. Boeing is also an “owner or operator” as defined by RCW 70A.305.020(22) of a “facility” as defined by RCW 70A.305.020(8).

B. Certain waste and constituents found at the Site are dangerous wastes and/or dangerous constituents as defined in WAC 173-303-040, and these are considered hazardous substances within the meaning of RCW 70A.305.020(13).

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

D. Based upon credible evidence, Ecology issued a PLP status letter to Boeing dated March 5, 1999, pursuant to RCW 70A.305.040, .020(26), and WAC 173-340-500. By letter dated April 7, 1999, Boeing voluntarily waived its rights to notice and comment and accepted Ecology's determination that Boeing is a PLP under RCW 70A.305.040.

E. Pursuant to RCW 70A.305.030(1), .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.

VII. WORK TO BE PERFORMED

Based upon the above Findings of Fact and Ecology Determinations, Ecology hereby orders Boeing to comply with all provisions of this Order and any modifications to this Order, including all exhibit to this Order and all documents incorporated by reference into this Order. Ecology hereby orders that Boeing take the following remedial actions at the Site. The area within the Site where remedial action is necessary under RCW 70A.305 is described in the Remedial Action Location Diagram (Exhibit A, Figures 5-1, 5-2 and 5-4).

Boeing must conduct these remedial actions in accordance with WAC 173-340 and -303

A. Boeing shall perform a final cleanup action for the Site by implementing the remedial actions set forth in the CAP, Exhibit A.

B. If Boeing learns of a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in soil, groundwater, surface water, air, and/or sediments, Boeing, 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. In the event that Ecology determines that this unanticipated or changed circumstances warrant changes in the Scope of Work (e.g., the Compliance Monitoring Plan),

Ecology shall modify the associated Plan in writing accordingly or direct Boeing to modify and submit the modified Plan to Ecology for approval. Boeing shall perform the Plan as modified.

C. Boeing 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 AOC(s) at the Facility no later than 15 calendar days after discovery, and shall investigate and report on those areas as directed by Ecology's project coordinator.

D. Boeing shall submit to Ecology written annual Progress Reports that describe the actions taken during the previous year to implement the requirements of this Order. Boeing must submit all Progress Reports by the tenth (10th) of April following the end of the calendar year. The first Progress Report under this Order will be submitted on the tenth (10th) of April 2024 and will summarize activities that occurred from January to December 2023. Additional reporting requirements will be specified in the appropriate Plans for cleanup action activities. Unless otherwise specified by Ecology, Progress Reports and any other documents submitted pursuant to this Order shall be sent by certified mail, return receipt requested, to Ecology's project coordinator. The Progress Reports shall include the following:

1. A list of on-site activities that have taken place during the previous year.
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 CAP (Exhibit A) during the previous year and any planned deviations in the current year.
4. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.
5. All raw data (including laboratory analyses) received during the previous year (if not previously submitted to Ecology), together with a detailed description of the underlying samples collected.
6. A list of deliverables for the current year.

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

Ecology's Financial Assurance Officer is:
Joanna Richards
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
Phone: (360) 407-6754
Fax: (360) 407-6715
Email: joar461@ecy.wa.gov

F. As detailed in the CAP, institutional controls are required at the Site. Environmental (Restrictive) Covenants will be used to implement the institutional controls.

1. In consultation with Boeing, Ecology will prepare the Environmental (Restrictive) Covenants consistent with WAC 173-340-440, RCW 64.70, and any policies or procedures specified by Ecology. The Environmental (Restrictive) Covenants shall restrict future activities and uses of the Site as agreed to by Ecology and Boeing.
2. After approval by Ecology, Boeing shall record the Environmental (Restrictive) Covenant for affected parcels it owns with the office of the County Auditor as detailed in the CAP (Exhibit A). Boeing shall provide Ecology with the original recorded Environmental (Restrictive) Covenants within thirty (30) days of the recording date.

G. All plans or other deliverables submitted by Boeing for Ecology's review and approval under the CAP (Exhibit A) shall, upon Ecology's approval, become integral and enforceable parts of this Order. Boeing shall take any action required by such deliverable.

H. If Ecology determines that Boeing has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to Boeing, perform any or all portions of the remedial action or at Ecology's discretion allow the Boeing

opportunity to correct. In an emergency, Ecology is not required to provide notice to Boeing. Boeing 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 XI (Enforcement).

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

J. Ecology may determine that, in addition to tasks described in the CAP, other additional work may be necessary to accomplish the objectives of MTCA. Boeing must perform these response actions in addition to those required by the CAP, if Ecology determines that such actions are necessary to meet the requirements of MTCA. Boeing must complete the additional work according to the standards, specifications, and schedule set forth or approved by Ecology in a written modification to any work plan. Ecology reserves the right to conduct the work itself, to seek reimbursement from Boeing for the costs incurred in performing the work, and/or to seek any other appropriate relief. Nothing in this Paragraph shall be construed to limit Ecology's authority to require performance of further response actions at the Site.

VIII. TERMS AND CONDITIONS

A. Remedial Action Costs

Boeing 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 70A.305, including remedial actions and Order preparation, 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, Boeing shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

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

B. Designated Project Coordinators

The project coordinator for Ecology is:

Li Ma
Hazardous Waste & Toxics Reduction
WA State Department of Ecology
PO BOX 330316
Shoreline, WA 98133-9716
Phone #: (425) 466-9872
li.ma@ecy.wa.gov

The project coordinator for Boeing is:

Debbie Taege
The Boeing Company
Environmental Remediation
PO Box 3707, MC 46-202
Seattle, WA 98124-2207
Cell: (818) 720-5575
deborah.a.taege@boeing.com

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To

the maximum extent possible, communications between Ecology and Boeing, 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, .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, .220.

Boeing shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s), subcontractor(s), and other key personnel to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

D. Access

RCW 70A.305.030(1)(a) authorizes Ecology or any Ecology authorized representative to enter all property at the Site that Boeing either owns, controls, or has access rights to, after reasonable notice unless an emergency prevents such notice. Boeing shall use their best efforts to secure access rights for those properties within the Site not owned or controlled by Boeing where remedial activities or investigations will be performed pursuant to this Order.

As used in this Section, “best efforts” means the efforts that a reasonable person in the position of Boeing would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If, within 30 days after the effective date of this Order, Boeing is unable to accomplish what is required through “best efforts,” they shall notify Ecology, and include a description of the steps taken to comply with the requirements. If Ecology deems it appropriate, it may assist Boeing, or take independent action, in obtaining such access and/or use restrictions. Ecology reserves the right to seek payment from Boeing for all costs, including cost of attorneys’ time, incurred by Ecology in obtaining such access or agreements to restrict land, water, or other resource use.

Boeing shall notify Ecology of any manufacturing or process areas at the Facility at which Boeing conducts activities utilizing secrets associated with U.S. Department of Defense (DOD) or any International Traffic in Arms Regulation, 22 CFR §§ 120 *et. seq.* (ITAR)- or Export Administrative Regulations, 15 CFR §§ 730 *et. seq.* (EAR)-related projects. Boeing may request a reasonable delay to providing access to these areas of the Facility so that Boeing and Ecology's representatives may further confer regarding the purpose of the inspection in the area and appropriate precautions for protecting DOD secrets or complying with ITAR and EAR requirements. Boeing shall notify Ecology in advance of any required security clearance required for such an area.

If photographs are to be taken in a DOD, ITAR, or EAR area that contains items important to national security, then Boeing shall provide a competent photographer to take photographs under the instruction of Ecology staff on site subject to limitations required for protection of DOD secrets, including any required DOD, ITAR, or EAR security clearance. All such photographs will be developed and previewed by Boeing, to enable Boeing to assure compliance with security requirements for protection of DOD secrets. Boeing shall provide electronic copies to Ecology-NWRO of all photographs taken within seven (7) days excepting any photographs for which additional precautions must be followed to protect DOD secrets. Boeing shall provide Ecology with a log of the photographs taken and shall identify photographs withheld for protection of DOD secrets.

E. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, Boeing 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.

Upon Ecology's request, Boeing shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by Boeing pursuant to the implementation of this Order. Boeing shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site.

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. Access to Information

Boeing shall provide to Ecology, upon request, copies of all non-privileged records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Boeing's possession or control or that of their contractors or agents relating to activities at the Facility or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the work. Boeing shall also make available to Ecology, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the work.

Nothing in this Order is intended to waive any right Boeing may have under applicable law to limit disclosure of Records protected by the attorney work-product privilege and/or the attorney-client privilege. If Boeing withholds any requested Records based on an assertion of privilege, Boeing 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, including: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeological, scientific, chemical, radiological, biological, or engineering data, or the portion of any other record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Order.

Notwithstanding any provision of this Order, Ecology retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under any other applicable statutes or regulations.

G. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of the work performed pursuant to this Order, Boeing 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.

H. Delay in Performance

1. Boeing shall notify Ecology of any delay or anticipated delay in performing any requirement of this Order. Such notification shall be made by telephone and email to the Ecology Project Coordinator within forty-eight (48) hours after Boeing first knew or should have known that a delay might occur. Boeing shall adopt all reasonable measures to avoid or minimize any such delay. Within seven (7) days after notifying Ecology by telephone and email, Boeing shall provide to Ecology written notification fully describing the nature of the delay, the anticipated duration of the delay, any justification for the delay, all actions taken or to be taken to prevent or minimize the delay or the effect of the delay, a schedule for implementation of any measures to be taken to mitigate the effect of the delay, and any reason why Boeing should not be held strictly accountable for failing to comply with any relevant requirements of this Order. Increased costs or expenses associated with implementation of the activities called for in this Order is not a justification for any delay in performance.

2. Ecology shall consider any delay in performance of this Order that is not properly justified by Boeing a violation of this Order. Any delay in performance of this Order shall not affect Boeing's obligations to fully perform all obligations under the terms and conditions of this Order.

I. Amendment of Order

The Ecology Project Coordinator may make minor changes to any plan or schedule or the work to be performed under this Order without formally amending this Order. The Ecology Project Coordinator may direct such changes in writing or verbally. Ecology will memorialize any verbal change in writing, but the effective date of the change is the date Ecology's Project Coordinator verbally directed the change.

To make substantial changes to any plan or schedule or the work to be performed, Ecology will formally amend this Order. Such amendments will be in writing and signed by the Regional Section Manager of the Hazardous Waste & Toxics Reduction Program. Such amendments are subject to public notice and comment.

No informal advice, guidance, suggestion, or comment by Ecology's Project Coordinator or other Ecology representatives regarding any deliverables submitted by Boeing shall relieve Boeing of their obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

J. 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 Boeing to cease such activities for such period of time as it deems necessary to abate the danger. Boeing shall immediately comply with such direction.

In the event Boeing 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, Boeing may cease such activities. Boeing 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, Boeing shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Boeing's cessation of activities, it may direct Boeing to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, Boeing'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

(Delay in Performance) 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.

K. Reservation of Rights

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

Nothing in this Order shall limit the power and authority of Ecology to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Order shall prevent Ecology from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Boeing in the future to perform additional activities pursuant to MTCA, CERCLA or any other applicable law.

L. Other Claims

By issuance of this Order, Ecology assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of Boeing. Ecology shall not be deemed a party to any contract entered into by Boeing or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against Boeing or any person not a party to this Order, for any liability such person may have under MTCA, CERCLA, other statutes, or common law.

No action or decision by Ecology pursuant to this Order shall give rise to any right to judicial review, except as set forth in RCW 70A.305A.070.

M. Transfer of Interest in Property

Before any voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by Boeing, Boeing shall provide 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.

Further, prior to Boeing's transfer of any interest in all or any portion of the Site, Boeing 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, Boeing shall notify Ecology of said transfer. Upon transfer of any interest, Boeing 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 Boeing pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits or approvals, except as provided in RCW 70A.305.090. The permits or specific federal, state, or local requirements that the agency has determined are applicable and that are known at the time of the execution of this Order have been identified in Exhibit A. Boeing 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 Boeing, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and the PLP must implement those requirements.

2. *Relevant and Appropriate Requirements.* All actions carried out by Boeing pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. The relevant and appropriate requirements that Ecology has determined apply have been identified in Exhibit A. If additional relevant and appropriate requirements are identified by Ecology or Boeing, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and Boeing must implement those requirements.

3. Pursuant to RCW 70A.305.090(1), Boeing may be exempt from the procedural requirements of RCW 70A.15, 70A.205, 70A.300, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, Boeing shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70A.305.090(1) that have been issued by local government, 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. Boeing has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or Boeing determines that additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or Boeing shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Boeing 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 Boeing and on how Boeing must meet those requirements. Ecology shall inform Boeing in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Boeing shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

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

O. Periodic Review

So long as remedial action continues at the Site, the Ecology will review the progress of remedial action at the Facility, and review the data accumulated as a result of monitoring the Site as often as Ecology determines is necessary and appropriate under the circumstances. Unless otherwise decided by Ecology, every five (5) years after the initiation of cleanup action at the Site the Parties will confer regarding the status of the Facility and the need, if any, for further remedial action at the Facility. At least ninety (90) days prior to each periodic review, Boeing 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 Facility under appropriate circumstances. This provision shall remain in effect for the duration of this Order.

IX. SATISFACTION OF ORDER

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

X. SEVERABILITY

If a court issues an order that invalidates any provision of this Order or finds that Boeing have sufficient cause not to comply with one or more provisions of this Order, Boeing shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

XI. ENFORCEMENT

Pursuant to RCW 70A.305.050, this Order may be enforced as follows:

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

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

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

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

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

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

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

Effective date of this Order: January 10, 2023

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



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