

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:	AGREED ORDER
Silver Bay Logging, Inc., and RJ & BA LLC	No. DE 21418

TO: Betty Buhler	Betty Buhler
Silver Bay Logging, Inc.,	RJ & BA LLC
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Kelso, WA 98626	Kelso, WA 98626

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## **I. INTRODUCTION**

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Silver Bay Logging, Inc. and RJ & BA, LLC (collectively the potentially liable persons (PLPs)) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the PLPs to conduct a Remedial Investigation (RI) and Feasibility Study (FS) per WAC 173-340-350 and to develop a draft Cleanup Action Plan (DCAP) per WAC 173-340-350 through 173-340-380 addressing contamination at the Site located in the area of 816 and 836 S. Kenyon St, 803 and 811 S. Chicago St, and 7760 and 7808 8th Ave S., Seattle, Washington. Ecology believes the actions required by this Order are in the public interest.

## **II. JURISDICTION**

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

## **III. PARTIES BOUND**

This Agreed Order shall apply to and be binding upon the Parties to this Order, and their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. The PLPs agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the PLPs' responsibility under this Order. The PLPs 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 and WAC 173-340 shall control the meanings of the terms in this Order.

A. Site: The Site is commonly referred to as Independent Metals Plant 2 (a.k.a. Silver Bay Logging). The Site constitutes a facility under RCW 70A.305.020(8). The Site is defined by

where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located. Based upon factors currently known to Ecology, the Site is generally located in the area of 816 and 836 S. Kenyon Street, 803 and 811 S. Chicago St., 7760 and 7808 8<sup>th</sup> Ave. S, Seattle, Washington and impacted Lower Duwamish Waterway sediments, as shown in part in the Site Location Diagram (Exhibit A).

B. Parties: Refers to the State of Washington, Department of Ecology and Silver Bay Logging, Inc. and RJ & BA, LLC.

C. Potentially Liable Persons (PLP(s)): Refers to Silver Bay Logging, Inc. and RJ & BA, LLC.

D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order.

## V. FINDINGS OF FACT

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

A. Based upon factors currently known to Ecology, the Site is generally located in the area of 816 and 836 S. Kenyon Street, 803 and 811 S. Chicago St., 7760 and 7808 8<sup>th</sup> Ave. S, Seattle, Washington (Property), and extends to impacted Lower Duwamish Waterway (LDW) sediments as shown in the Site Location Diagram (Exhibit A) and in related LDW Remedial Investigation data and Reports. The Ecology Facility Site ID is 16139 and the Cleanup Site ID is 12300. The real property owned by the PLPs (Property) consists of six King County parcels, King County Tax Parcel numbers 7327902480; 7327902490; 7327902500; 7327902510; 7327902520; and 7327903645, which covers approximately 3.06 acres (the Property). In addition, the PLPs also lease a portion of the Site from the City of Seattle. The leased portion, approximately 0.23 acres, corresponds to the right-of-way for that portion, of South Chicago Street that formerly extended east of 8th Avenue South. The Site is an approximately 3.29 acres property located along the vicinity of the Lower Duwamish Waterway. The southern portion of the Property, including a

warehouse building and office, is currently leased to a gypsum recycling business and the northern portion of the Property includes a marine dock located on the left bank of the Duwamish River.

B. The Property has been used for residential, commercial, and industrial purposes and is zoned Manufacturing/Industrial by the City of Seattle to provide for industrial uses.

C. Over the last several decades, businesses operating at the Property may have released hazardous substances at the Property.

D. Historical facilities and operations included:

1. A former gasoline station/ auto repair shop with battery shop on the northern portion of the Site from 1929 to approximately 1937.
2. Metaldehyde slug bait packaging (within one of the on-site buildings) from 1960 to 1999.
3. A work boat manufacturer, Workboats Northwest, on the site between 1976 and 1995.
4. A scrap and recycled metal sorting and handling facility, Independent Metals, on the site between 2006 and 2014.
5. A transfer site for processed logs, Silver Bay Logging, on the site between 1996 and 2015.
6. Gypsum recycling by American Gypsum Recycling-2 LLC, began operations in 2019 and is currently operating at the Property.

E. Contamination at the Property is related to these past operations. Previous investigations identified the presence of diesel- and oil-range total petroleum hydrocarbons (TPH), carcinogenic polycyclic aromatic hydrocarbons (cPAHs), tetrachloroethene (PCE), trichloroethene (TCE), polychlorinated biphenyls (PCBs), arsenic, cadmium, and lead in soil at concentrations exceeding the applicable soil screening levels on the Property. Previous investigations identified the presence of diesel- and oil-range TPH, PCE, and vinyl chloride (VC), selenium, arsenic, and lead in groundwater at concentrations exceeding groundwater screening levels on the Property.

F. Regular monitoring for total petroleum hydrocarbons (TPH) for oil and grease, zinc, copper, lead, pH and turbidity in stormwater was conducted at the Property under an existing National Pollutant Discharge Elimination System (NPDES) permit. In June 2009, Seattle Public Utilities (SPU) collected a storm drain solids sample from a catch basin (CB206) located at the Property and reported the results to Ecology. Analytical results identified concentrations of polychlorinated biphenyls (PCBs), copper, lead, mercury, zinc, polycyclic aromatic hydrocarbons (PAHs), phthalates, diesel and heavy oil range hydrocarbons, 4-methylphenol, and benzoic acid exceeding storm drain screening values. Additional samples confirmed that PCBs and metals were present at the Site.

G. In a 2009 Site Hazard Assessment, Ecology concluded that PCBs were released at Silver Bay Logging (Independent Metals Plant 2), 816 S. Kenyon Street. Ecology placed Independent Metals Plant 2 on its Confirmed and Suspected Contaminated Sites (CSCSL) list with Cleanup Site ID number 12300. Ecology required that PCBs and metals be added to the NPDES monitoring requirements for the Site.

H. In March and April 2011, SPU collected storm drain solids samples from catch basin RCB229, located in the right-of-way adjacent to the facility, and from onsite catch basin CB206. Results indicated that concentrations of PCBs, copper, mercury, zinc, PAHs, phthalates, phenol, benzyl alcohol, n-nitrosodiphenylamine, and diesel-range hydrocarbons and heavy oil-range hydrocarbons were above storm drain screening values used in the Lower Duwamish Waterway (LDW) source control investigation. Ecology conducted a follow-up inspection in August 2011, and identified that deficiencies in implementing Best Management Practices (BMPs) of Site Storm Water Pollution Prevention Plan (SWPPP) were causing the release of contaminants of mercury and PCB in stormwater and surface soils on the property

I. In April 2013, Ecology conducted a facility inspection and collected treated effluent samples and storm drain solids from a catch basin. Sample results demonstrated that concentrations of cadmium, copper, lead, mercury, zinc, PAHs, phthalates, phenols and PCBs in sediment

exceeded Sediment Management Standard (SMS) criteria, and similarly, concentrations of copper, lead, mercury, nickel, zinc and PCBs exceeded surface water quality standards.

J. In October 2015, Ecology conducted a Site Hazard Assessment (SHA) for the Property, using a ranking system from 1 to 5, with 1 being most hazardous and 5 being the least, and Ecology assigned the Property the rank of 4. Ecology also documented that the Property had discharges of PCBs at concentrations exceeding surface water quality guidelines into the LDW. Additionally, metals, phthalates, diesel, oil, phenols, n-nitrosodiphenylamine and benzyl alcohol had also been identified in catch basin solids within the Property.

K. In April 2017, five underground storage tanks (UST) were decommissioned and removed at the Property.

- The removed USTs included two 5,000-gallon capacity, single-walled USTs, and two 10,000-gallon capacity, single-walled USTs, all four located south of the warehouse near the southern Property line. All four USTs were in good to fair condition and no evidence of a release was observed. The fifth UST was a 300-gallon capacity, single-walled steel UST in the “East Yard”, the most southeastern edge of the Property.
- An August 8, 2017 Underground Storage Tank Closure & Site Assessment Report, prepared by The Riley Group Inc., indicated that there was a release in the East Yard from the 300-gallon UST. This heating oil UST (UST5) was heavily corroded and visible holes were observed. Analytical data obtained from soil samples collected from within this UST’s excavation, north and beneath UST5, indicated that diesel-range TPH is present in soil at concentrations exceeding MTCA Method A Soil Cleanup Levels for Unrestricted Land Uses. Soil analytical data obtained during the 2016 Additional Subsurface Investigation from test probes P18 and P19, which were in close proximity to UST5, appear to indicate that the extent of soil impacts in this location is limited. Ecology received a report for releases related to the 2017 UST removal at Silver Bay Logging in August 2017. Ecology assigned UST ID 620356 to that release.

L. In 2018, two independent remedial actions to address contamination were completed at the Property.

1. One of the independent remedial actions took place at the Property's East Yard, in the southeastern portion of the Property, where two areas were excavated. The first excavation was conducted to address contamination extending to 1.5 feet below ground surface (bgs). The second excavation was completed around UST5's former location. The original footprint of this second excavation was extended and was eventually merged with excavation to address impacts in the southeast area to a depth of about 5 feet bgs. Results of analysis of sampling from these excavations were less than MTCA Method A CULs for unrestricted land use.
2. The second independent remedial action occurred at the Property's Main Yard, in the central portion of the Property. 13 areas were excavated in the Main Yard.
  - i. Excavation within the northern portion of the Main Yard corresponded to the approximate location of the former gas station. During excavation of this area, an abandoned UST system, consisting of a 300-gallon UST and 1,000-gallon UST, was discovered. This UST system was decommissioned, removed, and disposed of offsite and represent the 6<sup>th</sup> and 7<sup>th</sup> UST removed from the Property.
  - ii. Three samples taken from the northern portion of the Main Yard contained levels of cadmium and lead, exceeding MTCA Method A CULs for unrestricted land use. One of the three samples also exceeded the arsenic CUL.
  - iii. Excavation of another area, located east of the storage building in the southern portion of the Main Yard, revealed oil staining at the surface associated with releases from large hydraulic machinery; the remaining excavation sites corresponded to exposed soil areas after removal of shredder residue.
  - iv. A sample collected from blue green stained fill soil, which was observed along the bank and beneath the wheelhouse at the Property, contained cadmium and

lead exceeding MTCA Method A CULs for unrestricted land use and copper exceeding Method B CUL for unrestricted land use.

- v. Another area in the Main Yard was excavated to address hydraulic oil contamination in the soils. Four samples collected from the final excavation limits of this area contained total diesel range organics and oil range organics exceeding the soil MTCA Method A CUL of 2,000 mg/kg.

M. Previous investigations conducted between 2004 and 2019 identified the presence of soil and groundwater contamination at the Property. The previously identified contaminants of concern at the Property known to exceed MTCA Method A CULs for unrestricted land use include: diesel- and oil-range TPH, PCE and TCE, and arsenic and lead in soil and groundwater; gasoline-range TPH, cPAHs, PCBs and cadmium in soil; and vinyl chloride (VC) in groundwater. TPH, metals, PCBs and cPAHs at the Property were attributed to Property operations. Sources of PCE, TCE and VC contamination in groundwater at the Property were not identified.

## **VI. ECOLOGY DETERMINATIONS**

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

A. The PLPs are “owners or operators” as defined in RCW 70A.305.020(22) of a “facility” as defined in RCW 70A.305.020(8).

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

C. Based upon credible evidence, Ecology issued a PLP status letter to Silver Bay Logging, Inc. and RJ & BA, LLC dated April 14, 2022, pursuant to RCW 70A.305.020(26), 70A.305.040, and WAC 173-340-500. Ecology provided notice and opportunity for comment. The PLPs provided written notice accepting their status as a PLP for the Site on May 2, 2022. Ecology concluded that credible evidence supported a finding of potential liability. Ecology issued a



determination that Silver Bay Logging, Inc. and RJ & BA, LLC are PLPs under RCW 70A.305.040 and notified Silver Bay Logging, Inc. and RJ & BA, LLC of this determination by letter dated May 11, 2022.

D. Pursuant to RCW 70A.305.030(1) and 70A.305.050(1), Ecology may require the 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.

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

## **VII. WORK TO BE PERFORMED**

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the PLPs take the following remedial actions at the Site. These remedial actions must be conducted in accordance with WAC 173-340 and 173-204 unless otherwise specifically provided for herein. The PLPs shall collect samples to fully characterize the site, including samples that current exist in the LDW sediments along the upland portion within the RI. After reviewing analytic results, Ecology will determine if additional sediment investigation is necessary to adequately characterize the sediment. Cleanup of the in-water portions of the impacted LDW, below mean higher high

water (MHHW), is governed by the U.S. Environmental Protection Agency under CERCLA as part of the Lower Duwamish Waterway Superfund Site.

A. The PLPs shall prepare and implement a Work Plan to conduct a Remedial Investigation (RI), Feasibility Study (FS), and a preliminary draft Cleanup Action Plan (DCAP) for the Site in accordance with the Scope of Work (Exhibits B) and Schedule of Deliverables (Exhibit C), and all other requirements of this Order. The following naming conventions shall be used for applicable documents: Agency Review Draft (designation for the first time Ecology receives a document); Public Review Draft (designates a document ready for public comment); Final (designation for a document after public comment and/or after Ecology approval); and the preliminary Draft Cleanup Action Plan (designation for the PLPs' version of the DCAP). Ecology is responsible for preparation of the Cleanup Action Plan (CAP); however, with Ecology concurrence, the PLPs may prepare a draft CAP (DCAP) for final approval by Ecology in accordance with WAC 173-304-350 through 173-340-390 and WAC 173-204. If the PLPs elect to prepare the DCAP, Ecology may complete it pursuant to Section VII.G of this Order. A scope of work (SOW) for the RI, FS, and DCAP is more particularly described in Exhibit B, "Scope of Work" and is incorporated by reference as an enforceable part of this Order.

B. The PLPs shall obtain Ecology approval for any tasks specified in Exhibit B to effectuate the work to be performed under this Order in the most efficient manner.

C. To effectuate the work to be performed under this Order in the most efficient manner, one of the PLPs has elected to take the lead in performing various aspects of the work required under this Order. Language in this Order, and the exhibits attached hereto, may reflect this agreement among the Subject PLPs. However, the Subject PLPs remain strictly, jointly, and severally liable for the performance of any and all obligations under this Order. In the event the party identified as a lead should fail to timely and properly complete performance of all or any portion of its work, all Subject PLPs must perform that remaining work, if any.

D. The PLPs shall complete the RI in accordance with the requirements of WAC 173-340-350. The PLPs shall conduct the FS according to the requirements of WAC 173-340-350(8);

the FS shall include at least one permanent cleanup action alternative and other cleanup option alternatives for the cleanup action at the Site. The PLPs shall provide Ecology with an Agency Review Draft RI Report and an Agency Review Draft FS Report. These Reports may be submitted together as an Agency Review Draft RI/FS Report. The PLPs shall incorporate and resolve Ecology's responses and comments to revise all draft Reports until the reports are accepted by Ecology. Unless otherwise specified by this Order or requested by Ecology, any documents submitted pursuant to this Order shall be sent electronically to Ecology's project coordinator.

E. If the PLPs learn 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, the PLPs, 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.

F. The PLPs shall submit to Ecology written Quarterly Progress Reports that describe the actions taken during the previous quarter to implement the requirements of this Order. All Progress Reports shall be submitted according to the Schedule (Exhibit C) after the effective date of this Order. Unless otherwise specified or requested by Ecology, Progress Reports and any other documents submitted pursuant to this Order shall be sent electronically 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 quarter.
2. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests.
3. Description of all deviations from the Scope of Work (Exhibit B) and Schedule of Deliverables (Exhibit C) during the current quarter, and any planned deviations in the upcoming quarter.
4. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.

5. All raw data (including laboratory analyses) received during the previous quarter (if not previously submitted to Ecology), together with a detailed description of the underlying samples collected.

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

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

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

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

J. Except where necessary to abate an emergency situation or where required by law, the PLPs shall not perform any activities that will potentially displace any contaminants on Site and any remedial actions at the Site outside those remedial actions required by this Order to address the contamination that is the subject of this Order, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section VIII.J (Amendment of Order). In the event of an

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

## **VIII. TERMS AND CONDITIONS**

### **A. Payment of Remedial Action Costs**

The PLPs shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under RCW 70A.305, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). For all Ecology costs incurred, the PLPs 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:

David Butler,  
PO Box 330316  
Shoreline, WA 98133-9716  
206-518-3513  
[david.butler@ecy.wa.gov](mailto:david.butler@ecy.wa.gov)

The project coordinator for Silver Bay Logging Inc. and RJ & BA LLC is:

Laura Maffei  
1455 SW Broadway, Suite 1500  
Portland, OR 97201-3412  
971-276-7306  
[lmaffei@cablehuston.com](mailto:lmaffei@cablehuston.com)

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the PLPs, 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, hydrogeological, or engineering work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct supervision of an engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43 and 18.220.

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

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

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

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

**D. Access**

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

**E. Sampling, Data Submittal, and Availability**

With respect to the implementation of this Order, the PLPs 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 electronic format in accordance with Section VII (Work to Be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

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

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

**F. Public Participation**

Ecology shall maintain the responsibility for public participation required in connection with this Order. However, the PLPs shall cooperate with Ecology, and shall:

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



by the PLPs related to remedial action work to be conducted at the Site that do not receive prior Ecology approval, the PLPs shall clearly indicate to their audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

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

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

- a. Online: <https://apps.ecology.wa.gov/cleanupsearch/site/12300>
- b. South Park Library  
8604 8th Avenue S, Seattle, WA 98108
- c. Ecology's Northwest Regional Office  
15700 Dayton Ave N, Shoreline, WA 98133

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

#### **G. Retention of Records**

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

Nothing in this Order is intended to waive any right the PLPs may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If the PLPs withholds any requested records based on an assertion of

privilege, the PLPs shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

#### **H. Resolution of Disputes**

1. In the event that the PLPs elect to invoke dispute resolution PLPs must utilize the procedure set forth below.

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

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

c. The PLPs may then request regional management review of the dispute. The PLPs must submit this request (Formal Dispute Notice) in writing to the Northwest Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

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

- e. The timelines in this section may be extended by agreement of the Parties.
2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.
4. In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section VII.F (Work to Be Performed) or initiating enforcement under Section X (Enforcement).

#### **I. Extension of Schedule**

1. The PLPs' request for an extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:
  - a. The deadline that is sought to be extended.
  - b. The length of the extension sought.
  - c. The reason(s) for the extension.
  - d. Any related deadline or schedule that would be affected if the extension were granted.
2. The burden shall be on the PLPs to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:
  - a. Circumstances beyond the reasonable control and despite the due diligence of the PLPs including delays caused by unrelated third parties or Ecology, such as (but not

limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the PLPs.

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

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

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

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

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

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

b. Other circumstances deemed exceptional or extraordinary by Ecology.

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

#### **J. Amendment of Order**

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

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

written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

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

**K. Endangerment**

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

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

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

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

**L. Reservation of Rights**

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

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

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

**M. Transfer of Interest in Property**

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

Prior to the PLPs' transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the PLPs shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest and, at least thirty (30)

days prior to any transfer, the PLPs shall notify Ecology of said transfer. Upon transfer of any interest, the PLPs shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

**N. Compliance with Applicable Laws**

1. *Applicable Laws.* All actions carried out by the PLPs 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. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order. The PLPs have 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 PLPs, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and the PLPs must implement those requirements.

2. *Relevant and Appropriate Requirements.* All actions carried out by the PLPs pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. At this time, no relevant and appropriate requirements have been identified as being applicable to the actions required by this Order. If additional relevant and appropriate requirements are identified by Ecology or the PLPs, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and the PLPs must implement those requirements.

3. Pursuant to RCW 70A.305.090(1), the PLPs 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, the PLPs shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70A.305.090(1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Order to enforce those local government permits

and/or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

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

Pursuant to RCW 70A.305D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70A.305.090(1) would result in the loss of approval from a federal agency that is necessary for the state to administer any federal law, the exemption shall not apply and the PLPs shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70A.305.090(1), including any requirements to obtain permits or approvals.

#### **O. Indemnification**

The PLPs agree to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action against the State of Washington, or its employees or agents (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions PLPs, their officers, employees,



agents, or contractors in implementing this Order. However, the PLPs shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

#### **IX. SATISFACTION OF ORDER**

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

#### **X. ENFORCEMENT**

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

- A. The Attorney General may bring an action to enforce this Order in a state or federal court.
- B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
- C. A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:
  - 1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of their 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.

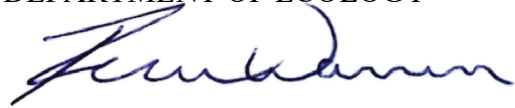
This Order may be reviewed only as provided under RCW 70A.305.060.

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Effective date of this Order: 12/28/2022

SILVER BAY LOGGING, INC.

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY



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Robert Warren  
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Toxics Cleanup Program  
Northwest Regional Office  
206-594-0093

RJ & BA, LLC

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Agreed Order No. DE 21418  
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Effective date of this Order: \_\_\_\_\_


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