

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

Occidental Chemical
Corporation, Glenn Springs
Holdings, Inc., and Mariana
Properties, Inc.

For:

Occidental Chemical Corporation
Facility Site No. 1212
Cleanup Site No. 4326/4330
State/EPA ID No. WAD009242314

AGREED ORDER

No. DE 22454

TO: Occidental Chemical
Corporation
Glenn Springs Holdings, Inc.
Mariana Properties, Inc.
Attn: Mr. Clinton
Babcock
7601 Old Channel Trail
Montague, MI 49437

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Occidental Chemical Corporation (OCC or Occidental), Glenn Springs Holdings, Inc., and Mariana Properties Inc. under this Agreed Order (Order) is to provide for remedial action at a facility (Exhibit A) where there has been a release or threatened release of hazardous substances. This Order requires the potentially liable parties (PLPs) to implement the final Cleanup Action Plan (CAP) finalized by Ecology (Exhibit B). Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

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

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each Party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such Party to comply with the Order. The 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, WAC 173-204, WAC 173-340-760 and WAC 173-340 shall control the meanings of the terms used in this Order.

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

B. 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.

C. Cleanup Action Plan (CAP): Refers to the document issued by Ecology under WAC 173-340-380 that selects Facility-specific corrective measures and specifies cleanup standards (cleanup levels, points of compliance, and other requirements for the corrective measures). The CAP is attached to this Order as Exhibit B.

D. Cleanup Standards: Refers to the standards promulgated under RCW 70A.305.030(2)(e) and include (1) hazardous substance concentrations (cleanup levels) that protect human health and the environment, (2) the location at the Facility where those cleanup levels must be attained (points of compliance), and (3) additional regulatory requirements that apply to a cleanup because of the type of action and/or the location of the Facility.

E. 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.

F. Corrective Measure: Refers to any measure or action to control, prevent, or mitigate release(s) and/or potential release(s) of dangerous constituents (including dangerous

waste and hazardous substances) reviewed and approved by Ecology for the Facility and set forth in a Facility-specific CAP prepared in compliance with the requirements of WAC 173-340, including WAC 173-340-360. Corrective measures may include interim actions as defined by WAC 173-340. Interim actions will not necessarily be set forth in a Facility-specific CAP.

G. 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).

H. 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).

I. Dangerous Waste Management Facility: Used interchangeably in this document with the term “Facility.”

J. 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.

K. Facility: Refers to the Occidental Chemical Corporation DWMU, EPA ID Number WAD009242314, controlled by PLPs located at a site with former DWMUs located at 605 E. Alexander Avenue, Tacoma, Washington; all property contiguous to the former DWMUs, including 709 E. Alexander Avenue; all property contiguous to the DWMU also controlled by PLPs; 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). For purposes of this Order, “Facility” shall not include the extent of contamination caused by the release of hazardous substances originating from activities associated with historic petroleum

storage and processing facilities that were operated at real properties located at 709 E. Alexander Avenue and at 901 and 1001 E. Alexander Avenue (previously known as 721 E. Alexander Avenue), which are subject to Agreed Order No. DE 9835 among Ecology, Mariana Properties Inc., and the Port of Tacoma, and denominated as the Alexander Avenue Petroleum Tank Facilities Site (Ecology Facility Site No. 1377; Ecology Cleanup Site No. 743).

L. Feasibility Study (FS): Refers to the investigation and evaluation of potential corrective measures 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 a CERCLA feasibility study, and which was undertaken in whole or in part to fulfill the corrective action requirements of WAC 173-303-64620, and to comply with the Administrative Order on Consent, as amended, among the United States Environmental Protection Agency (EPA), Ecology, and Occidental Chemical Corporation in EPA Docket No. 10-97-0011- CERCLA (Amended Agreement on Consent).

M. Parties: Refers to the State of Washington, Department of Ecology and Occidental Chemical Corporation (OCC or Occidental), Glenn Springs Holding, Inc., and Mariana Properties, Inc.

N. Potentially Liable Person (PLPs): Refers to Occidental Chemical Corporation (OCC or Occidental), Glenn Springs Holding, Inc., and Mariana Properties, Inc.

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

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

Q. RCRA Facility Assessment (RFA): Refers to the United States Environmental Protection Agency (EPA) conducted investigation of release(s) and potential release(s) at the Dangerous Waste Management Facility and the information contained in the report entitled

RCRA Facility Assessment Report, Occidental Chemical Corporation, Tacoma, Washington dated February 26, 1988 (“RFA Report”) (RFA Report). The RFA Report is incorporated into this Order by this reference as if fully set forth herein.

R. Release: Refers to any intentional or unintentional spilling, leaking, pouring, emitting, emptying, discharging, injecting, pumping, escaping, leaching, dumping, or disposing of dangerous waste or dangerous constituents into the environment. It also includes the abandonment or discarding of barrels, containers, and other receptacles containing dangerous waste or dangerous constituents, and includes the definition of “release” in RCW 70A.305.020(32).

S. 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 and a CERCLA remedial investigation, undertaken in whole or in part to fulfill the corrective action requirements of WAC 173-303-64620, and to comply with the Administrative Order on Consent, as amended, among the United States Environmental Protection Agency (EPA), Ecology, and Occidental Chemical Corporation in EPA Docket No. 10-97-0011- CERCLA (Amended Agreement on Consent).

T. 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 PLPs:

A. The Property is located on the eastern-most peninsula within the 12-square mile area of the Commencement Bay Nearshore/Tideflats (CB/NT) Superfund Site in Tacoma, Washington, at the southern end of the main basin of Puget Sound. The CB/NT Superfund Site includes several waterway problem areas and adjoining uplands, including the Mouth of Hylebos Problem Area where the Facility is located. The peninsula is bordered by the Hylebos Waterway on the east side and the Blair Waterway on the west. The Property includes a shoreline with the Hylebos Waterway, and is further bounded on the west, north, and south by real property formerly owned and/or operated by the United States (the United States Maritime Commission, Navy, Air Force, Naval and Marine Corps Reserve, and/or other instrumentalities of the United States), now owned by the Port of Tacoma. On September 8, 1983, EPA placed the CB/NT Superfund Site on the National Priorities List pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605.

B. The real properties which comprise the Site were undeveloped tidal mudflats prior to 1920. The area was filled with approximately 16 feet of dredge material as part of an upland expansion project between 1920 and 1936.

C. The Property located at 709 E. Alexander Avenue was owned and operated by F.O. Fletcher, Inc. (and predecessor and related entities)(Fletcher Oil) as a bulk petroleum fuel storage and distribution terminal from the 1930s to the 1980s. During the 1970s and 1980s, Fletcher Oil operated a tetraethyl lead plant at 709 E. Alexander Avenue, blending lead with gasoline. In addition, United Independent Oil operated a topping plant for crude oil distillation on the property in the 1970s and 1980s.

D. Hooker Electrochemical Company began operations at the Facility in 1929 and acquired additional adjacent parcels over time, including what is known as the North Ten Acres, acquired in 1937 from Todd Pacific Shipyards, Inc. (aka Seattle-Tacoma Shipbuilding Corp.)(Todd Shipyards). Todd Shipyards leased what is known as the North Ten Acres from Hooker Electrochemical Company from May 1941 to about June 1946. Todd Shipyards and instrumentalities of the United States including the Maritime Commission and Navy operated a salvage yard, waste incinerator and maintenance activities on this parcel during World War II. Between 1945 and 1946 a portion of the shoreline of this 10-acre parcel was used as a waste dump now known as the Navy/Todd Dump.

1. Navy Bureau of Ships entered into a contract with Todd Shipyards whereby “certain shipbuilding facilities owned by the Government” were “furnished for the use of [Todd Shipyards].” The government-owned equipment on Hooker Electrochemical Company’s property (leased to Todd Shipyards) included an incinerator, a nut and bolt salvage building, salvage bins, as well as catch basins and drainage lines.
2. Defense Plant Corporation leased a portion of Hooker Electrochemical Company’s Tacoma plant site and constructed Plancor 1560, an aluminum chloride plant, at the request of the War Production Board. The operation of this Plancor by Hooker Electrochemical Company was dependent on receiving chlorine, hydrogen and steam from the adjoining Hooker Electrochemical Company plant via pipelines. The Defense Plant Corporation was a subsidiary of the Reconstruction Finance Corporation (a Depression-era United States government corporation created to fund economic recovery). The current successor of Reconstruction Finance Corporation is the General Services Administration (GSA).

E. Hooker Electrochemical Company entered into a joint venture with Detrex Inc. in 1946, forming Hooker-Detrex Inc., to manufacture tetrachloroethylene (PCE) and trichloroethylene (TCE) at the Facility. In 1958 Hooker Electrochemical Company adopted the name Hooker Chemical Corporation. By 1968 Hooker Chemical Corporation was acquired by and became a subsidiary of Occidental Petroleum Corporation. Hooker Chemical Corporation continued as a wholly-owned subsidiary of Occidental Petroleum Corporation. Hooker Chemical Corporation changed its name to Occidental Chemical Corporation (OCC) in 1981.

F. OCC's predecessor ceased TCE/PCE manufacturing in May of 1973. However, the Facility continued to manufacture chlorine, caustic soda, muriatic acid, and calcium chloride. In 1979 the demolition of the PCE/TCE plant was initiated.

G. The Facility was transferred by Quit Claim Deed from OCC to Occidental Chemical Corporation Tacoma, Inc. (OCC Tacoma). OCC Tacoma "...assumed all of the liabilities and obligations of Occidental Chemical Corporation with respect to the Tacoma Plant [Facility], including the Joint Permit, as of February 1, 1997."

H. The Facility was then sold to Pioneer Chlor-Alkali Company, Inc. (Pioneer), a Delaware corporation, on June 17, 1997. OCC Tacoma retained ownership of the groundwater treatment plant; however, Pioneer employees operated the plant on OCC Tacoma's behalf.

I. By letter dated May 9, 2001, OCC Tacoma informed Ecology and EPA of a merger of OCC Tacoma, Inc., into its parent and sole stockholder, OCC. All of OCC Tacoma's obligations, including corrective action and continued operation of the groundwater treatment plant, were transferred to OCC on June 15, 2001.

J. On December 20, 2005, Pioneer (emerging from bankruptcy as Pioneer Americas, LLC) notified Ecology and EPA that Pioneer Americas, LLC was negotiating a sale of

the Facility to Mariana Properties, Inc., an affiliate of OCC. Pioneer Americas, LLC had already terminated the manufacturing of chlor-alkali and was operating the Facility solely for product storage and transfer operations. The final sale to Mariana Properties, Inc. occurred on January 5, 2006.

K. Glenn Springs Holdings, Inc., "...an affiliate of Occidental Chemical Corporation..." manages remediation projects for OCC in multiple states, including remediation of the Facility in Tacoma.

Findings of Fact Addressing Permit Status and Corrective Action

L. On November 17, 1980, a Part A permit application was submitted to EPA to operate a hazardous waste management facility under RCRA by OCC's predecessor for the Facility. An amended Part A permit application was submitted on August 12, 1982. EPA issued a letter dated April 17, 1985, acknowledging the submittal of both Part A applications. The EPA letter formally requested the submittal of a Part B application under the authority of 40 CFR 270.10(e)(4), which was submitted by OCC in October 1985.

M. In February 1988, EPA issued a RCRA Facility Assessment report identifying seventeen (17) solid waste management units (SWMUs) at the Facility.

N. On November 16, 1988, Ecology and EPA issued a joint permit for the storage of dangerous waste at the Facility. The permit authorized dangerous waste management in the following units without specific capacity limits:

1. Two railcar container storage units in areas referred to as TC-1, TC-2, and TC-3
Wastes authorized to be stored were chlorinated hydrocarbons/sulfuric acid mixture (waste codes K073, D002), decanted chlorinated hydrocarbons (K073), decanted sulfuric acid (D002, K073), and chlorinated hydrocarbons (K073).

2. One container drum storage unit authorized to store solid residues from closure and/or spill cleanup of chlorinated hydrocarbons (K073). Spent graphite electrode “blades and butts”, mastic, and dross (D008), and contaminated clothing (K073).
3. Graphite waste pile building containing spent graphite electrode “blades and butts”, mastic, and dross (D008).

O. Since 1979, corrective action was conducted with both Ecology and EPA oversight. In December 1979, a Phase I groundwater investigation was completed, and in August 1980 a Phase II groundwater investigation was completed. A Phase III investigation of chlorinated volatile organic compounds (CVOCs) in unsaturated soils was conducted in October 1980. Additional work completed from 1980 to 1988 included the completion of a groundwater quality report and proposed corrective action (December 1980), excavation and disposal off-site of 1850 cubic yards of soils containing CVOCs from the vadose zone in the former TCE/PCE plant area and from adjacent former lime settling ponds that served the plant, evaluation of monitoring data by Conestoga-Rovers & Associates (CRA), quarterly groundwater monitoring, multiple reports on the Hylebos Waterway sediment sampling, reports assessing groundwater treatment technologies, and compilation of a groundwater data base, with an addendum.

P. Corrective action, after the permit was issued, was covered by Section V of the permit entitled “Corrective Action for Past Practices”. The permit directed the continuation of investigations already underway. OCC submitted RCRA Facility Investigation I and II reports in July and October 1989, respectively.

Q. Closure of the permitted units was accomplished between 1990 and 1995. In May 1990 OCC closed permitted storage areas TC1 and TC3 as well as the graphite waste pile.

These units were certified by OCC to be clean closed, and Ecology approved the certifications in August of the same year. Between March of 1995 and August of 1995 OCC completed, and Ecology approved, the certified clean closure of the remaining permitted units.

R. Under the Dangerous Waste Permit, the corrective action to address soil and groundwater contamination between 1990 and 2005 consisted of the removal of 750 cubic yards of contaminated soils during construction of the groundwater treatment facility, submittal of a Corrective Action Plan and a Corrective Action Monitoring Plan, analysis of Preliminary Pumping Tests, construction and start-up of the groundwater treatment facility, and the start-up of groundwater extraction and injection systems. Beginning in 1996, OCC submitted quarterly monitoring event reports under a revised Corrective Action Plan and an updated Corrective Action Monitoring Plan, approved by EPA in October 1998. After the start-up of the extraction system, OCC also submitted Annual Data and Performance Evaluations. A “Compilation of Soils and Related Data” was submitted in January 1999. Annual “Investigation Progress Reports” were submitted by OCC beginning in December 2000.

S. In 2005, Ecology required OCC to submit a Corrective Measures Study work plan.

The work plan was submitted by OCC and approved by Ecology on February 1, 2005.

T. The last groundwater monitoring report under the Corrective Action Monitoring Plan was dated May 2009. Ecology formally suspended implementation of the Corrective Action Monitoring Plan in 2013 acknowledging that the plan would be revised when Ecology determined clear objectives for continued groundwater monitoring.

U. A Part B permit renewal application was received on May 20, 1998. The existing permit subsequently expired on November 16, 1998, but remained effective until April 29, 2005,

when a RCRA corrective action permit was issued incorporating by reference the Amended Agreement on Consent. The corrective action permit expired on April 29, 2015, and a new corrective action permit was issued incorporating Agreed Order DE 16943 dated December 31, 2019.

Facts Related to Contamination

V. OCC and its predecessors formerly owned and operated a chemical plant which continuously operated from 1928 until June 1997. At various times, the plant manufactured chlorine, sodium hydroxide, calcium chloride, muriatic acid, ammonia, ammonium hydroxide, trichloroethylene, tetrachloroethylene, sodium aluminate, and aluminum chloride. From approximately 1929 to 1970, effluents from chlorine production operations were discharged directly to the Hylebos Waterway through the main plant outfall. Wastes from the trichloroethylene and tetrachloroethylene production process were discharged to the Hylebos Waterway, disposed of at a deep-water disposal site, temporarily held in on-site settling ponds, or disposed of off-site. Due to past operating practices, soil and groundwater on and under portions of the Facility contain chlorinated organic compounds. Direct discharge of sludges and wastewaters as well as the soil and groundwater are potential sources of certain organic compounds detected in the Hylebos Waterway.

W. Todd Shipyards, via Todd Dry Dock & Construction Co., formerly owned and operated ship construction facilities which were active during World War I under the supervision of the United States Maritime Commission, the United States Navy, and/or other instrumentalities of the United States. The shipyard continued to exist after World War I and into the 1930s, but little is currently known about its activities. In 1939, Todd Shipyards under contract with the

United States Maritime Commission began construction of a shipyard at the end of the Hylebos/Blair Peninsula that during World War II occupied essentially all of the peninsula north of Eleventh Street, with the exception of the chemical plant located at 605 E. Alexander Avenue and a petroleum storage/distribution facility located at 709 E. Alexander Avenue. The shipyard operated from 1939 to 1946, and its operations were supervised and controlled by instrumentalities of the United States. The North Ten Acres at 605 E. Alexander Avenue were used by Todd Shipyards and the United States for a variety of shipyard activities, including: a “scrap disposal yard,” waste incineration, vehicle maintenance (including a 2000 gallon fuel tank on the shoreline), and a sewer system that discharged to the Hylebos Waterway. Shipyard wastes were dumped on the uplands and on the shoreline of the North Ten Acres and partially pushed into the Hylebos Waterway, forming the Navy/Todd Dump. Following World War II, the United States Navy used most of the Mouth of the Hylebos Waterway area and adjacent upland properties (then called the Naval Station Tacoma) for mothballing, berthing, maintaining, and/or dismantling Navy ships. The Port of Tacoma purchased most of the Naval Station Tacoma properties from the United States in 1960, and has since leased portions of the properties to many businesses, including several ship-related businesses. Operations at 401 E. Alexander Avenue (north of, and adjacent to, 605 E. Alexander Avenue), previously known as the Port Industrial Yard and now known as the Earley Business Center, have included ship dismantling by Zidell Dismantling (1960 to 1984), ship construction by Tacoma Boatbuilding (1969 to 1987), ship construction by AK-WA Shipbuilding (1986 to 1997), and ship-related operations of the United States Army Reserve. Other operations in the vicinity of the Property (south of, and adjacent to, 709 E. Alexander Avenue) have included United States Air Force petroleum storage/distribution facilities and the United States Naval and Marine Corps Reserve homeport for vessels. Due to

past operating practices associated with the activities described above, soil and groundwater on and under portions of the Facility contain various hazardous substances. Direct discharge of wastes as well as the soil and groundwater are potential sources of hazardous substances detected in the Hylebos Waterway.

X. Under a Cooperative Agreement with EPA, Ecology conducted a RI/FS of the CB/NT Superfund Site. Within the Tideflats area of the CB/NT Superfund Site, the RI/FS evaluated the nature and extent of contamination in the Sitcum, Blair, Milwaukee, Hylebos, St. Paul, Middle, Thea Foss (formerly known as City), and Wheeler-Osgood Waterways. The final RI/FS was made available for public comment in February 1989. Several chemicals were detected in the Mouth of the Hylebos Waterway sediments, including, but not limited to, polychlorinated biphenyls (PCBs), hexachlorobenzene, trichloroethane, tetrachloroethane, 1,2-dichlorobenzene, 1,3-dichlorobenzene, hexachlorobutadiene, and lead. On September 29, 1989, EPA issued a Record of Decision (ROD) that selected the remedy for remediation of sediments for Operable Unit 1 (Mouth of the Hylebos and Head of the Hylebos) and sources of contamination (Operable Unit 05) in the CB/NT Superfund Site. PCBs and hexachlorobenzene, were selected as chemical indicators of biological effects and human health risks at the Mouth of the Hylebos Waterway because these chemicals were found at the highest concentrations over the greatest area.

1. The ROD also determined that natural recovery will not sufficiently reduce contaminant concentrations in some areas of the Mouth of the Hylebos Waterway within the ten (10) year period, so the ROD required active sediment cleanup with one (1) of the four (4) technology options as a component of the remedy.
2. OCC, along with five other companies or entities, performed pre-remedial design activities pursuant to the ROD on the Hylebos Waterway under an Administrative Order

on Consent dated November 25, 1993.

Y. During pre-remedial design activities, organic compounds were detected in sediment adjacent to the Property and in the vicinity of where barges were used for sludge dewatering. This area was identified as Area 5106, and characterized as having relatively high concentrations of trichloroethylene, tetrachloroethylene, vinyl chloride, hexachlorobenzene, and hexachlorobutadiene above the sediment quality criteria.

Z. An investigation into the embankment area of the Facility, between +18 feet mean lower low water level (MLLW) and 0 feet MLLW, found concentrations of contaminants significantly above the sediment quality objectives, including: DDE, a pesticide, DDT, PCBs, and semi-volatile organic compounds. Intertidal sampling conducted as part of the pre-remedial design studies also identified chemicals in the intertidal area similar in composition and concentration and on the adjacent PRI Northwest embankment.

AA. On November 6, 1997, EPA and OCC entered into an Administrative Order on Consent (AOC) in EPA Docket No. 10- 97-0011-CERCLA to conduct removal actions to abate an imminent and substantial endangerment to the public health, welfare, or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Facility.

BB. On February 2, 2005, the 1997 AOC was amended (Amended AOC) to add Ecology as a party, to require compliance with CERCLA, MTCA and RCRA, and to conduct additional site characterization for both upland areas and beneath the Hylebos Waterway to determine the nature and extent of soil, groundwater, surface water, and sediment contamination; develop feasible alternatives to address the remaining contamination of all media; and develop an

integrated remedy or set of remedies to be selected and designed to satisfy both EPA and Ecology's statutory requirements.

CC. The tasks required by the Amended AOC Statement of Work, the current status of each task, and each task's approval date for final products through December 31, 2019, were listed in Exhibit C to Agreed Order No. DE 16943 as "Table 1, Status of SOW Deliverables, Groundwater and Sediment Remediation as of December 31, 2019." The list also includes tasks performed by OCC under Ecology and EPA oversight in addition to those specified in the Amended AOC Statement of Work.

DD. According to the draft Site Characterization Report, submitted to Ecology and EPA on August 14, 2015, that included all RI data and the final Conceptual Site Model, approved by Ecology and EPA on April 16, 2014, hazardous substances continue to be released from sources at the Facility into the environment including the Hylebos Waterway, shallow groundwater beneath and beyond the Facility and Commencement Bay, and buildings at the Port of Tacoma "Port Industrial Yard". The draft Site Characterization Report was conditionally approved by Ecology and EPA via letter dated October 11, 2016.

EE. The FS Report was submitted to Ecology for review, revised, open for public comment on January 27, 2017, and closed to public comment on June 26, 2017. The FS Report was amended by Ecology in response to the comments and approved as amended by letter dated November 6, 2018. EPA was given the opportunity for review and comment, pursuant to the Amended AOC.

FF. The Amended AOC was further amended by OCC, EPA, and Ecology (Second Amended AOC), in part to terminate the Amended AOC and to remove Ecology as a party. The

Second Amended AOC was signed by OCC on December 19, 2019, by Ecology on January 6, 2020, and by EPA on January 24, 2020.

Facts Related to Contamination at 709 E. Alexander Avenue

GG. From 1979 to 1983 the following spills were documented at the 709 E. Alexander Avenue property:

- a. 1979 - Gasoline spill, 69 gallons.
- b. 1981 - Safety-Kleen (aliphatic solvent) spill, quantity unspecified.
- c. 1981 - Product spills from leaky valves noted, quantity unspecified.
- d. 1983 - Diesel fuel spill, 300 gallons, seeped into ground, did not enter Hylebos Waterway over land.

HH. In 1989, Ecology and Environment, Inc., under contract with EPA, performed a file review and inspection of 709 E. Alexander Avenue. Chemical constituents detected in soil and groundwater samples included: Chlorinated hydrocarbons such as tetrachloroethylene (PCE), trichloroethylene (TCE), chloroform; semi-volatile compounds such as hexachlorobutadiene; and metals such as arsenic, chromium, copper, lead, nickel, and zinc. Only arsenic and nickel were detected as dissolved constituents in more than one groundwater sample. Some soil samples contained petroleum hydrocarbons dominated by diesel-range or heavier hydrocarbons, and semi-volatile compounds.

II. The source of the non-petroleum chemical constituents in the soil, ground water, and seep samples were identified as backfill debris containing graphite anodes and white fibrous sludge-like material similar in appearance to waste historically derived from industrial processes at the OCC property (605 E. Alexander Avenue). The vertical extent of backfill debris varies from 9 to 13 feet below grade with an average depth of 11 feet. The horizontal extent of backfill debris is

approximately 210 feet with an average width of 105 feet. The depth to ground water below the ground surface is approximately 9 feet at the contaminated areas; therefore, the backfill debris is in direct contact with the groundwater. The approximate in-place volume of the backfill debris is 9,000 cubic yards, of which approximately 2,000 cubic yards consist of white fibrous sludge-like material, graphite anodes, other industrial debris such as rubber, metal, and ceramic fragments, and concrete debris. The remaining is silty fill material.

JJ. In May 1995, Ecology drafted an Agreed Order for the 709 E. Alexander Avenue property to support the source control program being implemented by EPA in Commencement Bay to eliminate or reduce the hazardous substance release into the Hylebos Waterway. Ecology faxed copies of the Agreed Order, and the Cleanup Action Plan, to PRI for their comments/signature. As of August 1995, Ecology received no response. This caused delays in implementing the site cleanup at 709 E. Alexander Avenue, which led Ecology to issue an Enforcement Order No. DE 95TC- S242 jointly to PRI, OCC, and F.O. Fletcher, Inc. for completing the site cleanup at 709 E. Alexander Avenue on September 1, 1995.

II KK. Section 10 of the Amended AOC held in abeyance the 1995 Enforcement Order pending the implementation of a Consent Decree or Agreed Order implementing the selected remedies for the Property.

LL. The petroleum contamination located at 709 E. Alexander Avenue and at other real properties located at 901 and 1001 E. Alexander Avenue (previously known as 721 E. Alexander Avenue) is addressed in a separate October 3, 2013, Agreed Order No. DE 9835 entered between Ecology, Mariana Properties, Inc., and the Port of Tacoma. Ecology's findings of fact regarding the history of land use, property ownership, and contamination at those real properties are set forth in Agreed Order No. DE 9835.

VI. ECOLOGY DETERMINATIONS

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

- A. PLPs are persons within the meaning of RCW 70A.305.020(24).
- B. OCC is the past owner and operator of a Dangerous Waste Management Facility that received a final facility permit, subject to RCRA, 42 U.S.C. §§ 6924 and 6925, and regulations promulgated thereunder, including authorized state regulations in WAC 173-303. OCC is also a past “owner or operator” as defined by RCW 70A.305.020(22) of a “facility” as defined by RCW 70A.305.020(8).
- C. Glenn Springs Holdings, Inc. is the current operator of the groundwater treatment plant.
- D. Mariana Properties, Inc. is the current owner of the Facility.
- E. Certain waste and constituents found at the Facility are dangerous wastes and/or dangerous constituents as defined by WAC 173-303 and in Section IV (Definitions) of this Order.
- F. These dangerous wastes and dangerous constituents are considered hazardous substances within the meaning of RCW 70A.305.020(13).
- G. Based on the Findings of Fact and the administrative record, Ecology has determined that release(s) and potential release(s) of hazardous substances at and/or from the Facility present a potential threat to human health and the environment.
- H. Based on credible evidence, Ecology issued a PLP status letter to OCC dated August 27, 1988, for the Facility and Property located at 605 E. Alexander Avenue, pursuant to RCW 70A.305.040, .020(26), and WAC 173-340-500. By letter dated August 28, 1998, OCC

voluntarily waived its rights to notice and comment and accepted Ecology's determination that OCC is a PLP under RCW 70.105D.040. On September 23, 1994, Ecology issued a PLP status letter to OCC for the Property located at 709 E. Alexander Avenue. By letter OCC voluntarily waived its rights to notice and comment, and accepted Ecology's determination that OCC is a PLP under RCW 70.105D.040.

Based on credible evidence, Ecology issued a PLP status letter to Mariana Properties, Inc. dated June 8, 2015, and to Glenn Springs Holdings, Inc. also dated June 8, 2015, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. In separate letters, both dated July 17, 2015, Glenn Springs Holdings, Inc. and Mariana Properties, Inc. voluntarily waived its rights to notice and comment and accepted Ecology's determination that they are PLPs under RCW 70.105D.040.

Based on credible evidence, Ecology issued a PLP status letter to Mariana Properties, Inc., for the Property at 709 E. Alexander Avenue, Pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. In a letter dated April 4, 2013. Mariana Properties, Inc. voluntarily waived its rights to notice and comment and accepted Ecology's determination that it is a PLP under RCW 70.105D.040.

G. This Order does not and is not intended to address the petroleum contamination located on the 709 E. Alexander Avenue Property and on real property located at 901 and 1001 E. Alexander Avenue (previously known as 721 E. Alexander Avenue). That is covered in the October 3, 2013, Agreed Order No. DE 9835 among Ecology, Mariana Properties, Inc., and the Port of Tacoma.

H. Pursuant to RCW 70A.305.030(1) and .050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of

hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

VII. WORK TO BE PERFORMED

A. Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that PLPs take the following remedial actions at the Facility. The area within the Facility where remedial action is necessary under RCW 70A.305 is described in the Remedial Action Location Diagram (Exhibit A). These remedial actions must be conducted in accordance with WAC 173-340.

B. PLPs will implement the Cleanup Action Plan (Exhibit B) and remedial actions set forth in the Scope of Work (Exhibit C).

C. If PLPs learn of a significant change in conditions at the Facility, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in soil, groundwater, surface water, air, and/or sediment, 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.

D. 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. PLPs shall submit all Progress Reports by the tenth (10th) day of the month in which they are due after the effective date of this Order. Unless otherwise specified by Ecology, PLPs shall send Progress Reports and any other documents submitted pursuant to this Order by certified mail, return

receipt requested, to Ecology's project coordinator. The Progress Reports shall include the following:

1. A list of activities that have taken place at the Facility during the 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 Cleanup Action Plan (Exhibit B) or Scope of Work and Schedule (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.
- E. As detailed in the Cleanup Action Plan, institutional controls are required at the Facility. Environmental (Restrictive) Covenants will be used to implement the institutional controls.
1. In consultation with PLPs, 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 Facility as agreed to by Ecology and PLPs.

2. After approval by Ecology, PLPs shall record the Environmental (Restrictive) Covenant for affected properties it owns with the office of the Pierce County Auditor as detailed in the Schedule (Exhibit C). PLPs shall provide Ecology with the original recorded Environmental (Restrictive) Covenants within thirty (30) days of the recording date.

F. Financial assurance for corrective action is required by WAC 173-303-64620. Ecology's Financial Assurance Officer shall determine when PLPs 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: 360-485-5992
Fax: 360-407-6715
Email: joar461@ecy.wa.gov

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

H. PLPs shall notify Ecology's project coordinator in writing of any newly-identified SWMU(s), newly-discovered release(s) from known SWMU(s), and newly-discovered AOCs at the Facility no later than 5 calendar days after discovery, and shall investigate and report on these areas as directed by Ecology's project coordinator. If required, the investigation (assessment) and reporting shall be done in accordance with attached Exhibit C.

I. If Ecology determines that PLPs have failed to make sufficient progress or failed to implement the 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 PLPs, or an opportunity for dispute resolution. 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 remedial actions at the Facility outside those remedial actions required by this Order to address the contamination that is the subject of this Order, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section VIII.J. (Amendment of Order). In the event of an emergency, or where actions are taken as required by law, 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

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 Facility 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, 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:

Kerry Graber
Southwest Regional Office
P.O. Box 47600
300 Desmond Drive SE
Lacey, WA 98504-7600
360-407-6300
Kerry.graber@ecy.wa.gov

The project coordinator for PLPs is:

Clinton Babcock
Glenn Springs Holdings, Inc.
7601 Old Channel Trail
Montague, MI 49437
972-687-7506
Clint_babcock@oxy.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 Facility. To the maximum extent possible, communications between Ecology and 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 and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist licensed by the state of Washington or under the direct supervision of an engineer registered by the state of Washington, except as otherwise provided for by RCW 18.43 and 18.220.

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

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

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

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 Facility.

D. Access

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Facility that PLPs either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing 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 PLPs. PLPs shall make all reasonable efforts to secure access rights for those properties within the Facility not owned or controlled by 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 Facility property owned or controlled by PLPs unless an emergency prevents such notice. All persons who access the Facility pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Facility property access.

E. Sampling, Data Submittal, and Availability

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

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

RCW 70A.305.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing this public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that this Order is inadequate or improper in any respect.

Ecology shall maintain the responsibility for public participation at the Facility. However, PLPs shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop an appropriate mailing list, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before meetings related to remedial action work to be performed at the Facility with the interested public and/or local governments. Likewise, Ecology shall notify PLPs prior to the issuance of all press releases and fact sheets, and before meetings related to the Facility with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by PLPs that do not receive prior Ecology approval, PLPs shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

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

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

a. Department of Ecology
Southwest Regional Office
300 Desmond Drive SE
Lacey, WA 98503 360-407-6300

b. Communities for a Healthy Bay
535 Dock Street, Suite 213
Tacoma, WA 98402 253-383-2429

c. Mary Rose Kobetich Library
212 Browns Point Blvd NE
Tacoma, WA 98422 253-280-2920

d. University of Washington Tacoma Library
Tioga Library Building, Box 358460
1900 Commerce Street TLB 2008
Tacoma, WA 98502 253.692.4657

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Facility shall be maintained by Ecology in the repository at Ecology's Southwest Regional Office in Lacey, 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, PLPs shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and

subcontractors. Upon request of Ecology, 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 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 PLPs withholds any requested records based on an assertion of privilege, PLPs shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Facility-related data collected pursuant to this Order shall be considered privileged.

H. Resolution of Disputes

1. In the event that 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), 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 regard to the dispute; and the extent of resolution reached by informal discussion.

c. PLPs may then request regional management review of the dispute. PLPs must submit this request (Formal Dispute Notice) in writing to the Southwest Region Hazardous Waste and Toxics Reduction Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written

statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

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

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

4. In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section VII.E (Work to be Performed) or initiating enforcement under Section X (Enforcement).

I. Extension of Schedule

1. A request for an extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion prior to the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended;
- b. The length of the extension sought;
- c. The reason(s) for the extension; and

- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on 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 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 PLPs.

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

- 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 PLPs.

3. Ecology shall act upon any PLP's written request for extension in a timely fashion. Ecology shall give 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 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:

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

- b. Other circumstances deemed exceptional or extraordinary by Ecology; or

- c. Endangerment as described in Section VIII.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 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, 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 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 PLPs to cease such activities for such period of time as it deems necessary to abate the danger. PLPs shall immediately comply with such direction.

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

If Ecology concurs with or orders a work stoppage pursuant to this section 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 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 PLPs regarding remedial actions required by this Order, provided 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 Facility should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss

of natural resources resulting from the release or threatened release of hazardous substances at the Facility.

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

M. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Facility shall be consummated by 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 PLPs' transfer of any interest in all or any portion of the Facility, and during the effective period of this Order, 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, PLPs shall notify Ecology of said transfer. Upon transfer of any interest, 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 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. 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 D. 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 PLPs, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and PLPs must implement those requirements.

2. *Relevant and Appropriate Requirements.* All actions carried out by 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 PLPs, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and PLPs must implement those requirements.

3. Pursuant to RCW 70A.305.090(1), 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, 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. 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 PLPs determine 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 PLPs shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, 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 PLPs and on how PLPs must meet those requirements. Ecology shall inform PLPs in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. 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.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 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. Periodic Review

So long as remedial action continues at the Facility, the Parties agree to review the progress of remedial action at the Facility, and to review the data accumulated as a result of monitoring the Facility as often as is necessary and appropriate under the circumstances. At least every five (5) years after the initiation of cleanup action at the Facility, the Parties shall meet to discuss 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, PLPs 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.

P. Indemnification

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 (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions of PLPs, its officers, employees, agents, or contractors in entering into and implementing this Order. However, 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 PLPs' receipt of written notification from Ecology that PLPs have completed the corrective actions required by this Order, as amended by any modifications, and that PLPs have complied with all other provisions of this 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 Facility.

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

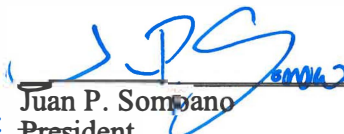
1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and

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

D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70A.305.070.

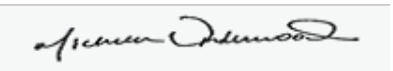
Effective date of this Order: 12/12/2023

Occidental Chemical Corporation




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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



Michelle Underwood
Section Manager
Hazardous Waste and Toxics Reduction
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Glenn Springs Holdings, Inc.



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5 Greenway Plaza, Suite 110
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Mariana Properties, Inc.



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