

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

The Port of Everett

AGREED ORDER

No. DE 22405

TO: Port of Everett
Attention: Lisa Lefeber
P.O. Box 538
Everett, WA 98206

TABLE OF CONTENTS

I. INTRODUCTION2

II. JURISDICTION2

III. PARTIES BOUND.....2

IV. DEFINITIONS2

V. FINDINGS OF FACT3

VI. ECOLOGY DETERMINATIONS8

VII. WORK TO BE PERFORMED.....9

VIII. TERMS AND CONDITIONS11

 A. Payment of Remedial Action Costs11

 B. Designated Project Coordinators.....12

 C. Performance13

 D. Access13

 E. Sampling, Data Submittal, and Availability14

 F. Public Participation14

 G. Access to Information16

 H. Retention of Records.....16

 I. Resolution of Disputes17

 J. Extension of Schedule.....18

 K. Amendment of Order19

 L. Endangerment.....20

 M. Reservation of Rights21

 N. Transfer of Interest in Property21

 O. Compliance with Applicable Laws22

 P. Indemnification24

IX. SATISFACTION OF ORDER24

X. ENFORCEMENT24

EXHIBIT A	Site Location Information
EXHIBIT B	Interim Action Plan and Schedule

Agreed Order No. DE 22405

Page 2 of 25

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the Port of Everett (Port) 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 Port to perform an interim remedial action at a facility where there has been a release or threatened release of hazardous substances. The facility is known as the Weyerhaeuser Mill A Site (Site). Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This 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, 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 Port agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the Port's responsibility under this Order. The Port shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in RCW 70A.305, WAC 173-204 and WAC 173-340 shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as the Weyerhaeuser Mill A Site. 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

Agreed Order No. DE 22405

Page 3 of 25

located in the vicinity of Port's marine terminal area between Pier 1 and Pigeon Creek Road off Terminal Avenue, Everett, Washington as shown in the Location Diagram (Exhibit A).

B. Parties: Refers to the State of Washington, Department of Ecology and the Port of Everett.

C. Potentially Liable Persons (PLP(s)): Refers to the Port of Everett and Weyerhaeuser Company (Weyerhaeuser).

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.

E. 2012 Order: Refers to Agreed Order No. 8979, entered in 2012 by Ecology, the Port, Weyerhaeuser, and DNR.

F. 2016 Order: Refers to Agreed Order No. 13119, entered in 2016 by Ecology, the Port and Weyerhaeuser.

G. Upland Area: Refers to areas of the Site that fall outside the In-Water Area, as generally depicted in Exhibit A.

H. In-Water Area: Refers to the intertidal (areas exposed to air at low tide) and subtidal (areas always covered by water) parts of the Site associated with adjacent marine waters, as generally depicted in Exhibit A. This area contains both privately owned tidelands and State owned aquatic lands.

I. Port Management Agreement (PMA): Refers to the agreement made on September 1, 2002 in which DNR delegated to the Port the management of "State-owned aquatic lands". The PMA is effective until August 31, 2032. RCW 79.105.420 authorizes DNR and the port district, upon request of a port district, to enter into an agreement to manage "State-owned aquatic lands" that front property owned or controlled by the port district.

V. FINDINGS OF FACT

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

Agreed Order No. DE 22405

Page 4 of 25

A. Based upon factors currently known to Ecology, the Site is generally located at the Port's south marine terminal area between Pacific Terminal and Pigeon Creek Road off Terminal Avenue, Everett, Snohomish County, Washington. The Site location is depicted in the diagrams attached to this Agreed Order as Exhibit A. The Site is listed on Ecology's Hazardous Sites List as "Weyerhaeuser Mill A." The Facility Site ID No. is 1884322 and the Cleanup Site ID No. is 2146.

B. The Port is an owner and an operator at the Site, and has owned the Site continuously since 1983.

C. DNR is the manager of the State-owned aquatic lands under constitutional and statutory mandates. Title 79 RCW authorizes DNR to lease state-owned aquatic lands.

D. Information in this paragraph provides a summary of the historical operations at the Site. A more extensive history will be provided as part of the Remedial Investigation produced pursuant to Order DE 8979. Portions of the Site were first developed around 1896 with the construction of the Bell-Nelson sawmill. Other portions of the Site were developed shortly thereafter with a shingle mill, shipyards, and a wire and steel company. In 1901, Weyerhaeuser purchased the Bell-Nelson sawmill. Between 1904 and 1914 Weyerhaeuser purchased the shingle mill and shipyards at the Site, and had expanded its sawmill operations to cover those properties. In 1926, Weyerhaeuser completed its acquisitions at the Site by buying a lumber mill that was located on the old wire and steel company property. Weyerhaeuser continued lumber production on the Site until around 1933, when it closed and dismantled the lumber mill. In 1936, Weyerhaeuser constructed an unbleached sulfite pulp mill (known as Mill A) on the Site, and in 1941 added simple bleaching facilities to the mill. In 1975, Weyerhaeuser converted the mill from a sulfite to a thermomechanical pulping process. Pulping operations at the Site ceased in 1980 and all process buildings, as well as most of the other buildings, were demolished around this time. The Port purchased the property in late 1983 and, in 1987, developed the property for use as a log yard. Log handling operations were performed there until around the mid-2000s. The Site is currently being used as a break bulk and container cargo terminal and is mostly paved.

Agreed Order No. DE 22405

Page 5 of 25

E. Weyerhaeuser leased from the State harbor areas fronting the mill for wharves, docks, and other aids to navigation from 1924 to 1984, at which time the leases were assigned to the Port. In 1984, the Port applied to DNR for a PMA pursuant to Ch. 221, Session Laws 1984, and in 2002 the State and the Port entered into a PMA.

F. While Weyerhaeuser operated the sulfite pulp mill, the Weyerhaeuser Mill A facility produced about 300 tons of pulp per day. The pulp was produced by digesting wood chips in a calcium sulfite solution. To produce the cooking liquor, elemental sulfur was burned and the resulting sulfur dioxide absorbed into a lime solution. The pulp was subsequently bleached with a chlorine solution. The thermomechanical pulping process, which began in 1975, manufactured pulp without the use of chemicals. However, the same bleaching process was used as with the sulfite process. These processes were located on privately owned land.

G. Prior to 1951, discharges from the Site included: untreated wastewater from washing, bleaching, and drying processes (Outfalls WT002 and WT003); stormwater runoff and wastewater from limestone cleaning operations including surface drainage from what is known as Mill A Creek (Outfall WT004); and stormwater runoff from other areas of the mill including hydraulic barker effluent (Outfall WT006). Mill A Creek is located on the eastern portion of the property. In addition to normal surface runoff, Mill A Creek reportedly received wastes from various washdown and cleanup operations and from spillages. It was reported in 1949 that approximately 25 million gallons of waste water per day were discharged through Outfalls WT002 and WT003 located between two of the mill's piers. One of these outfalls handled about 12 million gallons of diluted sulfite waste liquor while the other discharged the wastes from the bleaching process. These outfalls were located on privately owned land.

H. On April 6, 1951, the Soundview Pulp Company (predecessor to Scott Paper Company and Kimberly-Clark [K-C]) and Weyerhaeuser placed in operation an underwater disposal line (i.e., deep water diffuser) capable of dispersing 22 million gallons daily of concentrated digester liquor and wash waters. The deep water outfall (i.e., Outfall SW001) extended about 3,000 feet offshore; the terminal one third was a multiple-port diffuser that

Agreed Order No. DE 22405

Page 6 of 25

discharged in depths from about 300 to 340 feet. Analysis of sediment sampling data collected in 2004 and 2008 indicates that there have been no recent exceedances of contaminants above SMS cleanup levels in the same general area of historic outfall diffuser SW001. Therefore, this deep water diffuser area is not included within the Site.

I. In 1973, it was reported that over 14 million gallons per day of industrial wastes were discharged from Mill A to the waters of Port Gardner through three different outfalls (i.e., WT002, WT003, and WT004) as presented below.

- WT002 and WT003 – A total of about 14 million gallons per day were discharged through Outfalls WT002 and WT003. Wastes discharged at these locations include the salt water used for cooling, wastes from the bleach plant and acid plant, and from the hydraulic log barker.
- WT004 – Outfall WT004 handled surface drainage from what is known as Mill A Creek. Discharges from the creek ranged from 0.5 to 1 million gallons per day as reported in 1973. In 1975, a layer of pulp ½ to 1 inch thick was observed in the beach area around Outfall WT004.

J. In 1975, Outfalls WT002 and WT003 were reportedly sealed and abandoned. After 1975, Outfalls WT004 and WT006 were reportedly used only for stormwater discharge.

K. During sediment investigations conducted in 1992 as part of the Port's Marine Terminal Improvement Program, a deposit of sawdust was found adjacent to the former Mill A facility. The historical operations of sawmill and pulp facilities at the Site resulted in the deposition of sawdust, wood chips, and rafting debris over native sediments in the in-water area at the Site. This deposit is located in the vicinity of the former cargo dock adjacent to the west bulkhead of the former Mill A facility.

L. In accordance with a final Cleanup Action Decision issued by Ecology in September 1996 and two suitability determinations issued by Ecology, and the Corps of Engineers and the United States Environmental Protection Agency in 1994 and 1996, the Port remediated contaminated sediment in the berthing areas of Piers 1 and 3. These areas were listed on Ecology's Contaminated Sediment Site List published in 1996. The project included dredging contaminated sediment and creating a confined disposal facility in the historic log pond area, now known as the

Agreed Order No. DE 22405

Page 7 of 25

Pacific Terminal. The Port performed the work in accordance with the final Cleanup Action Decision. In 2008, following 10 years of post-construction monitoring at the confined disposal facility, Ecology issued a No Further Action Letter to the Port's environmental consultant for the project.

M. Past environmental investigations at the Site (prior to 2010) have documented the presence of hazardous substances in various media including soil, groundwater, and marine sediments. Compounds identified in these investigations as exceeding published MTCA cleanup levels and/or Sediment Management Standards (SMS) for Puget Sound Marine sediments (WAC chapter 173-204) include:

- **Soil** – Carcinogenic polycyclic aromatic hydrocarbons (cPAHs), naphthalene, and total petroleum hydrocarbons in the gasoline range (TPH-Gasoline).
- **Groundwater** – Metals, cPAHs, TPH-Gasoline, bis(2-ethylhexyl)phthalate, and carbazole.
- **Sediment** – Metals, polychlorinated biphenyls (PCBs), PAHs, other semi-volatile organic compounds (SVOCs), and dioxins/furans. Exceedances of SMS biological standards have also been documented (WAC 173-204-520(3)).

N. In 2012, Ecology and the Port, Weyerhaeuser Company, and Washington State Department of Natural Resources entered into the 2012 Order for the purpose of conducting a Remedial Investigation and Feasibility Study (RI/FS) and developing a draft (dCAP) for the Site. With the exception of carbazole in groundwater, the RI investigation to date has confirmed the presence of the contaminants identified in media associated with prior investigations (*see* Section V.M above). In addition, dioxins/furans, metals, PCBs, and TPH-Diesel/Oil in upland soil exceeded preliminary screening levels (PSLs) identified in the RI. Additional contaminants exceeding PSLs in the groundwater as part of the RI include sulfides, ammonia, PCBs, and TPH-Diesel/Oil.

O. In April 2016, Ecology, the Port, and Weyerhaeuser Company entered into the 2016 Order that required the Port and Weyerhaeuser to perform an interim action in the Site's In-Water Area. The interim action, located adjacent to the Pacific Terminal, was completed in February

Agreed Order No. DE 22405

Page 8 of 25

2017. Long-term confirmation monitoring for the interim action will be conducted after the final remedial action has been implemented at the Site.

P. In July 2019, Ecology made a minor of modification to the 2012 Order, in which Ecology broke up the completion of the RI/FS into two phases. As part of the phased approach, a separate RI/FS report and draft cleanup action plan (dCAP) will be prepared for the In-Water and Upland areas of the Site.

VI. ECOLOGY DETERMINATIONS

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

A. The Port is an “owner or operator” 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), (13), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to the Port dated June 21, 2011, pursuant to RCW 70A.305.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that the Port is a PLP under RCW 70A.305.040 and notified the Port of this determination by letter dated July 28, 2011.

D. Pursuant to RCW 70A.305.030(1), .050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

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

Agreed Order No. DE 22405

Page 9 of 25

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. Based on information developed in the RI/FS the remedy for the Marine Area is likely to permanently block a portion of the Site's existing stormwater system. Additionally, pursuant to WAC 173-204 any remedy for the Marine Area must include actions to control possible sources that could lead to recontamination. The interim action described in Section VII will control possible sources that could lead to recontamination, is technically necessary to enable the Marine Area remedies and will cost substantially more to implement if delayed. Based on these circumstances, Ecology has determined that an interim action is warranted under WAC 173-340-430.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the Port take the following remedial actions at the Site. These remedial actions must be conducted in accordance with WAC 173-340 and 173-204:

A. The existing stormwater collection and treatment system in the Upland Area will be reconfigured and upgraded as described in the Interim Action Plan and Schedule (**Exhibit B**). Work will include permanently sealing a stormwater outfall located north of the South Terminal wharf, redirecting stormwater from that outfall to the treatment area on the east side of the Upland Area, and upgrading technology employed in the treatment area.

B. If the Port learns of a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in any media, the Port, 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.

C. The Port shall submit to Ecology written monthly Progress Reports that describe the actions taken during the previous month to implement the requirements of this Order. All

Agreed Order No. DE 22405

Page 10 of 25

Progress Reports shall be submitted by the fifteenth (15th) day of the month in which they are due after the effective date of this Order. Unless otherwise specified by Ecology, Progress Reports and any other documents submitted pursuant to this Order shall be sent by certified mail, return receipt requested, to Ecology's project coordinator. The Progress Reports shall include the following:

1. A list of on-site activities that have taken place during the month.
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 Interim Action Plan and Schedule (Exhibit B) during the current month and any planned deviations in the upcoming month.
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 month.

D. All plans or other deliverables submitted by the Port for Ecology's review and approval under the Interim Action Plan and Schedule described in Exhibit B shall, upon Ecology's approval, become integral and enforceable parts of this Order. The Port shall take any action required by such deliverable.

E. Any Party may propose an additional interim action under this Order. If the Parties are in agreement concerning the additional interim action, the Port shall prepare and submit to Ecology an Interim Action 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 Interim Action Plan in accordance with WAC 173-340-600(16). The Port shall not conduct the interim action until Ecology approves the Interim Action Plan. Upon approval by Ecology, the Interim Action Plan becomes an integral and enforceable part of this Order, and the Port is required to conduct the

Agreed Order No. DE 22405

Page 11 of 25

interim action in accordance with the approved Interim Action Plan. Ecology reserves its authority to require additional interim action(s) under a separate order or other enforcement action under RCW 70A.305, or to undertake the interim action(s) itself.

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

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

Agreed Order No. DE 22405

Page 12 of 25

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:

Ryan Hardwick
Toxics Cleanup Program
PO Box 47600,
Olympia, WA 98504
Phone: 360-280-3895
E-Mail: ryan.hardwick@ecy.wa.gov

The project coordinator for the Port is:

Erik Gerking
Port of Everett
PO Box 538
Everett, WA 98206
Phone: 425-259-3164
E-Mail: erikg@portofeverett.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 Port, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project 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.

Agreed Order No. DE 22405

Page 13 of 25

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, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

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

D. Access

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that the Port 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 the Port's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the Port.

Agreed Order No. DE 22405

Page 14 of 25

Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the Port 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 Port 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, the Port shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the Port pursuant to implementation of this Order. The Port shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the Port 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.D (Access), Ecology shall notify the Port 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 at the Site. However, the Port shall cooperate with Ecology, and shall:

Agreed Order No. DE 22405

Page 15 of 25

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, 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 Port prior to the issuance of all press releases and fact sheets related to the Site, and before meetings related to the Site with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the Port that do not receive prior Ecology approval, the Port shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

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

4. When requested by Ecology, arrange and maintain a repository to be located at:

- a. Everett Public Library
2702 Hoyt Ave
Everett, WA 98201

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 Headquarter in Lacey, Washington.

Agreed Order No. DE 22405

Page 16 of 25

G. Access to Information

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

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

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

H. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of the work performed pursuant to this Order, the Port shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert

Agreed Order No. DE 22405

Page 17 of 25

a similar record retention requirement into all contracts with project contractors and subcontractors.

I. Resolution of Disputes

1. In the event that the Port elects to invoke dispute resolution the Port 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 Port has 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 fourteen (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 Port's 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 Port may then request regional management review of the dispute. the Port must submit this request (Formal Dispute Notice) in writing to the Headquarters Land and Aquatic Lands Cleanup Section 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 Port'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 endeavor to issue a written decision regarding the dispute (Decision on Dispute) within

Agreed Order No. DE 22405

Page 18 of 25

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.I (Work to be Performed) or initiating enforcement under Section X (Enforcement).

J. Extension of Schedule

1. The Port's 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 Port 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 Port including delays caused by unrelated third parties or Ecology, such as (but not

Agreed Order No. DE 22405

Page 19 of 25

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

b. A shelter in place or work stoppage mandated by state or local government order due to public health and safety emergencies.

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

d. 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 Port.

3. Ecology shall act upon the Port's written request for extension in a timely fashion. Ecology shall give the Port 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 Port's 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).

K. 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

Agreed Order No. DE 22405

Page 20 of 25

formally amended by the written consent of both Ecology and the Port. 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 Port 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).

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

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

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

Agreed Order No. DE 22405

Page 21 of 25

(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.

M. 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 Port 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 Port regarding remedial actions required by this Order, provided the Port complies with this Order.

Ecology nevertheless reserves its rights under RCW70A.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 Port does not admit to any liability for the Site. Although the Port is committing to conducting the work required by this Order under the terms of this Order, the Port 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.

N. 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 Port without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Agreed Order No. DE 22405

Page 22 of 25

Prior to the Port's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the Port 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 Port shall notify Ecology of said transfer. Upon transfer of any interest, the Port 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.

O. Compliance with Applicable Laws

1. *Applicable Laws.* All actions carried out by the Port pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, 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 B. The Port has a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or the Port, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and the Port must implement those requirements.

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

3. Pursuant to RCW 70A.305.090(1), the Port 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 Port shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered

Agreed Order No. DE 22405

Page 23 of 25

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. The exempt permits or approvals and the applicable substantive requirements of those permits or approvals, as they are known at the time of the execution of this Order, have been identified in Exhibit B.

4. The Port has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the Port 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 Port shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the Port 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 Port and on how the Port must meet those requirements. Ecology shall inform the Port in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. the Port 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 the Port 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.

Agreed Order No. DE 22405

Page 24 of 25

P. Indemnification

The Port agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (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 the Port, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the Port 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 Port's receipt of written notification from Ecology that the Port has completed the remedial activity required by this Order, as amended by any modifications, and that the Port 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 its refusal to comply.

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

Agreed Order No. DE 22405
Page 25 of 25

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: June 5, 2024

THE PORT OF EVERETT

DocuSigned by:
Lisa Lefebver
7069FAD7A3A9413...

Lisa Lefebver
Chief Executive Officer/Executive Director
The Port of Everett
PO Box 538
Everett, Washington 98206
(425) 259-3164

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

DocuSigned by:
Erik Snyder
3B1503E65D88495...

Erik Snyder, Manager
HQ Cleanup Section
Toxics Cleanup Program
Headquarters Office
PO Box 47600
Olympia, WA 98504-7600
(425) 466-6398

Exhibit B: Interim Action Plan for the Former Weyerhaeuser Mill A Interim Action No. 2

Introduction

The Weyerhaeuser Mill A MTCA Site (the Site) is located at 3500 Terminal Avenue, Everett, Washington at what is now the Port of Everett's Marine Terminals. The upland area of the Site generally encompasses the Port of Everett's South Terminal and Pacific Terminal. The Site is located adjacent to Port Gardner Bay and west of the Burlington Northern Santa-Fe (BNSF) right of way.

The Site is the former location of a range of industrial activities including pulp manufacturing, saw milling, ship building, shingle milling and log handling, and was in operation from the 1890s to the early 1980's. The Washington State Department of Ecology (Ecology) listed the Site under the Model Toxics Control Act (MTCA) and assigned it Cleanup Site ID No. 2146. The Site is currently used as a marine terminal facility by the Port.

In August of 2012, the Port, Weyerhaeuser, and the Department of Natural Resources (DNR) entered Agreed Order No. DE8979 (the AO) with Ecology to conduct remedial activities at the Site, including conducting a remedial investigation and feasibility study (RI/FS) and preparing a draft cleanup action plan (DCAP). In March of 2016, the Port and Weyerhaeuser entered into the second Agreed Order (No. DE13119) with Ecology to conduct an interim cleanup action in the in-water area (offshore of Pacific Terminal) which removed contaminated sediment and wood debris from the Site.

The proposed cleanup action for the Site's Marine Area will include the construction of a confined disposal facility (CDF) that will require disruption of an existing stormwater outfall (i.e., Outfall 003) that is located on the north side of the South Terminal Wharf. In anticipation of the cleanup construction, an interim action will be implemented (Interim Action No. 2) to decommission Outfall 003 and redirect the associated stormwater. The redirected stormwater will be conveyed to the eastern side of the property where there are currently two bioswale treatment systems – one that drains to the south to Outfall 001 and one to the north to Outfall 004. Outfalls 001 and 004 are not identified as current sources of contamination to the Marine area however, effective treatment of stormwater in these drainages is important to the long-term success of the overall remedy. The south draining bioswale will receive the stormwater that will be redirected from Outfall 003 and the interim action will include improvement to the bioswales for Outfalls 001 and 004 to ensure that the treatment capacity is adequate to handle the increased volume of stormwater that will result from the redirection of Outfall 003 and ensure protection of the Marine Area remedy from the stormwater discharge.

Alternatives to the action described above were deemed to be infeasible because construction of the CDF will permanently eliminate Outfall 003. Therefore, redirection of stormwater currently routed through Outfall 003 was the only viable alternative for Interim Action No. 2.

Given that contaminated media encountered as part of the interim action will be transported offsite for disposal at an Ecology-approved landfill and that a final cleanup will be completed at the Site in the future, post-construction monitoring for the purposes of the interim action will not be required.

Work to be performed under this interim action is described below and depicted in Attachment A.

Scope of Work

The Interim Action No. 2 will be completed to achieve the following goals:

1. Perform work that is technically necessary to enable the Marine Area remedy and would cost substantially more to implement if delayed;
2. Provide source control measures to the Marine Area remedy via enhanced stormwater treatment; and
3. Integrate Port infrastructure improvements and cleanup elements to ensure consistency with future Site use as a marine terminal, and for long-term protection of the Marine Area remedy, human health and the environment.

The Interim Action No. 2 will include, but is not limited to, the following general scope of construction cleanup elements:

- Decommission outfall 003 which drains into the area where the CDF will be constructed;
- Construct stormwater conveyance to direct the stormwater from the decommissioned outfall to the current bioswale areas;
- Construct bio-retention stormwater treatment cells within the bioswales; and
- Manage and properly dispose of contaminated soil and groundwater during construction in accordance with an Ecology approved soil and groundwater management plan.

Deliverables

The initial deliverable under the Second Interim Action will be a Work Plan that will provide a detailed description of the scope, engineering design, and phasing for the Interim Action. The Interim Action Work Plan will include:

- A description of the engineering and performance goals of the interim action;
- Engineering justification and basis of design for the proposed interim action;
- A summary of the design criteria and assumptions that will be used for the interim action;
- A general description of construction procedures, methods, sequencing, and materials;
- A compliance monitoring plan for the interim action construction; and
- A soil and groundwater management plan for the interim action construction.

Following construction, an Interim Action Completion Report will be prepared to document the as-built condition. The results of the Interim Action will also be included in the evaluation of final cleanup alternatives for the Site.

Permits and Permit Exemptions

Because it will modify the Port's approved stormwater system, Interim Action No. 2 will be subject to the municipal stormwater permit issued to the Port by Ecology under the state water quality regulations. Grading, filling and other activities involved in the interim action will be exempt from City of Everett permitting under RCW 70A.305.090, however the substantive requirements of applicable City standards will be complied with.

Schedule of Work and Deliverables

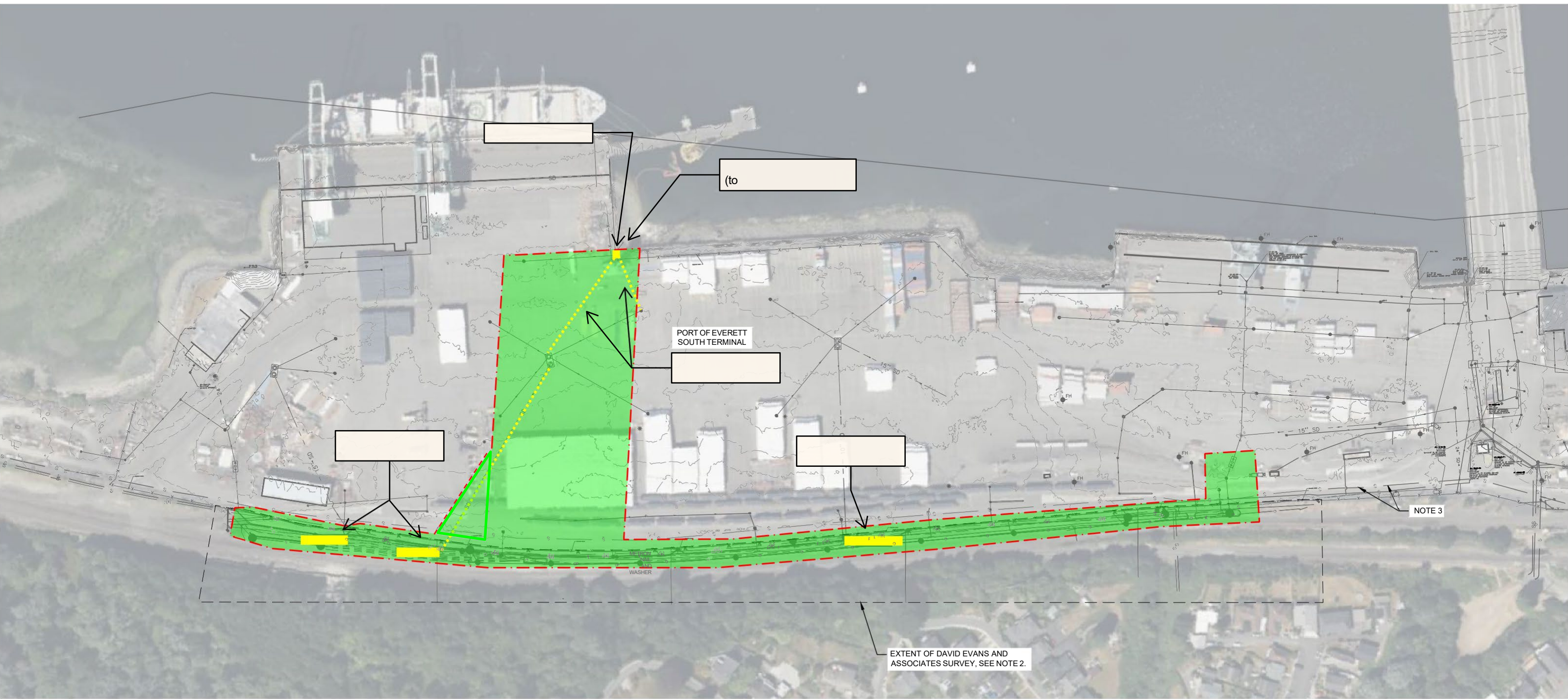
The schedule for design and construction of the Interim Action No. 2 is provided in Table B-1 below. It is the intent of the parties to complete this work by December 31, 2024.

Table 1. Schedule of Work and Deliverables

Deliverables		Due ¹
Interim Action No. 2 – Stormwater Reconfiguration and Treatment		
1	Submit Draft Interim Action Work Plan (IAWP) and draft Inadvertent Discovery Plan (IDP) to Ecology for review. A soil and groundwater management plan will be prepared as an exhibit to the IAWP.	Within 90 days of signed Agreed Order; Ecology provides comments within 30 days of its receipt of the Draft IAWP and IDP
2	Submit Final IAWP and IDP to Ecology	Within 30 days of receipt of Ecology's Final comments on Draft IAWP and IDP
3	Submit Schedule for completing the Interim Action construction	Within 10 days of Ecology approval of Final IAWP and IDP
4	Submit Draft Interim Action Completion Report	Within 120 days of the Interim Action final completion date
5	Submit Interim Action Completion Report	Within 30 days of receipt of Ecology comments on draft Interim Action No. 2 Completion Report

¹ Schedule is in calendar days. Deliverable due date may be modified with Ecology concurrence without amendment to the Agreed Order. Submittal due dates falling on a weekend or holiday defer to the following business day.

ATTACHMENT A - INTERIM ACTION SITE DIAGRAM. PORT OF EVERETT MARINE TERMINALS.



GENERAL NOTES:

1. ALL EXISTING STORM DRAINAGE WITHIN THE SOUTH TERMINAL, EXCLUDING ANY EXISTING UTILITIES WITHIN THE FOOTPRINT OF THE EXISTING SWALE, IS SOURCED FROM THE SOUTH TERMINAL STORM WATER SYSTEM AS-BUILT SURVEY, BY METRON AND ASSOCIATES INC. (2017).
VERTICAL DATUM - M.L.L.W.
PROJECT BENCHMARK N.G.S. BENCHMARK MONUMENT "J7".
VERTICAL DATUM IS M.L.L.W. AND IS BASED ON FIELD TIE TO N.G.S. BENCHMARK MONUMENT "J7", N.A.V.D. 88 ELEVATION = 26.77 FEET, N.A.V.D. 88, AS SHOWN ON THE CITY OF EVERETT PUBLISHED SHEET FOR "J7" DATED 01/15/98.
"J7" DATUM ELEVATION = 29.02 FEET, M.L.L.W.
M.L.L.W. -2.25 FEET = N.A.V.D. 88
2. EXISTING CONDITIONS INSIDE THE FOOTPRINT OF THE EXISTING SWALE IN THE SOUTH TERMINAL IS FROM THE "EXISTING CONDITIONS TOPOGRAPHICAL SURVEY PORT'S MARINE TERMINALS" BY DAVID EVANS AND ASSOCIATES INC. (2023)
3. DATUM NOTES - WASHINGTON COORDINATE SYSTEM, NORTH ZONE, NAD83-2011 EPOCH 2010.00 COORDINATES.
4. VERTICAL DATUM NAVD 88
5. EXISTING SANITARY SEWER LINE SOURCED FROM CITY OF EVERETT GIS.

 PROJECT LIMITS
 ANTICIPATED INFRASTRUCTURE