

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

The Port of Everett and  
Weyerhaeuser Company

FIRST AMENDMENT TO AGREED  
ORDER

No. DE 8979

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

Weyerhaeuser Company  
Attention: Kristen Sawin  
220 Occidental Avenue South  
Seattle, WA 98104

EXHIBIT B: Amended Scope of Work and Schedule

**I. INTRODUCTION**

The State of Washington, Department of Ecology (Ecology), Port of Everett (the Port), Weyerhaeuser Company (Weyerhaeuser), and Washington State Department of Natural Resources (DNR) entered into Agreed Order No. DE 8979 (Order) on August 9, 2012. The Order required the Port, Weyerhaeuser, and DNR (collectively the potentially liable persons [PLPs]) to conduct a Remedial Investigation and Feasibility Study (RI/FS) per WAC 173-340-350 and WAC 173-204-560, and to develop a draft Cleanup Action Plan (DCAP) per WAC 173-340-350 through 173-340-380 and WAC 173-204-560 through 173-204-580, addressing contamination at the Site. The order also required the PLPs to perform interim remedial actions at the facility where there has been a release or threatened release of hazardous substances.

Pursuant to Section VIII.L of the 2012 Order, the Parties hereby stipulate to amend the sections and paragraphs of the Order addressed below. This Amendment does not attempt to recite

all of the provisions of the Order. Except as set forth above and explicitly provided herein, all other provisions of the Order remain in full force and effect, unchanged by this First Amendment.

### **AMENDMENTS TO AGREED ORDER EXHIBITS**

A. Exhibit B (Schedule of Work and Deliverables) to the Order is amended / replaced in its entirety by the revised Exhibit B.

B. Exhibit D (Public Participation Plan) to the Order is struck.

### **III. DEFINITIONS**

Unless otherwise specified herein, all definitions in RCW 70A.305.020, WAC 173-204, and WAC 173-340 shall control the meanings of the terms in this Order. Paragraphs B and C in the Order are replaced in their entirety by the following:

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

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

### **V. FINDINGS OF FACTS**

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

O. On May 18, 2018, the Washington State Supreme Court ruled that DNR is neither an owner nor operator under the Model Toxics Control Act (MTCA) when DNR is merely acting as a manager of state-owned aquatic lands that are part of a MTCA cleanup site.

### **VI. ECOLOGY DETERMINATIONS**

Ecology makes the following determinations, without any express or implied admissions of such determinations by the PLPs. Paragraph G is added to Ecology's Determinations, as follows:

G. DNR was included as a party to this Agreed Order in August 2012. Pursuant to the Washington State Supreme Court's May 18, 2018 ruling referenced in paragraph O of Section V (Findings of Fact), DNR will no longer be a party to this Order.

## VII. WORK TO BE PERFORMED

Section VII (Work to be Performed) of the Order is hereby amended to add the following remedial actions as follows:

A. The PLPs shall conduct the additional remedial actions described in **Exhibit B** to this Amendment. Generally, the PLPs shall perform the following:

5. Prepare and submit for Ecology review and approval all documents necessary to complete the design for an anticipated cleanup action for the In-Water Area of the Site. The Scope of Work and Schedule (Exhibit B) specifies the required deliverables and the schedule by which they must be submitted. The requirements for this work include the following:

- a. Preparation of agency review draft Pre-Remedial Design Investigation (PRDI) Project Plans for Ecology review, followed by preparation of final documents addressing Ecology's review comments. The Project Plans include a Work Plan, Sampling and Analysis Plan, Quality Assurance Project Plan, a Health and Safety Plan, and an Inadvertent Discovery Plan. The PRDI Work Plan shall include a data/information gaps analysis and a summary description of work to fulfill identified data/information gaps .
- b. Completion of the work described in the PRDI Project Plans.
- c. Preparation of an agency review draft Engineering Design Report (EDR) for Ecology review, followed by preparation of a final document addressing Ecology's review comments. The EDR shall incorporate the PRDI findings and the results of engineering evaluations required to complete the design. The EDR shall also include a Construction Quality Assurance Plan, Compliance Monitoring and Contingency Response Plan, and a Water Quality Monitoring Plan.
- d. Complete the permitting necessary to implement the cleanup action including preparation of a Joint Aquatic Resources Permit Application (JARPA) that

would be submitted to the Washington Department of Fish & Wildlife for Hydraulic Project Approval and to the USACE for Section 404/Section 10 permits and the preparation of any other necessary permits applications for an anticipated cleanup action for the In-Water Area of the Site.

- e. Complete the design and procurement documents necessary to implement the cleanup action including preparation of 90% complete agency review draft Construction Plans and Specifications (Plans and Specs) for Ecology review. The Plans and Specs shall be based on the EDR.

B. The PLPs shall perform the remedial actions required by this Amendment according to the work schedule set forth in Exhibit B. To effectuate the work to be performed under this Amendment in the most timely and efficient manner, the Port has elected to take the lead in performing various aspects of the work required under this Order. However, the PLPs remain strictly, jointly, and severally liable for the performance of any and all obligations under this Amendment. In the event the party identified as a lead should fail to timely and properly complete performance of all or any portion of its work, all PLPs must perform that remaining work, if any.

Effective date of this Amendment: \_\_\_\_\_

THE PORT OF EVERETT

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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WEYERHAEUSER COMPANY

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## **Exhibit B – Amended Scope of Work and Schedule**

### **AMENDED SCOPE OF WORK**

Pursuant to the Agreed Order to which this Scope of Work & Schedule is attached, the Port of Everett (Port) and the Weyerhaeuser Company (Weyerhaeuser) (collectively the PLPs) shall take the following remedial actions at the Weyerhaeuser Mill A (Site) and these actions shall be conducted in accordance with Chapters 173-340 and 173-204 WAC unless otherwise specifically provided for herein.

The Port has provided Ecology with a draft Remedial Investigation/Feasibility Study (RI/FS) for the Marine Area<sup>1</sup> of the Site and a preliminary draft Cleanup Action Plan (dCAP).

The Amended Scope of Work (SOW) is divided into eight major tasks as follows:

- Task A. Administrative
- Task B. Permitting for Marine Area
- Task C. Design for Marine Area
- Task D. Upland Area Remedial Investigation/Feasibility Study (RI/FS)
- Task E. Upland Area Draft Cleanup Action Plan (DCAP) and State Environmental Policy Act (SEPA)

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<sup>1</sup> The term “Marine Area” has the same meaning as “In-Water Area”, as referenced in the 2012 Agreed Order.

## SCHEDULE

The schedule for deliverables described in the Agreed Order and the Scope of Work is presented below. If the date for submission of any item or notification required by this Schedule of Deliverables occurs on a weekend, state or federal holiday, the date for submission of that item or notification is extended to the next business day following the weekend or holiday. Nothing shall limit the PLPs' ability to submit documents prior to the completion times listed below.

Where a deliverable due date is triggered by Ecology notification, comments or approval, the starting date for the period shown is the date the PLPs received such notification, comments or approval electronically or by certified mail, return receipt requested, from Ecology. Where triggered by Ecology receipt of a deliverable, the starting date for the period shown is the date Ecology receives the deliverable.

	Work Scope	Schedule <sup>1</sup>
<b>A. Administrative</b>		
A.1	Issue written notification to Ecology of selected contractor name and qualifications	Within 45 days of the effective date of the Amended Agreed Order
A.2	Progress Reports <sup>2</sup>	Due the 15th of every month, beginning after the first full month following the effective date of the Amended Agreed Order. As the project progresses, this can be changed to every other month or quarterly as needed by the Ecology Project Coordinator.
<b>B. Permitting for Marine Area</b>		
B.1	Complete permitting studies <sup>3</sup>	Within 12 months of effective date of the Amended Agreed Order
B.2	Complete draft SEPA and JARPA application and supporting documents <sup>4</sup>	Within 60 days of finalization of the Cleanup Action Plan
B.3	Complete final SEPA and JARPA application and supporting documents	Within 45 days from receipt of comments from Ecology on the Draft SEPA and JARPA application documents (B.3)

<b>C. Design for Marine Area</b>		
C.1	Complete draft Pre-Remedial Design Investigation (PRDI) Work Plan <sup>5</sup>	Within 120 days from finalization of the Cleanup Action Plan
C.2	Complete final PRDI Work Plan	Within 60 days from receipt of Ecology comments on the Draft PRDI Work Plan (C.1)
C.3	Start PRDI <sup>6</sup>	Within 90 days from the start of the first permit restricted in-water work window following finalization of the PRDI Work Plan (C.2)
C.4	Draft PRDI Data Report	90 days following availability of validated investigation data
C.5	Final PRDI Data Report	30 days following receipt of Ecology's final comments on Draft PRDI
C.6	Complete draft Engineering Design Report (EDR) <sup>7</sup>	Within 120 days from Ecology approval of the PRDI Data Report (C.5)
C.7	Complete draft Final EDR	Within 60 days from receipt of Ecology comments on the Draft EDR (C.4)
C.8	Complete final EDR	Within 45 days from receipt of Ecology comments on the Draft Final EDR (C.5)
C.9	Complete final Construction Plans, Specifications and Bid Documents <sup>8</sup>	Within 360 days from Ecology approval of the EDR (C.6)
<b>D. Upland Area Remedial Investigation / Feasibility Study (RI/FS)</b>		
D.1	Agency Review Draft Upland Area RI/FS Report	The Agency Review Draft Upland Area RI/FS report shall be due to Ecology within 180 days of the effective date of the Amended Agreed Order.
D.2	Agency Review Draft Revised Upland Area RI/FS Report Sections	The Agency Review Draft Final Upland Area RI/FS report shall be due 60 days



		after receipt of Ecology comments on the Draft Upland Area RI/FS report (D.1).
D.3	Public Review Draft Upland Area RI/FS Report	The Public Review Draft Upland Area RI/FS report shall be due 45 days after receipt of Ecology comments on the Draft Revised RI/FS report (D.2).
D.4	Final Upland Area RI/FS Report	The Final Upland Area RI/FS Report shall be submitted to Ecology 30 days after receipt of Ecology's responsiveness summary to public comment on the Public Review Draft Upland Area RI/FS Report and final review comments by Ecology.
<b>E. Upland Area Draft Cleanup Action Plan (DCAP) and State Environmental Policy Act (SEPA)</b>		
E.1	Agency Review Upland Area DCAP	The Agency Review Upland Area DCAP shall be submitted to Ecology 120 days after Ecology approval of the Final Upland Area RI/FS Report (D.4).
E.2	Agency Review Revised Upland Area DCAP	The Agency Review Revised Upland Area DCAP shall be due 45 days after receipt of Ecology comments on the Agency Review Upland Area DCAP (E.1).
E.3	Public Review Upland Area DCAP and SEPA	The Public Review Upland Area DCAP shall be due 45 days after receipt of Ecology comments on the Agency Review Revised Upland Area DCAP.
E.4	Final Upland Area DCAP, SEPA	The Final DCAP and SEPA shall be due 30 days after receipt of Ecology's

		responsiveness summary to public comment on the Public Review Upland Area DCAP and final review comments by Ecology.
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Notes:

1. Schedule is in calendar days. Deliverable due date may be modified with Ecology concurrence without amendment to the Agreed Order.
2. The progress reports will include but not be limited to: activity at the site during the reporting period, activity expected to occur in the following month(s), deviations from deliverables and schedule, deviations from required tasks, sampling results that deviate from the norm, any other changes that have occurred or items that have come up that have any impact on the project.
3. Permitting studies include bathymetric studies and habitat evaluations to support preparation of the required permitting documents.
4. May include Biological Evaluation and mitigation plans, as necessary to complete the required permit applications.
5. Work Plans include the following: Work Plan, Sampling and Analysis Plan, Quality Assurance Project Plan, Inadvertent Discovery Plan, and Health and Safety Plan. Ecology will not approve the Health and Safety Plan. However, it must be submitted for Ecology review and comment.
6. Multiple in-water work windows may be required to complete the PRDI depending on the approved scope of study and start date.
7. The Engineering Design Report includes Compliance Monitoring and Quality Assurance Project Plan, Inadvertent Discovery Plan, and Health and Safety Plan. Additionally, the results of the PRDI investigation will be presented in the Engineering Design Report. The EDR will include permit requirements and the substantive requirements of procedurally exempt permit requirements that will be included in the project design.
8. Review by Ecology will be to evaluate compliance with approved EDR and WAC 173-340-400(4)(b).