

State of Washington
Department of Ecology

In the Matter of Remedial Action by:
Weyerhaeuser NR Company
Agreed Order
No. 23839

To:
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1. Introduction

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Weyerhaeuser NR Company (Weyerhaeuser) 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 Weyerhaeuser to begin the investigation and cleanup process for the Site per the Model Toxics Control Act. Ecology believes the actions required by this Order are in the public interest.

2. Jurisdiction

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

3. 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. Weyerhaeuser agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Weyerhaeuser's responsibility under this Order. Weyerhaeuser 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.

4. 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.

4.1 Site

The Site is referred to as Cosmo Specialty Fibers. The Site constitutes a facility under RCW 70A.305.020(8). The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located. Based upon factors currently known to Ecology, the Site is generally located in the vicinity of the Main Mill and the Westport Ponds and potentially along the Wood Stave Pipe, which passes underground through the residential areas of Cosmopolis, Washington and Aberdeen, Washington. (See Definitions in Sections 4.5 and 4.6 and Parcel Map in Exhibit A).

4.2 Parties

Refers to the State of Washington, Department of Ecology (Ecology), and Weyerhaeuser NR Company (Weyerhaeuser).

4.3 Potentially Liable Persons (PLPs)

Refers to entities named as potentially liable persons for this Site: Weyerhaeuser NR Company (Weyerhaeuser) and Cosmo Specialty Fibers, Inc. Only Weyerhaeuser is a party to this Order. Cosmo Specialty Fibers, Inc. is on a separate Agreed Order No. 23840 for this Site.

4.4 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.

4.5 Main Mill

Refers to the mill property located at 1701 First Street in Cosmopolis, WA where manufacturing and associated activities took place (see Parcel Map in Exhibit A, Figure 1).

4.6 Westport Ponds

Refers to the area on a non-contiguous property located about 2.5 miles from the Main Mill (see Parcel Map in Exhibit A, Figure 2). The main activities in this area are wastewater storage, pH and disinfection treatment, and wastewater sampling and discharge to Grays Harbor via outfall 001 per NPDES permit no. WA0000809.

4.7 Wood Stave Pipe

Refers to the pipe carrying wastewater from the Main Mill to the Westport Ponds. The pipe is 42 inches in diameter and made of wood staves held together by metal bands.

This pipe runs underground about 3 miles from the Main Mill to the Westport Ponds, passing through residential areas of Cosmopolis and Aberdeen.

4.8 Red Liquor

Red liquor is a mixture of spent pulping chemicals and organics specific to the sulfite pulping process. Red liquor may be further classified into light, intermediate, and heavy based on the stages of the processing. During normal mill operations, heavy red liquor is burned for energy and to recover chemicals to be reused in the pulping process.

4.9 Cosmo Specialty Fibers, Inc. owned by Charlestown Investments

Cosmo Specialty Fibers, Inc. owned by Charlestown Investments ("Cosmo") is the owner or operator of the Site. Cosmo is a Potentially Liable Person. Cosmo is not a party to this Order.

5. Findings of Fact

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

5.1

Based on the documented releases, the Site is generally located in the vicinity of the Main Mill, the Westport Ponds, and potentially along the Wood Stave Pipe (see Definitions in Section 4.5 and 4.6 and Exhibit A). The Ecology Site ID is no. 32.

5.2

Weyerhaeuser constructed the mill in 1957 as a paper grade sulfite process pulp mill. In 1962, Weyerhaeuser started converting the mill to produce dissolving and specialty grade pulp and continued to operate the mill until September 2006, when production shut down. Weyerhaeuser sold the mill to Cosmo Specialty Fibers, Inc. in 2010.

5.3

The mill resumed operations in May 2011 as Cosmo Specialty Fibers, Inc. Cosmo Specialty Fibers, Inc. filed a Foreign Registration Statement (Certificate of Authority per Chapter 23.B.15 RCW) with Washington Secretary of State on August 20, 2010. The Director named on the Certificate of Authority is also the Director and Vice President of the Gores Group LLC.

5.4

Production was subsequently curtailed for about 8 months between May 2020 through January 2021. This curtailment included the shutdown of all production operations,

including the power boiler and wastewater treatment system. During this curtailment, no red liquor was stored onsite.

5.5

There have been multiple chlorine releases at the site. The first was reported in the November 7, 1979 letter to Ecology from Weyerhaeuser in which they reported a liquid chlorine leak from a chlorine car that occurred on October 27, 1979.

5.6

Cosmo reported an air release from their chlorine dioxide liquid storage tank that occurred on March 15, 2022, as reported to the National Response Center (Incident #1331128). Cosmo also had a chlorine dioxide release at the bleach plant stack on December 8, 2022, as reported to the National Response Center (Incident #1354527). EPA Region 10 and Ecology were also on site during the December 8, 2022 release.

5.7

In a January 30, 1978 memo, Ecology described the release of magnesium oxide (MgO) from a recovery boiler bypass valve at the mill. In the December 13, 1979 letter to Ecology, Weyerhaeuser reported a release of MgO dust for a duration of five hours on December 1, 1979.

5.8

In the March 13, 1980 letter to Ecology, Weyerhaeuser reported a leak of red liquor to the stormwater system on February 6, 1980 and broken underground piping. In the July 15, 1996 letter, Weyerhaeuser reported 1,000 gallons of red liquor overflow to the stormwater system.

5.9

In the January 6, 1988 memo, Ecology documented a spill of acidified water at the Westport ponds on the same day, resulting in measurements of pH as low as 1.0 in the adjacent ditches.

5.10

On November 28, 1995, Weyerhaeuser submitted a release report under MTCA to Ecology for a caustic release that occurred in February 1995 at the railcar off-loading area. The report described groundwater monitoring results with the pH exceeding 12.

5.11

The mill effluent has been shown to be toxic to bivalves, as described in the Toxic Identification/Reduction Evaluation (TI/RE) report submitted by Weyerhaeuser to Ecology on April 28, 2005. There were no new effluent toxicity data for a period between 2006 and 2011, during which the mill was shut down for ownership transfer.

5.12

Effluent toxicity is further discussed in the TI/RE update Cosmo submitted on February 26, 2016, as well as the quarterly TI/RE updates Cosmo submitted starting March 2017. There were no toxicity data collected during the May 2020 through January 2021 period, as the mill was not operating at the time.

5.13

Leaks or ruptures in the Wood Stave Line have been reported to Ecology as early as September 1996.

5.14

In the last 10 years, there were around 16 leaks detected along the Wood Stave Pipe, both at the Main Mill and the Westport Ponds, as well as in the residential neighborhoods along the pipe. The most recent leak was discovered on September 12, 2023 due to water puddling above the pipe in the residential area of south Aberdeen. Cosmo reported that the puddling had stopped on October 18, 2023. The cause of the leak has not been investigated. To address the series of leaks, Cosmo submitted the final Pipe Risk Assessment Repair and Maintenance Plan to Ecology on March 7, 2023 under the Ecology's Administrative Order No. 21150 issued on May 5, 2022. The plan has not yet been implemented.

5.15

The November 2017 Sediment Study results showed elevated concentrations of dioxin and furans at both outfall 001 and outfall 002 of the NPDES permit no. WA0000809.

5.16

On February 28, 2024, Cosmo submitted to Ecology a Tier 2 annual report under the Emergency Planning and Community Right-to-Know Act (EPCRA). The report identified chemicals stored onsite, including spent liquor, cooking acid, sulfuric acid, caustic, methanol.

5.17

In the March 19, 2024 update of the Spill Prevention, Control, and Countermeasures (SPCC) Plan, Cosmo identified other chemicals stored on site in addition to the EPCRA chemicals identified in the Tier 2 report. According to the 2024 Tier 2 report and the 2024 update of the SPCC Plan, some of the chemicals are currently stored in process vessels instead of storage tanks. During Ecology's inspections on September 15, 2023 and February 29, 2024, Ecology found that some of the process vessels (e.g. dump tanks, acid accumulators) have no secondary containment.

5.18

During the May 23, 2023 Dangerous Waste Inspection, Ecology identified a number of violations of the dangerous waste requirements and observed dangerous waste

generated during that month that was being stored on site. Ecology documented the observed violations in an inspection report that was sent to Cosmo on August 30, 2023. With the inspection report, Ecology requested that Cosmo provide documentation that they had corrected the identified violations. During the February 29, 2024 water quality inspection, Ecology confirmed that the issues have not been corrected and that the dangerous wastes (i.e. paints and methyl ethyl ketone) remained on-site past the allowable storage date in WAC 173-303. As of Ecology's site visit on March 21, 2024, the dangerous waste has been stored on site for over 10 months; Cosmo did not have a scheduled date for removing the dangerous waste offsite.

5.19

During the September 15, 2023 inspection, Ecology noted that part of the fencing at the Westport Ponds was in disrepair. On the March 21, 2024 site visit, Ecology also learned that the security camera at the Westport Ponds was also down as well.

5.20

During the September 15, 2023 inspection, Ecology noted a number of items that needed repairs to address potential releases to air and water. These included the aerators at the Westport Ponds that are necessary to minimize odors and the aerators and boom at the stormwater outfall. These repairs have not been made.

5.21

As noted in EPA's Unilateral Administrative Order (No. 10-2024-0063) issued on March 26, 2024 identified risks and potential of release at the site, including risks associated with the mill's losing power and water while there are still chemicals on site. Most of the mill lost power on September 2024.

5.22

Cosmo Specialty Fibers, Inc. is under Agreed Order No. 23840 for this Site, effective date of July 18, 2025. The Cosmo Agreed Order No. 23840 requires Cosmo to conduct a remedial investigation, feasibility study, and prepare a preliminary draft cleanup action plan. Ecology and Cosmo may also agree to interim actions to be conducted at the Site.

5.23

Based upon the lack of operational oversight by Cosmo, recent documented releases of hazardous chemicals, violations of dangerous waste storage requirements, and Cosmo's failure to implement repair and maintenance plans, at portions of the Site current conditions may present unsafe working conditions. As detailed below in the Work to Be Performed, Section 7.1, Ecology and Weyerhaeuser will hold a meeting (and continue discussions) regarding conditions at the Site and determine if portion(s) of the Site present an endangerment (Section 8.12), an emergency (Section 7.4), or require an Extension to the Schedule (Section 8.10).

6. Ecology Determinations

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

6.1

Weyerhaeuser is a former “owner or operator” as defined in RCW 70A.305.020(22) of a “facility” as defined in RCW 70A.305.020(8).

6.2

Based upon credible evidence, Ecology issued a PLP status letter to Weyerhaeuser dated August 1, 2023, pursuant to RCW 70A.305.040, .020(26), and WAC 173-340-500. By letter dated August 31, 2023, Weyerhaeuser voluntarily waived its rights to notice and comment and accepted Ecology’s determination that Weyerhaeuser is a PLP under RCW 70A.305.040. Ecology issued a determination that Weyerhaeuser is a PLP under RCW 70A.305.040 and notified Weyerhaeuser of this determination by letter dated February 27, 2024.

6.3

Pursuant to RCW 70A.305.030(1) and .050(1), Ecology may require Weyerhaeuser 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.

6.4

Since the start of curtailment in December 2022, Cosmo has stored chemicals meeting the definition of “hazardous substance” under MTCA.

6.5

The EPA may choose to take actions at the Site in accordance with their CERCLA authority. In such case, Ecology will work with the EPA and Weyerhaeuser to streamline EPA’s action with the requirements of this Order. This Order may be revised as part of this process.

7. Work to be Performed

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

7.1

At the time of the effective date of this Order, conditions at portions of the Site need to be properly evaluated to ensure that such conditions do not present endangerment (Section 8.12), an emergency (Section 7.4), or require an Extension to the Schedule (Section 8.10) prior to commencement of work. In accordance with the Schedule, Weyerhaeuser and Ecology will meet to discuss the Site conditions, the Site health and safety plan, any concerns of Weyerhaeuser and/or their consultants with working conditions at the Site, and whether adjustments to the Schedule are appropriate to resolve such conditions.

Further, Weyerhaeuser and Ecology agree to meet and confer, as frequently as the Parties deem appropriate, regarding the current conditions at the Site and to evaluate the progress of any interim or remedial action(s) under this Order, Cosmo's Agreed Order No. 23840, the Environmental Protection Agency's Unilateral Administrative Order, and/or any other local, state, or federal order or directive issued to Cosmo.

7.2

Weyerhaeuser will complete an RI/FS in accordance with the schedule and terms of the Scope of Work and Schedule, Exhibits B and D, and all other requirements of this Order. The following naming conventions shall be used for documents: Agency Review Draft (designation for the first time Ecology receives a document); Public Review Draft (designates a document ready for public comment); and Final (designation for a document after public comment and Ecology approval).

7.3

If Weyerhaeuser 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, Weyerhaeuser, within seven (7) days of learning of the change in condition, shall notify Ecology in writing of said change. Weyerhaeuser will provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions as soon as practicable.

7.4

In the event that Weyerhaeuser becomes aware of any action or occurrence that causes or threatens a release of hazardous substances, pollutants, or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to safety, public health, welfare or the environment, Weyerhaeuser shall immediately notify Ecology of such threat to safety, public health, welfare, release, or threatened release. Upon Ecology's receipt of this notice, Weyerhaeuser may suspend work at the

affected portion(s) of the Site under this Order until such time as Ecology determines that the emergency situation or threat to public health, welfare, or the environment is abated and Ecology issues a Notice to Proceed. In such a case, if necessary, Ecology will amend the Schedule as provided by Section 8.10. If the emergency situation or threat to public health, welfare, or the environment only applies to a portion of the Site, Ecology may require Weyerhaeuser to continue work under this Order at the non-impacted part of the Site. This is for action or occurrence not covered by Section 8.12 of this Order (Endangerment).

7.5

Weyerhaeuser 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 Progress Reports shall be submitted 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, Progress Reports and any other documents submitted pursuant to this Order shall be submitted electronically to Ecology's project coordinator. The Progress Reports shall include the following:

7.5.1

A list of on-site activities that have taken place during the month.

7.5.2

Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests.

7.5.3

Description of all deviations from the Scope of Work and Schedule (Exhibit B and D) during the current month and any planned deviations in the upcoming month.

7.5.4

For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.

7.5.5

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.

7.5.6

A list of deliverables for the upcoming month.

7.6

All plans or other deliverables submitted by the Weyerhaeuser for Ecology's review and approval under the Scope of Work and Schedule (Exhibits B and D) shall, upon Ecology's approval, become integral and enforceable parts of this Order. Weyerhaeuser shall take any action required by such deliverable.

7.7

Any Party may propose an additional interim action under this Order. If the Parties are in agreement concerning the additional interim action, Weyerhaeuser shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). Weyerhaeuser shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and Weyerhaeuser is required to conduct the interim action in accordance with the approved Interim Action Work 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.

7.8

If Ecology determines that Weyerhaeuser has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to Weyerhaeuser, perform any or all portions of the remedial action or at Ecology's discretion allow Weyerhaeuser opportunity to correct. In an emergency, Ecology is not required to provide notice to Weyerhaeuser, or an opportunity for dispute resolution. Weyerhaeuser shall reimburse Ecology for the costs of doing such work in accordance with Section 8.1 (Payment of Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section 10 (Enforcement).

7.9

Except where necessary to abate an emergency situation or where required by law, Weyerhaeuser shall not perform any remedial actions at the Site outside those remedial actions required by this Order to address the contamination that is the subject of this Order, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section 8.11 (Amendment of Order). In the event of an emergency, or where actions are taken as required by law, Weyerhaeuser 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.

7.10

To effectuate the work to be performed at the Site in the most efficient manner, Cosmo will take the lead in performing the following remedial actions:

- 7.10.1 Any remedial actions required by Cosmo's Agreed Order No. 23840 that are not otherwise also provided by this Order.
- 7.10.2 Any remedial actions required by any other enforcement or administrative orders issued by Ecology to Cosmo that are not otherwise also provided by this Order.
- 7.10.3 Any removal or response actions required by the Unilateral Administrative Order issued by the EPA to Cosmo that is not otherwise also provided by this Order.

Additional remedial action work that is not identified in this Order, may be proposed by Ecology as an amendment pursuant to Amendment of Order (Section 8.11) or a separate MTCA order. Ecology recognizes that work may be required of Cosmo at the Site under the authority of other environmental laws. By entering into this Order, Weyerhaeuser does not agree to conduct work that is not in this Order or work that is not a remedial action required by MTCA or identified as an ARAR (Section 8.15). Both Weyerhaeuser and Ecology reserve all rights (Section 8.13) with respect to any amendment to this Order or separate MTCA order.

If questions arise as to which PLP should be conducting a remedial action under this Section 7.10, the party will request confirmation from Ecology. Where necessary, the parties agree to meet and discuss work required at the Site, which party is conducting the work, and how remedial action work by Weyerhaeuser required under this Order is coordinated with other work being conducted at the Site.

8. Terms and Conditions

8.1 Payment of Remedial Action Costs

Weyerhaeuser 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 not include work performed by Ecology or its contractors for, or on, the Site arising from the Unilateral Administrative Order issued by the U.S. Environmental Protection Agency to Cosmo. These costs will not include work performed by Ecology or its contractors for enforcement of the Agreed Order No. 23840 or work required by Agreed

Order No. 23840 that is not otherwise required by this Order. 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). Ecology has accumulated approximately \$35,000 in remedial action costs related to this Site as of March 2025. For all Ecology costs incurred, Weyerhaeuser 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.

8.2 Designated Project Coordinators

The project coordinator for Ecology is:

Ha Tran
SWM Program, Industrial Section
PO Box 47600
Olympia, Washington 98504
(360) 790-6276
ha.tran@ecy.wa.gov

The project coordinator for Weyerhaeuser is:

Luke Thies
(406) 897-8010
luke.thies@weyerhaeuser.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 Weyerhaeuser, 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.

8.3 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.

Weyerhaeuser 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.

8.4 Access

Ecology acknowledges that, as of the effective date of this Order, Weyerhaeuser does not have an access agreement for property owned by Cosmo within the Site and does not own property within the Site (as the Site boundaries are currently understood).

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that any PLP 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 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. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by any PLP 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.

Weyerhaeuser shall make best efforts to secure access rights for those properties within the Site not owned or controlled by Weyerhaeuser where remedial activities or investigations will be performed pursuant to this Order. As used in this Section, “best efforts” means the efforts that a reasonable person in the position of Weyerhaeuser would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance to secure access and/or use restriction agreements, as required by this Section. For purposes of this Order, the term “best efforts” does not require payment of sums of money to Cosmo, its corporate successors, affiliates, and assigns, a bankruptcy trustee, or court-appointed receiver, for access because under Agreed Order No. 23840, Section 8.4, Cosmo agreed to allow other PLPs access to the Site for purposes of conducting remedial actions under Ecology’s oversight. If, within 30 days after the effective date of this Order, Weyerhaeuser is unable to accomplish what is required through “best efforts,” they shall notify Ecology, and include a description of the steps taken to comply with the requirements. If Ecology deems it appropriate, it may assist Weyerhaeuser, or take independent action, in obtaining such access and/or use restrictions.

8.5 Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, Weyerhaeuser 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 an electronic format in accordance with Section 7 (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, Weyerhaeuser shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by Weyerhaeuser pursuant to implementation of this Order. Weyerhaeuser shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow Weyerhaeuser 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 8.4 (Access), Ecology shall notify Weyerhaeuser prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(5)(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.

8.6 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 Site. However, Weyerhaeuser shall cooperate with Ecology, and shall:

8.6.1

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.

8.6.2

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 Weyerhaeuser 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 Weyerhaeuser that do not receive prior Ecology approval, Weyerhaeuser shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

8.6.3

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.

8.6.4

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

Aberdeen Timberland Library
(360) 533-2360
121 E Market St, Aberdeen WA 98520
Hours: Monday – Saturday 10 am to 6 pm

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 Office in Lacey, Washington.

8.7 Access to Information

Weyerhaeuser 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 Weyerhaeuser'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. Weyerhaeuser 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 Weyerhaeuser may have under applicable law to limit disclosure of Records protected by the attorney work-product privilege and/or the attorney-client privilege. If Weyerhaeuser withholds any requested Records based on an assertion of privilege, Weyerhaeuser 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 Weyerhaeuser is 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.

8.8 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, Weyerhaeuser 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.

8.9 Resolution of Disputes

8.9.1

In the event that Weyerhaeuser elects to invoke dispute resolution Weyerhaeuser must utilize the procedure set forth below.

- 8.9.1.1 Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), Weyerhaeuser has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).
- 8.9.1.2 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; Weyerhaeuser's position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.
- 8.9.1.3 Weyerhaeuser may then request Industrial Section management review of the dispute. Weyerhaeuser must submit this request (Formal Dispute Notice) in writing to the Industrial 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; Weyerhaeuser's position with respect to the dispute; and the information relied upon to support its position.
- 8.9.1.4 The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute

(Section Manager's Decision on Dispute) within thirty (30) calendar days of receipt of the Formal Dispute Notice.

8.9.1.5 Within seven (7) calendar days of receipt of the Section Manager's Decision on Dispute, Weyerhaeuser may request the Solid Waste Program Manager review the Section Manager's Decision on Dispute. The Program Manager shall endeavor to issue a written decision on the dispute within thirty (30) calendar days of receipt providing the factual and legal basis of the Program Manager's decision on the dispute (Program Manager's Decision on Dispute). The Program Manager's Decision on Dispute shall be Ecology's final decision on the disputed matter.

8.9.2

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.

8.9.3

Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless the subject of the dispute is about the presence or threat of Endangerment (Section 8.12), an emergency (Section 7.4), or Ecology agrees in writing to a schedule extension (Section 8.10). If the subject of the dispute is about the presence or threat of Endangerment (Section 8.12) or an emergency (Section 7.4), then Ecology's receipt of the Informal Dispute Notice shall automatically stay further work only at the affected portion(s) of the Site until Ecology's final decision on the disputed matter is issued.

8.9.4

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 7.1 (Work to be Performed) or initiating enforcement under Section 10 (Enforcement).

8.10 Extension of Schedule

8.10.1

Weyerhaeuser 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:

- 8.10.1.1 The deadline that is sought to be extended.
- 8.10.1.2 The length of the extension sought.
- 8.10.1.3 The reason(s) for the extension.
- 8.10.1.4 Any related deadline or schedule that would be affected if the extension were granted.

8.10.2

The burden shall be on Weyerhaeuser 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:

- 8.10.2.1 Circumstances beyond the reasonable control and despite the due diligence of Weyerhaeuser 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 Weyerhaeuser.
- 8.10.2.2 A shelter in place or work stoppage mandated by state or local government order due to public health and safety emergencies.
- 8.10.2.3 Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty.
- 8.10.2.4 Endangerment as described in Section 8.12 (Endangerment).
- 8.10.2.5 An emergency situation or an event that may present an immediate threat to public health or welfare or the environment as described in Section 7.4.

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 Weyerhaeuser.

8.10.3

Ecology shall act upon any of Weyerhaeuser's written request for extension in a timely fashion. Ecology shall give Weyerhaeuser 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 8.11 (Amendment of Order) when a schedule extension is granted.

8.10.4

At Weyerhaeuser'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:

- 8.10.4.1 Delays in the issuance of a necessary permit which was applied for in a timely manner.
- 8.10.4.2 Other circumstances deemed exceptional or extraordinary by Ecology.
- 8.10.4.3 Endangerment as described in Section 8.12 (Endangerment).
- 8.10.4.4 An emergency situation or an event that may present an immediate threat to public health or welfare or the environment as described in Section 7.4.

8.11 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 8.13 (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 Weyerhaeuser. 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, Weyerhaeuser 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 8.9 (Resolution of Disputes).

8.12 Endangerment

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

In the event Weyerhaeuser determines that any activity being performed under this Order or condition at the Site where work is to be performed is creating or has the potential to create a danger to human health or the environment, Weyerhaeuser may stop work within that area. Weyerhaeuser shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination to stop work. Upon Ecology's direction, Weyerhaeuser shall provide Ecology with documentation of the basis for the determination to stop work within that area. If Ecology disagrees with Weyerhaeuser's determination, it may direct Weyerhaeuser to resume work within that area. Ecology's decision to require Weyerhaeuser to resume work may be subject to Dispute Resolution under this Order.

If Ecology concurs with or orders a work stoppage pursuant to this section, Weyerhaeuser's obligations with respect to the work under this Order within that area shall be suspended until Ecology determines the danger is abated, and the time for performance of such work, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section 8.10 (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.

8.13 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 Weyerhaeuser to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against Weyerhaeuser regarding remedial actions required by this Order, provided Weyerhaeuser complies with this Order.

Ecology nevertheless reserves its rights under RCW 70A.305, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health or the environment, and to issue orders requiring such remedial

actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

By entering into this Order, Weyerhaeuser does not admit to any liability for the Site. Although Weyerhaeuser is committing to conducting the work required by this Order under the terms of this Order, Weyerhaeuser 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.

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

8.15 Compliance with Applicable Laws

8.15.1 Applicable Laws

All actions carried out by Weyerhaeuser 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 C. Weyerhaeuser 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 Weyerhaeuser, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and Weyerhaeuser must implement those requirements.

8.15.2 Relevant and Appropriate Requirements.

All actions carried out by Weyerhaeuser 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 C. If additional relevant and appropriate requirements are identified by Ecology or Weyerhaeuser, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and Weyerhaeuser must implement those requirements.

8.15.3

Pursuant to RCW 70A.305.090(1), Weyerhaeuser 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, Weyerhaeuser 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.

8.15.4

Weyerhaeuser 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 Weyerhaeuser 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 Weyerhaeuser shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Weyerhaeuser 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 Weyerhaeuser and on how Weyerhaeuser must meet those requirements. Ecology shall inform Weyerhaeuser in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Weyerhaeuser 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 Weyerhaeuser 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.

8.16 Indemnification

Weyerhaeuser 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 Weyerhaeuser, its officers, employees, agents, or contractors in entering into and implementing this Order. However, Weyerhaeuser 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.

9. Satisfaction of Order

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

10. Enforcement

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

10.1

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

10.2

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.

10.3

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

10.3.1

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

10.3.2

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

10.4

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: _____

Weyerhaeuser NR Company

State of Washington
Department of Ecology

Kristen Sawin
VP Corporate and Government Affairs
220 Occidental Avenue South
Seattle, WA 98104
Kristen.Sawin@Weyerhaeuser.com

James DeMay, P.E.
Section Manager
Industrial Section
(360) 628-1739

Exhibit A: Parcel Map

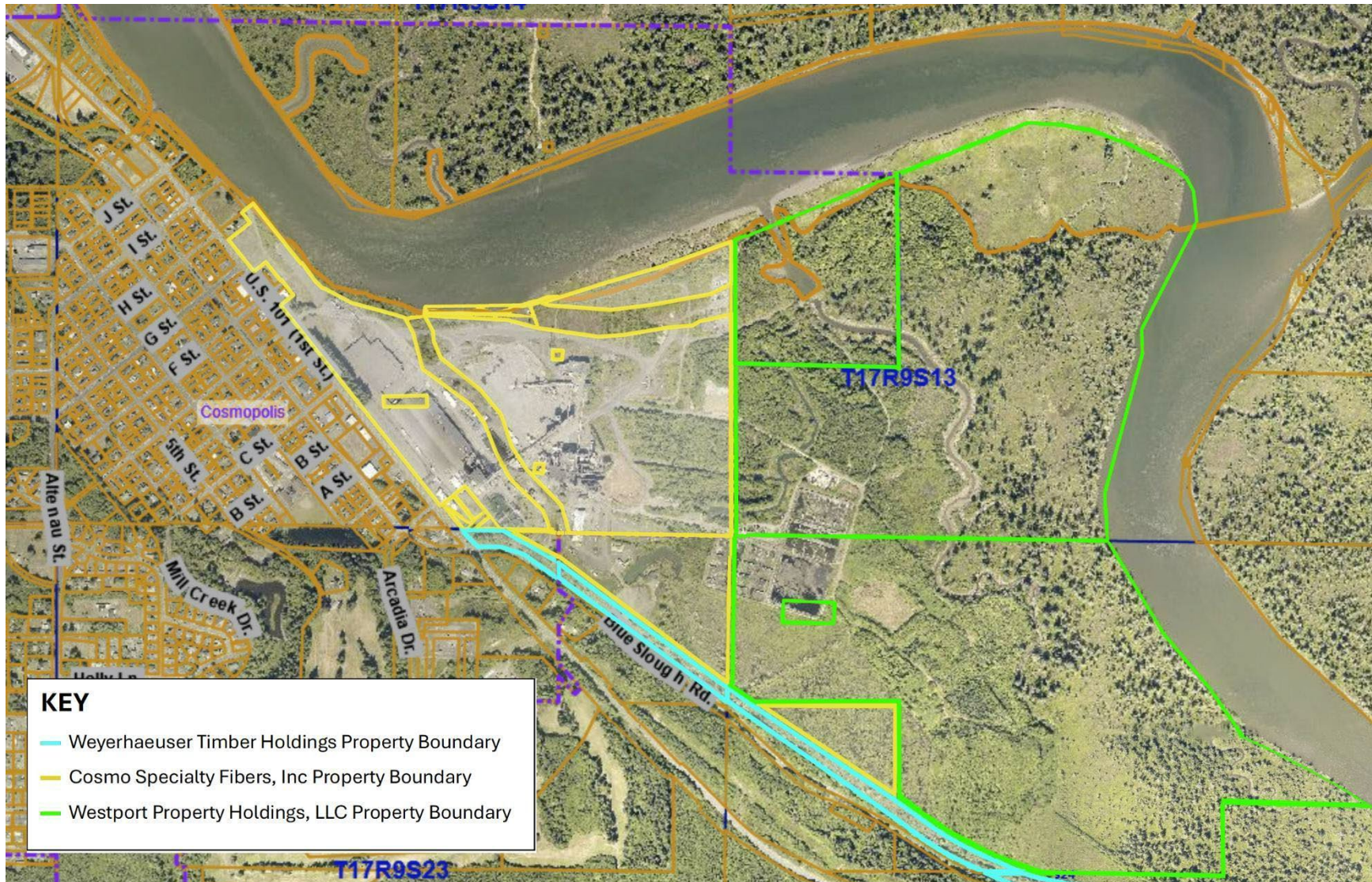


Figure 1. Main Mill



Figure 2. Westport Ponds with Cosmo's Property Boundaries in Yellow

EXHIBIT B

SCOPE OF WORK

PURPOSE

The work under this Agreed Order (AO) involves conducting a Remedial Investigation (RI) and Feasibility Study (FS), conducting additional interim actions if agreed to by the parties, and preparing a preliminary Draft Cleanup Action Plan (DCAP) to select a cleanup alternative. The purpose of the RI, FS, and preliminary DCAP is to determine the extent of contamination and evaluate cleanup alternatives for the Site.

The PLP shall coordinate with Ecology throughout the development of the RI/FS Interim Actions and shall keep Ecology informed of changes to any Work Plan or other project plans, and of any issues or problems as they develop.

The SOW is divided into the following major tasks:

- Task 1. RI Work Plan
- Task 2. Remedial Investigation
- Task 3. Interim Action(s) (if required)
- Task 4. Feasibility Study
- Task 5. SEPA Compliance
- Task 6. Public Participation
- Task 7. DCAP

TASK 1. RI WORK PLAN

The PLP shall prepare a Remedial Investigation Work Plan (Work Plan). The Work Plan shall include an overall description and schedule of all RI activities. The Work Plan shall clearly describe the project management strategy for implementing and reporting on RI activities. The responsibility and authority of all organizations and key personnel involved in conducting the RI will be outlined.

A Key Project Meeting will be held prior to submittal of the RI Work Plan(s). The purpose of the Remedial Investigation Planning Meeting is to review requirements for the Work

Plan and plan Remedial Investigation field work, discuss the preliminary Conceptual Site Model, and identify project data needs and possible interim actions.

The Work Plan shall describe general facility information; site history and conditions; including previous operations; past field investigations, including any data collection and analysis of soils, air, groundwater, surface water, and sediments; a conceptual site model showing contaminants, migration pathways in all environmental media, and potential receptors; geology and groundwater system characteristics; past, current, and future land use; identification of natural resources and ecological receptors; hazardous substances and their sources, etc., in compliance with WAC 173-340-350 and WAC 173-204-560.

As part of the project background, existing environmental data on site soil, groundwater, surface water, and sediments will be compiled and evaluated for data gaps. The data gaps will be used as the basis for conducting additional site investigations, if necessary. The Work Plan will also identify specific data collection procedures in a Sampling and Analysis Plan (SAP) and Quality Assurance Project Plan (QAPP) as part of the Work Plan in compliance with WAC 173-340-820 and WAC 173-204-600 for defining the nature and extent of contamination. The PLP will also submit a copy of the Health and Safety Plan (HASP) for the project.

The SAP identifies the proposed number and location of all environmental samples and methods, including soil borings, groundwater monitoring wells, soil, groundwater, stormwater, seep, catch basin and sediment samples, approximate depths, and includes a quality assurance project plan. The SAP will describe the sampling objectives, the rationale for the sampling approach (based upon the identified data gaps), and plans for data use, and shall provide a detailed description of sampling tasks. The SAP shall describe specifications for sample identifiers; sampling equipment; the type, number, and location of samples to be collected; the analyses to be performed; descriptions of sampling equipment and methods to be used; sample documentation; sample containers, collection and handling; data and records management; and schedule.

The Quality Assurance Project Plan (QAPP) will be prepared in accordance with the Guidance for Preparation of Quality Assurance Project Plans, EPA Region 10, Quality Data Management Program, QA/R-5 and requirements of the EPA Contract Laboratory Program. The QAPP will also follow Ecology's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies (July 2004) ¹and Sediment Sampling and Analysis Plan Appendix (February 2008).² Laboratories must meet the accreditation standards

¹ Found at <http://www.ecy.wa.gov/biblio/0403030.html>

² Found at <http://www.ecy.wa.gov/biblio/qapp.html>

established in WAC 173-50. Data quality objectives will reflect the criteria or threshold values used for the source control evaluation.

The SAP, including the QAPP, will be submitted to Ecology for review and approval. As with all environmental work at the site, work may not begin without written approval from Ecology. The plan shall provide seven (7) days notice to Ecology prior to beginning sampling. Ecology may obtain split samples.

The PLP or their contractors shall submit all new sampling data generated under this SAP and any other recently collected data to Ecology for entry into the Environmental Information Management System (EIM) in accordance with WAC 173-340-840(5) and Ecology's Toxics Cleanup Program Policy 840: Data Submittal Requirements. Only validated data will be entered into the EIM database within 30 days of Ecology approval of the associated report.

RI Work Plan tasks and subtasks will include the following:

- Sampling and analysis of soil, groundwater, and seeps;
- Sampling and analysis of surface and subsurface sediments;
- Sampling and analysis of stormwater and catch basin solids to determine whether the stormwater system is a source of contamination to sediments;
- Evaluate the potential to contaminate or recontaminate sediments, including analysis of the following pathways:
 - Direct discharges
 - Stormwater discharges
 - Overland flow
 - Groundwater discharges and seeps
 - Soil erosion
 - Site operations
 - Spills, dumping, leaks, housekeeping, and management practices.

The PLP will provide Ecology with an Agency Review Draft Work Plan. Once Ecology reviews and approves the Work Plan, it will be considered the Final Work Plan. The Work Plan shall not be implemented until approved by Ecology. Once approved by Ecology, the

PLP will implement the Final Work Plan according to the schedule contained in this Exhibit.

The PLP shall prepare two (2) copies of the Agency Review Draft RI Work Plan and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and comment. After incorporating Ecology's comments on the Agency Review Draft Work Plan and after Ecology approval, the PLP shall prepare three (3) copies of the Final Work Plan and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology.

TASK 2. REMEDIAL INVESTIGATION

The PLP shall conduct an RI that meets the requirements of WAC 173-340-350(5) and WAC 173-204-560 according to the Work Plan as approved by Ecology. The RI will determine the nature and extent of contamination exceeding preliminary Model Toxics Control Act (MTCA) cleanup levels, preliminary Sediment Management Standards (SMS) cleanup standards, and other regulatory requirements. The RI must provide sufficient data and information to define the nature and extent of contamination.

Field sampling and analysis will be completed in general accordance with the SAP and QAPP. Deviation(s) from the approved SAP and QAPP must be communicated to Ecology immediately and documented as required by Ecology.

The PLP shall provide interim data reports and updates to Ecology as new site data and information become available. Laboratory analysis data shall also be provided in electronic format when it has been validated. Raw laboratory data will be provided to Ecology upon request.

Prior to submittal of the Agency Review Draft RI Report, a Key Project Meeting will be held. During the Remedial Investigation Pre-Report Check-In, Ecology and the PLP will review available data and an updated conceptual site model and discuss the content and organization of the Draft RI Report.

The PLP shall compile the results of the Site investigation into an Agency Review Draft RI Report. The PLP shall prepare two (2) copies of the Agency Review Draft RI Report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and comment.

After incorporating Ecology's comments on the Agency Review Draft RI Report, the PLP shall prepare three (3) copies of a Public Review Draft RI Report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment. Electronic survey data for monitoring locations,

electronic lab data, and GIS maps of contaminant distribution shall also be provided for both the Agency Review Draft RI Report and Public Review Draft RI Reports either in the report or as attachments. The RI Report will not be considered Final until after a public review and comment period.

If the data collected during this investigation is insufficient to define the nature and extent of contamination, and/or to select a cleanup action plan an additional phase of investigation shall be conducted to define the extent of contamination.

TASK 3. INTERIM ACTIONS (if required)

Remedial actions implemented prior to completion of the RI/FS, including those that:

- are technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance;
- correct a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed; or
- are needed to provide for completion of the remedial investigation/feasibility study or design of the cleanup action.

will be considered interim actions, will be implemented in accordance with WAC 173-340-430 and the AO, and will be designed in a manner that will not foreclose reasonable alternatives for any final cleanup action that may be required. Remedial actions for contaminated sediments will be designated partial cleanup actions and will be implemented pursuant to WAC 173-204-550(3)(d).

The PLP will implement an interim action if agreed to by the parties by Amendment to this AO. Based upon information in the Agency Review Draft RI Report, interim action(s) may be needed to expedite control of releases to sediments or other environmental media pursuant to WAC 173-340-430.

The scope of the interim actions may include, but not be limited to, typical source control or containment elements such as:

- Soil or sediment removal
- Groundwater remediation
- Repair, slip lining, replacement, or closure of stormwater conveyances or other structures such as conduit, vaults, catch basins, etc.
- Removal of underground storage tanks and pipes

- Removal of old drain fields or former surface impoundments
- Proper abandonment of old wells
- Removal of contaminated building or other structural material
- Construction of a treatment facility
- Shoreline stabilization such as bulkhead repair, erosion or seepage control, and grading or clearing.

If an interim action is to be performed, the PLP will prepare and submit for Ecology approval an Agency Review Draft Interim Action Work Plan (IAWP) with detail commensurate with the work to be performed. The Agency Review Draft IAWP shall include, as appropriate:

- Description of the interim action including its purpose, general requirements, and relationship to the (final) cleanup action (to the extent known);
- Summary of relevant RI/FS information, including at a minimum existing site conditions and alternative interim actions considered;
- Information regarding design and construction requirements, including a proposed schedule and personnel roles and responsibilities;
- Compliance Monitoring Plan;
- SAP/QAPP; and
- Permits required.

The PLP will also submit a copy of the Health and Safety Plan for the project. The PLP will be responsible for complying with the State Environmental Policy Act (SEPA) Rules including preparing and submitting an environmental checklist for the interim action, and will assist Ecology with presentations at any additional meetings or hearings that might be necessary for SEPA compliance or as part of the Public Participation Plan.

The PLP shall prepare two (2) copies of the Agency Review Draft Interim Action Work Plan and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review. The PLP shall incorporate Ecology's comments and then prepare two (2) copies of the Public Review Draft Interim Action Work Plan and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology. After a public notice and comment period for the Public Review Draft IAWP (and

SEPA determination), Ecology will approve the IAWP (if appropriate) and the document will be considered Final. The PLP shall prepare three (3) copies of the Final Interim Action Work Plan and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats. Once approved by Ecology, the PLP will implement the interim action according with the approved schedule.

Upon successful completion of the work, an Agency Review Draft Interim Action Report will be prepared as a separate deliverable. The PLP shall prepare two (2) copies of the Agency Review Draft Interim Action Report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and approval. After incorporating Ecology's comments on the Agency Review Draft Interim Action Report and after Ecology approval, the PLP shall prepare three (3) copies of the Final Interim Action Report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology.

TASK 4. FEASIBILITY STUDY

The PLP shall use the information obtained in the RI to prepare an Agency Review Draft Feasibility Study (FS) that meets the applicable requirements of WAC 173-340-351(6) according to the Schedule in this exhibit. The Agency Review Draft FS will evaluate remedial alternatives for site cleanup, consistent with MTCA and SMS requirements to ensure protection of human health and the environment by eliminating, reducing, or otherwise controlling risk posed through each exposure pathway and migration route.

Prior to beginning the FS, a Key Project Meeting will be held to review ARARs, potential remedial alternatives and establish points of compliance.

The Agency Review Draft FS will provide a detailed analysis of each remedial alternative according to the applicable requirements of WAC 173-340-350, MTCA Remedial Investigation and WAC 173-340-351, Feasibility Study, and WAC 173-204-560, SMS Cleanup Study. The remedial alternatives will be evaluated for compliance with the applicable requirements of WAC 173-340-360, Selection of Cleanup Actions, and WAC 173-204-560(4), including a detailed evaluation of remedial alternatives relative to the following criteria:

- Compliance with Cleanup Standards and Applicable Laws
- Protection of Human Health
- Protection of the Environment
- Provision for a Reasonable Restoration Time Frame

- Use of Permanent Solutions to the Maximum Extent Practicable
- The Degree to which Recycling, Reuse, and Waste Minimization are Employed
- Short-term Effectiveness
- Long-Term Effectiveness
- Net Environmental Benefit
- Implementability
- Provision for Compliance Monitoring
- Cost-Effectiveness
- Prospective Community Acceptance

The remedial alternative that is judged to best satisfy the evaluation criteria will be identified. Justification for the selection will be provided, and the recommended remedial alternative further developed, in the FS Report.

The PLP shall prepare two (2) copies of the Agency Review Draft FS and submit them, including one electronic copy in Word (.doc) and Adobe (.pdf) formats, to Ecology for review. After addressing Ecology's comments on the Agency Review Draft FS, the PLP shall prepare three (3) copies of the Public Review Draft FS and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment. The FS will not be considered Final until after a public review and comment period.

TASK 5. SEPA COMPLIANCE

The PLP shall be responsible for complying with the State Environmental Policy Act (SEPA) Rules including preparing and submitting an environmental checklist. If the result of the threshold determination is a determination of significance (DS), the PLP shall be responsible for the preparation of Draft and final environmental impact statements. The PLP shall assist Ecology with coordinating SEPA public involvement requirements with MTCA public involvement requirements whenever possible, such that public comment periods and meetings or hearings can be held concurrently.

TASK 6. PUBLIC PARTICIPATION

The PLP shall support Ecology in presenting the Public Review Draft RI Report and the Public Review Draft FS Reports and SEPA evaluations at one public meeting or hearing. The PLP will assist Ecology with presentations at any additional meetings or hearings that might be necessary for SEPA compliance or as part of the Public Participation Plan.

After the public comment periods are completed, the PLP shall prepare an Agency Review Draft Responsiveness Summary that addresses public comments. The PLP shall prepare two (2) copies of the Agency Review Draft Responsiveness Summary and submit them to Ecology for review and approval, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment.

After addressing Ecology's comments and after Ecology approval, the PLP shall prepare five (5) copies of the Final Responsiveness Summary and submit them to Ecology for distribution, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats.

TASK 7. PRELIMINARY DRAFT CLEANUP ACTION PLAN

Upon Ecology approval of the Public Review Draft Remedial Investigation Report and Public Review Draft Feasibility Study, a Key Project Meeting will be held regarding the Cleanup Action Plan. The Cleanup Action Plan Meeting will be used to review plans for developing the Agency Review preliminary Draft Cleanup Action Plan (DCAP).

The PLP shall prepare an Agency Review preliminary DCAP in accordance with WAC 173-340-380 that provides a proposed remedial action to address the contamination present on the Site. Where contaminated sediments are included in the remedial action, the cleanup plan will comply with WAC 173-204-575, in addition to the MTCA requirements cited above. The preliminary DCAP shall include a general description of the proposed remedial actions, cleanup standards developed from the RI/FS and rationale regarding their selection, a schedule for implementation, description of any institutional controls proposed, and a summary of applicable local, state, and federal laws pertinent to the proposed cleanup actions.

The PLP will submit an Agency Review preliminary DCAP for Ecology's review and approval. The Agency Review preliminary DCAP will include, but not be limited to, the information listed under WAC 173-340-380. The PLP shall prepare two (2) copies of the Agency Review preliminary DCAP and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and approval.

After receiving Ecology's comments on the Agency Review preliminary DCAP, if any, the PLP shall revise the preliminary DCAP to address Ecology's comments and submit five (5)

copies of the Public Review DCAP including one electronic copy each in Word (.doc) and Adobe (.pdf) formats.

Exhibit C
Applicable Laws

Applicable Laws	Permit
Model Toxics Control Act (Chapter 70A.305 RCW), and MTCA Cleanup Regulations(Chapter 173-340 WAC)	NA
Washington State Clean Air Act (RCW 70.94), Washington State's Operating Permit Regulation (WAC 173-401), Federal Clean Air Act	Air Operating Permit No. WA0000809
State Environmental Policy Act (SEPA) (RCW 43.21C) and State Environmental Policy Act Rules (Chapter 197-11 WAC)	As applicable
Water Pollution Control (RCW 90.48), National Pollutant Discharge Permit Program (WAC 173-220) the Federal Clean Water Act	NPDES Permit No. WA0000809
Dangerous Waste Regulation, WAC 173-303	NA
Emergency Planning and Community Right-to-Know Act	NA
Oil Pollution Prevention Regulations (40 CFR Part 112)	NA
Solid Waste Handling Standards (WAC 173-350)	Solid Waste Disposal Permit 01LF490

EXHIBIT D – SCHEDULE OF DELIVERABLES

Below is the schedule for deliverables described in the Agreed Order and the Scope of Work. 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. Where a deliverable due date is triggered by Ecology notification, comments or approval, the starting date for the period shown is the date the PLP received such notification, comments or approval by certified mail, return receipt requested, unless otherwise noted below. Where triggered by Ecology receipt of a deliverable, the starting date for the period shown is the date Ecology receives the deliverable by certified mail, return receipt requested, or the date of Ecology signature on a hand-delivery form.

Deliverable/Task	Due Date
Monthly Progress Report	The 10 th day of each month, after the effective date of the Agreed Order
Agency Review Draft Interim Action Work Plan (as needed)	Within 60 calendar days following Ecology's written notification that an Interim Action is necessary
Initial implementation of Final Interim Action Work Plan (IAWP) as needed	Upon receipt of Ecology's Approval of the IAWP
Agency Review Draft RI Work Plan	Within 120 calendar days following effective date of the Agreed Order
Final RI Work Plan	Within 30 calendar days following receipt of Ecology comments on Agency Review Draft Work Plan
Completion of RI Field Work	Within 12 months following completion of the Final SAP, QAPP and HSP
Agency Review Draft RI Report	Within 90 calendar days following receipt of final, validated laboratory data for all phases

Public Review Draft RI Report	Within 45 calendar days following receipt of Ecology comments on Agency Review Draft RI Report
Agency Review Draft FS	Within 120 days following Ecology approval of the Final RI Report
Public Review Draft FS	Within 45 calendar days following receipt of Ecology's comments on the Agency Review draft FS
Agency Review preliminary Draft Cleanup Action Plan (DCAP)	90 calendar days following Ecology approval of the Final FS.