

State of Washington
Department of Ecology

In the Matter of Remedial Action by:
Port of Vancouver
Agreed Order
No. DE 23653

To: Julianna Marler
Chief Executive Officer
Port of Vancouver
3103 NW Lower River Rd
Vancouver, Washington 98660

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Exhibit A Interim Action Area

1. Introduction

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the Port of Vancouver (Port or Subject PLP) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the Port to implement an interim remedial action at the Alcoa Vancouver Site (Site) in Vancouver, Washington. Ecology believes the actions required by this Order are in the public interest. This Agreed Order herein is solely focused on the PCB-Impacted Sediment Area within the larger Alcoa Vancouver Site.

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

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 Alcoa Vancouver. 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 Interim Action Area (Exhibit A) shows where the remedial action will be implemented. The Site description and remedial action are more fully described in the Interim Action Work Plan (Exhibit B).

4.2 Parties

Refers to the State of Washington, Department of Ecology, and the Port.

4.3 Potentially Liable Persons (PLPs)

Refers to Port and Alcoa, Inc.

4.4 Subject PLP

Refers to the PLP (Port) subject to this Order.

4.5 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.

5. Findings of Fact

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

5.1

The Site is located at 5701 Northwest Lower River Road, Vancouver, Washington, approximately three miles northwest of downtown Vancouver, Washington. The Site is bounded by the Northwest Lower River Road to the north, the Columbia River to the south, lands owned by Clark County and the Subject PLP to the east, and lands owned by multiple industrial property owners to the west. In-water areas of the Site include properties that owned by the State of Washington, which are managed by the Washington State Department of Natural Resources, and property owned by the Subject PLP.

5.2

The Site is listed on the Department of Ecology's Hazardous Sites List as "Alcoa Vancouver," Facility Site ID No. 21 and Cleanup Site ID No. 2867. The Site encompasses the following sites on the Hazardous Site List: "Alcoa Northeast Parcel" (FS ID 50815458), "Alcoa Vancouver NPL" (FS ID 25), "Alcoa Vancouver PCB" (FS ID 22), "Alcoa Vancouver Rod Mill" (FS ID 24), "Alcoa Vancouver TCE" (FS ID 23), and "Columbia Marine Lines" (FS ID 26).

5.3

Alcoa owned and/or operated a primary aluminum smelter and fabrication facility for approximately 45 years at the Site, until 1986. In 1987, Alcoa discontinued primary aluminum manufacturing operations and sold the smelter and underlying lands, and some other ancillary facilities and lands, to Vanalco, Inc. Vanalco subsequently filed for bankruptcy, and its assets at the Site were purchased by Glencore Washington LLC (now

known as Evergreen Aluminum LLC (Evergreen)) in April 2002. No manufacturing operations have taken place at the Site since December 2000. The Port of Vancouver is the current owner of the Site since 2009.

5.4

The Site includes three landfill areas east of the former aluminum smelter property, which were formerly owned by Alcoa. These landfill areas are known as the East Landfill, the North Landfill, and the North 2 Landfill. The North and North 2 Landfills were remediated in 2004. The southern boundary of the East Landfill is set back approximately 50 feet landward from the top of the bank of the Columbia River. Alcoa also owned the land generally located to the south and southwest of the East Landfill area, including the bank of the Columbia River (above the ordinary high-water mark) and the land located alongside a Clark County Public Utilities (CPU) outfall line (hereinafter "South Bank" or "South Bank Area").

5.5

The Site is situated on the flood plain of the nearby Columbia River. The Site hydrogeology has been characterized by numerous borings, including detailed characterization of the East, North and North 2 Landfills and the National Priorities List (NPL) Site. The groundwater system in the area can be divided into four general hydrogeologic units: the shallow zone, the intermediate zone, the deep zone, and the aquifer zone. The predominant groundwater flow direction beneath the Site is toward the Columbia River in the deeper hydrogeologic units. The shallow zone consists of dredged sand placed on the Site during the late 1940s and early 1950s. A discontinuous, perched water table is located in the shallow zone during the wetter months of the year. The direction of the movement of water in the saturated portions of the shallow zone beneath the Site varies with the time of year and the amount of precipitation. The intermediate zone consists of sandy silt with clay lenses. The deep zone consists of fine to medium sand while the aquifer zone consists of sandy gravel.

5.6

In 1997, polychlorinated biphenyl's (PCBs) were discovered in three Columbia River sediment samples collected by CPU as part of the NPDES permitting requirements for a non-contact cooling water discharge installed approximately 300 feet west of the East Landfill. Alcoa initiated a soil and groundwater investigation of the entire bank/shore of the East Landfill. This work indicates that the East Landfill is not the primary source of the PCBs in the Columbia River sediments. During the investigation, an area of elevated PCBs in soil was discovered on the riverbank to the south and southwest of the East Landfill area, adjacent to the CPU outfall line (now known as the South Bank Area). This is thought to be the major source of the PCB contamination found in the Columbia River adjacent to the cooling water discharge.

5.7

PCBs found in soils in the South Bank Area adjacent to the East Landfill were below the MTCA Method A industrial cleanup level. However, the South Bank Area near the CPU's outfall included approximately 2,500 cubic yards of soil impacted with PCBs at concentrations above the MTCA Method A industrial cleanup level. This material was localized around the location of the CPU outfall to a depth of approximately 15 feet and was excavated in 2003 in accordance with Ecology Agreed Order No. DE 03 TCPIS-5737. Adjacent to and further downstream from the CPU outfall, sediments of the Columbia River are impacted with PCBs.

5.8

In June of 2008, Ecology issued an Enforcement Order to Alcoa (Ecology Order No. DE 5660). This Enforcement Order required Alcoa to: 1) demolish ore handling facilities next to the dock, 2) remove existing above ground petroleum tank foundations and associated piping east of the dock, 3) remove existing underground petroleum storage tanks located in the river dike west of the dock, 4) conduct petroleum contamination soil sampling after removal of the underground storage tanks and pipelines and, if necessary, perform soil removal, 5) sample and remove any PCB contaminated soil along the riverbank and dike west of the dock with the potential to impact the sediment remediation, and 6) prepare and re-grade the Columbia River riverbank and dike as needed for geotechnical stability required for the sediment remediation. Alcoa has completed the remedial actions required by this enforcement order.

5.9

On January 30, 2009, the Clark County Superior Court entered a Consent Decree between Ecology and Alcoa, which required Alcoa to implement a December 2008 Cleanup Action Plan (CAP) to address contamination identified in a September 2008 Remedial Investigation/Feasibility Study (RI/FS) for the Site. The 2008 CAP identified four Areas of Concern (AOCs) that required additional remedial actions including the PCB-Impacted Sediment Area, Dike Underground Storage Tanks, Soluble Oil Area, and Crowley Parcel. On July 11, 2011, the Court entered an Amended Consent Decree, which required Alcoa to perform the remedial actions defined in a Supplemental Cleanup Action Plan. The Port was not a signatory to the 2008 Consent Decree or 2011 Amended Consent Decree but was subsequently identified by Ecology as a PLP in 2020.

5.10

Alcoa conducted cleanup actions at the Site pursuant to the 2009 Consent Decree, 2008 Cleanup Action Plan, 2011 Amended Consent Decree, and 2011 Supplemental Cleanup Action Plan. The remedial action for the PCB-Impacted Sediment Area included two main elements: 1) dredging, dewatering, and disposal of PCB-impacted sediments; and 2) placement of clean sand material following dredging to enhance natural recovery,

restore natural grade in-water elevations, and protect the shoreline at the Site (herein comprehensively referred to as enhanced natural recovery (ENR)).

5.11

Dredging was initiated on December 1, 2008, and continued through January 26, 2009. Approximately 50,000 cubic yards (cy) of PCB-impacted sediment was removed during dredging activities and 1.5 million gallons of dredged decant water was treated on-site prior to discharge. Approximately 4,910 cy of the total dredge volume was released into the Columbia River when a shoreline slope failure occurred on January 5, 2009. The shoreline slope reconstruction occurred between February 24, 2009 and February 27, 2009. Following dredging actions, approximately 34,305 cy of ENR sand was placed in-water primarily using barge-mounted equipment. No confirmational samples of the post-dredged surface area were collected by Alcoa prior to placement of the ENR sand. Performance sediment sampling was conducted following placement of the ENR sand and shoreline armoring to demonstrate compliance with Site cleanup standards. The performance samples were collected at the standard point of compliance (POC) for sediment cleanups (0-10 centimeters (cm) of riverbed), which was within the 6-inch layer of clean ENR sand placed on top of the post-dredged surface areas. All the performance samples collected from the clean ENR sand layer verified those locations were below the Site-specific remediation level of 320 micrograms per kilogram ($\mu\text{g}/\text{kg}$) and the Site-specific surface area-weighted average concentration (SWAC) cleanup level of 97 micrograms per kilogram ($\mu\text{g}/\text{kg}$) as established in the 2008 CAP. Alcoa documented completion of the remedial action in the December 2009 *Project Completion Report: Alcoa/Evergreen Vancouver Site*.

5.12

In 2015 Ecology conducted the first Periodic Review of the Site and concluded, based on the availability of data at the time, that “the cleanup actions completed at the Alcoa Vancouver Site appear to be protective of human health and the environment”. Ecology is in the process of conducting a second Periodic Review of the Site.

5.13

In 2018 the Port conducted sampling of sediments to incorporate Berth 17 into its existing maintenance dredging program within the former 2009 cleanup dredge area . The sediment samples analytical results showed exceedances of PCBs above Site-specific cleanup levels, remedial action levels, and PCBs and polycyclic aromatic hydrocarbons (PAHs) above Sediment Management Standards (SMS) Freshwater Screening Levels. In 2019 and 2021, the Port collected additional samples of sediment to understand sediment conditions relative to potential future operational use and to document surface and subsurface conditions prior to and after fender pile replacement. Consistent with the 2018, the results indicated that elevated concentrations of PCBs and PAHs are

present in surface and subsurface within the berth area. The ENR sand layer placed in 2009 was not detected during the 2018, 2019, and 2021 in-water sediment sampling by the Port.

5.14

In 2021 and 2022 Alcoa conducted additional in-water sampling to support the second Period Review process as directed by Ecology. Results of this sampling showed PCB concentrations in sediment remain above Site-specific cleanup standards and remediation levels as well as PAHs exceeding SMS Freshwater Screening Levels.

6. Ecology Determinations

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

6.1

The Subject PLP is an “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 all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70A.305.020(32), (13), respectively, has occurred at the Site.

6.3

Based upon credible evidence, Ecology issued a PLP status letter to the Subject PLP dated July 9, 2020, pursuant to RCW 70A.305.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that the Subject PLP is a PLP under RCW 70A.305.040 and notified the Subject PLP of this determination by letter dated August 20, 2020.

6.4

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

6.5

Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or

substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan.

PCB concentrations in sediment remain above Site-specific cleanup standards and remediation levels as established in the 2008 CAP. In-water sediment sampling conducted by the Port and Alcoa since the remedial action confirmed PCBs above cleanup levels remain in sediments at the Site (as well as elevated PAHs). Based on these circumstances, Ecology has determined that an interim action is warranted under WAC 173-340-430.

7. Work to be Performed

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the Subject PLP take the following remedial actions at the Site. The area within the Site where remedial action is necessary under RCW 70A.305 is described in the Interim Action Area figure (Exhibit A). These remedial actions must be conducted in accordance with WAC 173-340 and 173-204:

7.1

The Subject PLP shall perform an interim action in accordance with the requirements of WAC 173-340-430. Within the interim action area, the Port will remove PCB and PAH contaminated sediment via dredging. The dredge extents will be defined following a pre-design investigation in accordance with the schedule and terms of the Scope of Work and Schedule (Exhibit C). The Interim Action will address sediment contamination and comply with the Site-specific PCB cleanup level and the SMS Sediment Cleanup Objectives for total Aroclor PCBs and total PAHs as described in the Interim Action Work Plan (IAWP) (Exhibit B) and the Engineering Design Report to be prepared following completion of the pre-design investigation. The Interim Action will be subject to review and approval by Ecology to ensure compliance with MTCA/SMS requirements and dredge material will be disposed of off-site at a licensed upland disposal facility.

7.2

If the Subject PLP learns of a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in any media, the Subject PLP, within seven (7) days of learning of the change in condition, shall notify Ecology in writing of said change and provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.

7.3

The Subject PLP 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 sent by certified mail, return receipt requested, to Ecology's project coordinator. The Progress Reports shall include the following:

7.3.1

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

7.3.2

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

7.3.3

Description of all deviations from the Schedule (Exhibit C) during the current month and any planned deviations in the upcoming month.

7.3.4

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

7.3.5

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.

7.3.6

A list of deliverables for the upcoming month.

7.4

Pursuant to WAC 173-340-440(11), the Subject PLP shall maintain sufficient and adequate financial assurance mechanisms to cover all costs associated with the operation and maintenance of the remedial action at the Site, including institutional controls, compliance monitoring, and corrective measures.

7.4.1

Within sixty (60) days of the effective date of this Order, the Subject PLP shall submit to Ecology for review and approval an estimate of the costs under this

Order for operation and maintenance of the remedial actions at the Site, including institutional controls, compliance monitoring and corrective measures. Within sixty (60) days after Ecology approves the aforementioned cost estimate, the Subject PLP shall provide proof of financial assurances sufficient to cover all such costs in a form acceptable to Ecology.

7.4.2

The Subject PLP shall adjust the financial assurance coverage and provide Ecology's project coordinator with documentation of the updated financial assurance for:

7.4.2.1

Inflation, annually, within thirty (30) days of the anniversary date of the entry of this Order; or if applicable, the modified anniversary date established in accordance with this section, or if applicable, ninety (90) days after the close of the Subject PLP's fiscal year if the financial test or corporate guarantee is used.

7.4.2.2

Changes in cost estimates, within thirty (30) days of issuance of Ecology's approval of a modification or revision to the IAWP that result in increases to the cost or expected duration of remedial actions. Any adjustments for inflation since the most recent preceding anniversary date shall be made concurrent with adjustments for changes in cost estimates. The issuance of Ecology's approval of a revised or modified IAWP will revise the anniversary date established under this section to become the date of issuance of such revised or modified IAWP.

7.5

If required by the IAWP, institutional controls will be implemented at the Site. Environmental (Restrictive) Covenants may be used to implement the institutional controls of the interim action area, that do not have a Clark County assigned parcel number.

7.5.1

In consultation with the Subject PLP, Ecology will prepare the Environmental (Restrictive) Covenants consistent with WAC 173-340-440, RCW 64.70, and any policies or procedures specified by Ecology. The Environmental (Restrictive) Covenants shall restrict future activities and uses of the Site as agreed to by Ecology and the Subject PLP.

7.5.2

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

7.5.3

As detailed in the IAWP, as part of the remedial action for the Site, institutional controls are required on properties not owned by the Subject PLP. The Subject PLP will ensure that the owner of each affected property records an Ecology-approved Environmental (Restrictive) Covenant as detailed in the Schedule (Exhibit C). Upon a showing that the Subject PLP has made a good faith effort to secure an Environmental (Restrictive) Covenant for an affected property and failed to do so, Ecology may provide assistance to the Subject PLP. Unless Ecology determines otherwise, affected properties with Clark County Property Account numbers: 500501000; 500505000; 503000000; 503001000; and 503020000. The Subject PLP shall provide Ecology with the original recorded Environmental (Restrictive) Covenants within thirty (30) days of the recording date.

7.6

All plans or other deliverables submitted by the Subject PLP for Ecology's review and approval under the Schedule (Exhibit C) shall, upon Ecology's approval, become integral and enforceable parts of this Order. The Subject PLP 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, the Subject PLP shall prepare and submit to Ecology an IAWP for that additional interim action, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the IAWP Plan in accordance with WAC 173-340-600(16). The Subject PLP shall not conduct the interim action until Ecology approves the IAWP. Upon approval by Ecology, the IAWP becomes an integral and enforceable part of this Order, and Subject PLP is required to conduct the interim action in accordance with the approved IAWP. 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 the Subject PLP has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to the Subject PLP, perform any or all portions of the remedial action or at Ecology's discretion allow the Subject PLP opportunity to correct. In an emergency, Ecology is not required to provide notice to the Subject PLP, or an opportunity for dispute resolution. The Subject PLP shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Payment of Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section 10 (Enforcement).

7.9

Except where necessary to abate an emergency situation or where required by law, the Subject PLP 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, the Subject PLP 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

Ecology hereby incorporates into this Order the previous remedial actions described in Section 5 (Findings of Fact). Reimbursement for specific project tasks under a grant agreement with Ecology is contingent upon a determination by Ecology's Toxics Cleanup Program that the retroactive costs are eligible under WAC 173-332A-320(6), the work performed complies with the substantive requirements of WAC 173-340, and the work is consistent with the remedial actions required under this Order. The costs associated with Ecology's determination on the past independent remedial actions described in Section 5 (Findings of Fact), are recoverable under this Order.}

8. Terms and Conditions

8.1 Payment of Remedial Action Costs

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

the Subject PLP an invoice soon after the Order is signed. For costs incurred after this date, Ecology will send the Subject PLP an invoice quarterly. For all Ecology costs incurred, Subject PLP 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:

Dave Johnson
Department of Ecology
Solid Waste Management Program, Industrial Section
P.O. Box 47600
Olympia, WA 98504
360-338-2638
E-mail: johd461@ecy.wa.gov

The project coordinator for the Subject PLP is:

Mary Mattix
3103 NW Lower River Road
Vancouver, WA 98660
360-823-5316
E-mail: mmattix@portvanusa.com

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the Subject PLP, 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.

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

The Subject PLP shall make best efforts to secure access rights for those properties within the Site not owned or controlled by the Subject PLP 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 the Subject PLP would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If, within 60 days after the effective date of this Order, the Subject PLP 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 the Subject PLP, or take independent action, in obtaining such access and/or use restrictions. Ecology reserves the right to seek payment from the Subject PLP for all costs, including cost of attorneys’ time, incurred by Ecology in obtaining such access or agreements to restrict land, water, or other resource use.

8.5 Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the Subject PLP shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology’s Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, the Subject PLP shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the Subject PLP pursuant to implementation of this Order. The Subject PLP shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the Subject PLP 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 the Subject PLP prior to any sample collection activity unless an emergency prevents such notice.

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

8.6 Public Participation

Ecology shall maintain the responsibility for public participation at the Site. However, the Subject PLP 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 the Subject PLP prior to the issuance of all press releases and fact sheets related to the Site, and before meetings related to the Site with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the Subject PLP that do not receive prior Ecology approval, the Subject PLP 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:

Fort Vancouver Regional Library
1007 E. Mill Plain Blvd.
Vancouver, WA 98663

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 Solid Waste Management Program in Lacey, Washington.

8.7 Access to Information

The Subject PLP shall provide to Ecology, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within the Subject

PLP's possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the work. The Subject PLP shall also make available to Ecology, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the work.

Nothing in this Order is intended to waive any right the Subject PLP may have under applicable law to limit disclosure of Records protected by the attorney work-product privilege and/or the attorney-client privilege. If the Subject PLP withholds any requested Records based on an assertion of privilege, the Subject PLP 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 Respondents are required to create or generate pursuant to this Order.

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

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, the Subject PLP 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 the Subject PLP elects to invoke dispute resolution the Subject PLP 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), the Subject PLP 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; the Subject PLP'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 The Subject PLP may then request management review of the dispute. The Subject PLP must submit this request (Formal Dispute Notice) in writing to the Solid Waste Management Program, 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; the Subject PLP'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 (Decision on Dispute) within thirty (30) calendar days of receipt of the Formal Dispute Notice. The Decision on Dispute shall be Ecology's final decision on the disputed matter.

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 Ecology agrees in writing to a schedule extension.

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

The Subject PLP's request for an extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

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 the Subject PLP 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 the Subject PLP including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the Subject PLP.

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).

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

8.10.3

Ecology shall act upon any Subject PLP's written request for extension in a timely fashion. Ecology shall give the Subject PLP 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 the Subject PLP'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).

8.11 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 the Subject PLP. Ecology will provide its written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

When requesting a change to the Order, the Subject PLP 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 at the Site under this Order is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct the Subject PLP to cease such activities for such period of time as it deems necessary to abate the danger. The Subject PLP shall immediately comply with such direction.

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

If Ecology concurs with or orders a work stoppage pursuant to this section, the Subject PLP's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section 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 the Subject PLP to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the Subject PLP regarding remedial actions required by this Order, provided the Subject PLP complies with this Order.

Ecology nevertheless reserves its rights under RCW70A.305, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health or the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of

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

By entering into this Order, the Subject PLP does not admit to any liability for the Site. Although the Subject PLP is committing to conducting the work required by this Order under the terms of this Order, the Subject PLP 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 the Subject PLP without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to the Subject PLP's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the Subject PLP shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, the Subject PLP shall notify Ecology of said transfer. Upon transfer of any interest, the Subject PLP 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

Ecology makes the final determination on whether applicable permit or substantive requirements are "legally applicable" or "relevant and appropriate" under WAC 173-340-710(2).

8.15.1 Applicable Laws

All actions carried out by the Subject PLP pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits or approvals, except as provided in RCW 70A.305.090. The permits or specific federal, state, or local requirements that the agency has determined are applicable and that are known at the time of the execution of this Order have been identified in Exhibit B. The Subject PLP has a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or the Subject PLP, Ecology will document

in writing if they are applicable to actions carried out pursuant to this Order, and the Subject PLP must implement those requirements.

8.15.2 Relevant and Appropriate Requirements.

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

8.15.3

Pursuant to RCW 70A.305.090(1), the Subject PLP may be exempt from the procedural requirements of RCW 70A.15, 70A.205, 70A.300, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, the Subject PLP 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. The exempt permits or approvals and the applicable substantive requirements of those permits or approvals, as they are known at the time of the execution of this Order, have been identified in Exhibit B.

8.15.4

The Subject PLP has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the Subject PLP determines that additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other Party of its determination. Ecology shall determine whether Ecology or the Subject PLP shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the Subject PLP shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the Subject PLP and on how the Subject PLP must meet those requirements. Ecology shall inform the Subject PLP

in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The Subject PLP shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Pursuant to RCW 70A.305.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70A.305.090(1) would result in the loss of approval from a federal agency that is necessary for the state to administer any federal law, the exemption shall not apply and the Subject PLP 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

To the extent permitted by law, the Subject PLP agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions of the Subject PLP, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the Subject PLP 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 the Subject PLP's receipt of written notification from Ecology that the Subject PLP has completed the remedial activity required by this Order, as amended by any modifications, and that the Subject PLP 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.

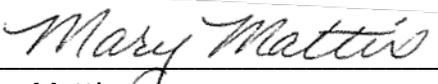
10.4

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: September 2, 2025

Port of Vancouver

State of Washington
Department of Ecology



Mary Mattix
Director of Environmental Services
360-823-5316



James DeMay
Industrial Section, Section Manager
Solid Waste Management Program
360-628-1739