

State of Washington
Department of Ecology

In the Matter of Remedial Action by:

Port of Bellingham

Agreed Order

No. DE 18005

To: Port of Bellingham
1801 Roeder Avenue
Bellingham, Washington 98225

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1. Introduction

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the Port of Bellingham (Port) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the Port to prepare and submit for Ecology review and approval all documents necessary to complete the design and permitting of the cleanup action per WAC 173-340-400 described in the final Cleanup Action Plan (final CAP) (Exhibit B). 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. 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 the Weldcraft Steel & Marine Site. The Site constitutes a facility under RCW 70A.305.020(8). The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located. Based upon factors currently known to Ecology, the Site is generally located at 2652 N. Harbor Loop Drive in Bellingham, Washington as shown in the Site Location Diagram (Exhibit A, Figure 2).

- 4.2 **Parties**
Refers to the State of Washington, Department of Ecology and the Port of Bellingham.
- 4.3 **Potentially Liable Persons (PLP(s))**
Refers to Port of Bellingham (the Port) and Weldcraft Steel & Marine/Mr. Owen Wilson.
- 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 **2003 Order**
Refers to Agreed Order No. DE 03TCPBE-5623, entered in 2003 by Ecology and the Port, for the purpose of conducting a remedial investigation/feasibility study (RI/FS), and conducting an interim action for cleanup of Site sediment.
- 4.6 **The UST Site Unit**
Refers to the portion of the Site consisting of the former gasoline underground storage tank (UST) area, as further described in the RI/FS conducted under the 2003 Order.
- 4.7 **The Work Yard Site Unit**
Refers to the portion of the Site consisting of the North, South, and Northeast Work Yards, as further described in the RI/FS conducted under the 2003 Order.
- 4.8 **The Marine Site Unit**
Refers to the portion of the Site consisting of the Marine Area, as further described in the RI/FS conducted under the 2003 Order.

5. Findings of Fact

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

- 5.1
Based upon factors currently known to Ecology, the Site is generally located at 2652 N. Harbor Loop in Bellingham, Washington, as shown in the Site Location Diagram (Exhibit A, Figure 2). The Site is located in the NW ¼ of the NW ¼ of Section 25 Township 38 N Range 2 E
- 5.2
The Weldcraft Steel & Marine facility was established on the Site in 1946 and was initially involved in general boat repair activities. The company was known as Weldcraft Steel Works until 1961, Weldcraft Steel and Tank from 1961 to 1972, and Weldcraft Steel & Marine from that point forward. Weldcraft Steel and Marine has primarily operated as a

boatyard that conducted various activities including: boat construction, repair, and maintenance; wood and metal fabrication; marine pipefitting; electrical work; sheet metal work; painting; machinery construction, installation, and repair; vessel haul-out and launching; lofting and pattern-making; canvas and plastic work; storage, brokerage, retail, and wholesale sales; and concrete work.

5.3

Industrial activities at the Site have taken place both in the fee-owned upland and adjacent fee-owned submerged and inter-tidal aquatic lands.

5.4

The Port has been an owner of the Site, which was vacant tidelands at the time of purchase, since 1927 when it acquired the Site from Hugh Eldridge. During the late 1920's, the Site was filled with material dredged during construction of Squalicum Waterway and from other upland sources of fill.

5.5

Between 1993 and 2002, the Port conducted a number of investigations of environmental conditions at the Site, including: (1) a Phase II environmental site assessment (ESA); (2) a supplemental sediment investigation; and (3) a Phase III ESA, and a sediment remedial investigation (RI). These investigations confirmed the presence of hazardous substances in Site soil, groundwater and sediment including total petroleum hydrocarbons (TPH) in the gasoline range in groundwater; tributyltin (TBT), mercury, copper and semi-volatile organic compounds in sediment; and TPH in the gasoline range and lead in soil.

5.6

Based on the results of sampling conducted at the Site, Ecology added the Site to Ecology's list of Confirmed and Suspected Contaminated Sites in 2001. In 2001 and 2002, Ecology conducted a Site Hazard Assessment. In 2002, Ecology placed the Site on the Hazardous Sites List and ranked using the Washington Ranking Method. The Site was assigned an overall priority ranking of 1 pursuant to MTCA.

5.7

Ecology issued Early Notice Letters of Potentially Liable Person (PLP) status to the Port and Weldcraft Steel & Marine (Mr. Owen Wilson) on September 25 and September 26, 2002, respectively. Ecology issued letters confirming PLP status to the Port and Weldcraft Steel & Marine on December 13, 2002.

5.8

In July 2003, Ecology and the Port entered into the 2003 Order that required the Port to perform a remedial investigation/feasibility study (RI/FS) and complete an interim action for the Site sediment. The interim action was completed in 2004.

5.9

In 2015, an RI/FS for the Site, prepared by the Port and its consultant Landau Associates, was finalized after public notice and opportunity to comment.

5.10

The RI/FS's findings are as follows: The Site RI defined physical characteristics, source areas, the nature and extent of impacted media, and the migration pathways and potential receptors for contaminants. Furthermore, the RI identified three distinct Site Units: the UST Site Unit, the Work Yard Site Unit, and the Marine Site Unit. Data from the RI and previous investigations were used in the FS process to develop and evaluate remedial alternatives for the Site. The FS developed remedial alternatives for the UST and Work Yard Site Units for cleanup of contaminated media defined in the RI, evaluated the alternatives against criteria defined by MTCA, provided a comparative analysis of the alternatives to determine the relative environmental benefits of each, and compared the relative benefits of each against their costs to determine the alternative that uses permanent solutions to the maximum extent practicable. The preferred alternative for the Site is an integrated cleanup action that addresses contamination in the UST and Work Yard Site Units. The preferred alternative is Alternative 1 as described in the FS, and was selected based on the disproportionate cost analysis, also presented in the FS.

5.11

Industrial activities at the Site have taken place both in the fee-owned upland and adjacent fee-owned submerged and inter-tidal aquatic lands.

5.12

After finalizing the RI/FS, the Port developed a draft Cleanup Action Plan (dCAP) in accordance with WAC 173-340-380 that provides a proposed remedial action to address the contamination present at the Site. The Port has submitted an Agency Review dCAP for Ecology's review.

6. Ecology Determinations

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

6.1

The Port is an "owner or operator" as defined in RCW 70A.305.020(22) of a "facility" as defined in RCW 70A.305.020(8).

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 Port dated September 25, 2002, pursuant to RCW 70A.305.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that the Port is a PLP under RCW 70A.305.040 and notified the Port of this determination by letter dated December 13, 2002.

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. Either party may propose an interim action under this Order. If the Parties are in agreement concerning the interim action, the Parties will follow the process in Section 7 (Work to be Performed). If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70A.305, or to undertake the interim action itself

7. Work to be Performed

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

7.1

The Port shall prepare and submit for Ecology review and approval all documents necessary to complete the design and permitting of the cleanup action described in the final CAP. The Scope of Work and Schedule (Exhibit C) specifies the required deliverables for this task and the schedule by which they must be submitted. The work to be performed for this task includes the following:

7.1.1 Preparation of draft Pre-Remedial Design Investigation (PRDI) Project Plans for Ecology review, followed by preparation of final documents addressing Ecology's review comments. The Project Plans include a Work Plan, Sampling and Analysis Plan, Quality Assurance Project Plan, Inadvertent Discovery Plan and a Health and Safety Plan. The PRDI Work Plan shall include a data gaps analysis and a summary description of work to fulfill identified data gaps.

7.1.2 Completion of the work described in the PRDI Project Plans.

7.1.3 Preparation of an Ecology review draft and final Engineering Design Report (EDR) that address Ecology's review comments. The EDR shall incorporate the PRDI findings and the results of engineering evaluations required to complete the design.

7.1.4 Preparation of 90% complete Construction Plans and Specifications (Plans and Specs) for Ecology review, followed by preparation of 100% complete documents addressing Ecology's review comments and the requirements imposed by permitting agencies. The Plans and Specs shall be based on the EDR.

7.2

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

7.3

The Port shall submit to Ecology written quarterly Progress Reports that describe the actions taken during the previous quarter 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 email 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 quarter.

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 quarter and any planned deviations in the upcoming quarter.

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 quarter.

7.4

All plans or other deliverables submitted by the Port 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 Port shall take any action required by such deliverable.

7.5

If the Parties agree on an interim action under Section 6 (Ecology Determinations), the Port 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). The Port 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 the Port is required to conduct the interim action in accordance with the approved Interim Action Work Plan.

7.6

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

7.7

Except where necessary to abate an emergency situation or where required by law, the Port shall not perform any remedial actions at the Site outside those remedial actions required by this Order to address the contamination that is the subject of this Order, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section 8.11 (Amendment of Order). In the event of an emergency, or where actions are taken as required by law, the Port must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

7.8

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 such 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 Port shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under RCW 70A.305, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs

shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173 340 550(2). For all Ecology costs incurred, the Port shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an 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:

John Rapp
Bellingham Field Office
913 Squalicum Way, Unit 101
Bellingham, WA 98225
Email: john.rapp@ecy.wa.gov
206-247-3242

The project coordinator for the Port is:

Ben Howard
Port of Bellingham
1801 Roeder Avenue
Bellingham, Washington 98227
Email: benh@portofbellingham.com
360-676-2500

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the Port, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

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

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 Port either owns, controls, or has access rights to at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the Port's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the Port. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the Port unless an emergency prevents such notice. All persons who access the Site pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

The Port shall make best efforts to secure access rights for those properties within the Site not owned or controlled by the Port 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 Port 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 90 days after the effective date of this Order, the Port 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 Port, or take independent action, in obtaining such access and/or use restrictions. Ecology reserves the right to seek payment from the Port 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 Port shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section 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, the Port shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the Port pursuant to implementation of this Order. The Port shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the Port and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section 8.4 (Access), Ecology shall notify the Port prior to any sample collection activity unless an emergency prevents such notice.

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

8.6 Public Participation

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

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:

Bellingham Public Library
210 Central Avenue
Bellingham, Washington 98225

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 Northwest Regional Office in Bellingham, Washington.

8.7 Access to Information

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

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

Nothing in this Order is intended to waive any right the Port may have under applicable law to limit disclosure of Records protected by the attorney work-product privilege and/or the attorney-client privilege. If the Port withholds any requested Records based on an assertion of privilege, the Port shall provide Ecology with a privilege log specifying the Records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged, including: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, biological, or engineering data, or the portion of any other record that evidences conditions at or around the Site; or (2) the portion of any Record that 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 Port 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 Port elects to invoke dispute resolution the Port 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 Port 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 Port may then request regional management review of the dispute. The Port must submit this request (Formal Dispute Notice) in writing to the Northwest Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the Port's position with respect to the dispute; and the information relied upon to support its position.

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

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 Port to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

8.10.2.1 Circumstances beyond the reasonable control and despite the due diligence of the Port including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the Port.

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 Port.

8.10.3

Ecology shall act upon any the Port's written request for extension in a timely fashion. Ecology shall give the Port written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section 8.11 (Amendment of Order) when a schedule extension is granted.

8.10.4

At the Port's request, an extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of one of the following:

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

When requesting a change to the Order, the Port shall submit a written request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request is received. If Ecology determines that the change is substantial, then the Order must be formally amended. Reasons for the disapproval of a proposed change to this Order shall be stated in writing. If Ecology does not agree to a proposed change, the disagreement may be addressed through the dispute resolution procedures described in Section 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 Port to cease such activities for such period of time as it deems necessary to abate the danger. the Port shall immediately comply with such direction.

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

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

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

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

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

Prior to the Port's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the Port shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, the Port shall notify Ecology of said transfer. Upon transfer of any interest, the Port shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

8.15 Compliance with Applicable Laws

8.15.1 Applicable Laws

All actions carried out by the Port pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits or approvals, except as provided in RCW 70A.305.090. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order. the Port has a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or the Port, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and the Port must implement those requirements.

8.15.2 Relevant and Appropriate Requirements.

All actions carried out by the Port pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. At this time, no relevant and appropriate requirements have been identified as being applicable to the actions required by this Order. If additional relevant and appropriate requirements are identified by Ecology or the Port, Ecology will

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

8.15.3

Pursuant to RCW 70A.305.090(1), the Port may be exempt from the procedural requirements of RCW 70A.15, 70A.205, 70A.300, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, the Port shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered 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

The Port has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the Port determines that additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other Party of its determination. Ecology shall determine whether Ecology or the Port shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the Port shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the Port and on how the Port must meet those requirements. Ecology shall inform the Port in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The Port shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

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

and substantive requirements of the laws referenced in RCW 70A.305.090(1), including any requirements to obtain permits or approvals.

8.16 Indemnification

To the extent permitted by law, the Port agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions of the Port, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the Port shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

9. Satisfaction of Order

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

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: October 10, 2025

Port of Bellingham



TIFFANY DESIMONE

Interim Executive Director

Port of Bellingham

360-676-2500

State of Washington
Department of Ecology



KIM WOOTEN

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