

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

Port of Bellingham

AGREED ORDER
No. DE 9001

TO: Port of Bellingham
Attn: Mike Stoner, Director of Environmental Programs
1801 Roeder Avenue
Bellingham, WA 98227-1677

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I. 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 conduct a remedial investigation (RI), a feasibility study (FS), and to prepare a draft cleanup action plan (DCAP) for the Westman Marine site (Site). Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. The Port agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the Port's responsibility under this Order. The Port shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as the Westman Marine, Inc. Site and is generally located at 218 McMillan Avenue, Blaine, Washington, in the southeastern portion of the Blaine Harbor industrial area. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. The preliminary Site boundary is more particularly

described in the Site Diagram (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(5). The remedial investigation will further delineate the Site boundary.

- B. Parties: Refers to the State of Washington, Department of Ecology, and the Port.
- C. Potentially Liable Party (PLP): Refers to the Port.
- D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order. The terms “Agreed Order” or “Order” shall include all exhibits to this Order.

V. FINDINGS OF FACT

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

A. The Site is generally located at 218 McMillan Avenue, Blaine, Whatcom County, Washington (located in the southeastern portion of the Blaine Harbor industrial area). The Site location is depicted in Exhibit A. The Site is listed on the Department of Ecology’s Hazardous Sites List as “Westman Marine, Inc.” with the Facility Site Identification Number 66519819.

B. The upland portion of the Site was created prior to 1949 when aquatic lands were dredged to create a boat harbor and small boat marina. The dredged material was used to create an upland industrial area armored with timber bulkheads, although in some areas riprap was used instead of, or in conjunction with, the bulkheads. The marina was expanded several times since its original construction, but the footprint of the upland industrial area has remained largely unchanged.

C. The Port is the owner of the fee-owned land inboard (east) of the state established Inner Harbor Line. Filled aquatic land within the state harbor area and the aquatic land are state-owned aquatic land (SOAL) managed by the Port under a 1997 Port Management Agreement (PMA).

D. Beginning in 1949, the Site was used for boatyard/shipyard operations by Berg Shipbuilding Company and Andrew Berg. The Site has been leased by several tenants since that time, including Westman Industrial Company from 1976 through 1989 and Westman Marine,

Inc. from 1989 to 2011. Between 1961 and 1969, a dock was constructed and the area where the current travel lift exists was dredged. *See* Exhibit A. A marine railway was constructed at the Site around 1981 to allow the upland maintenance and repair of larger vessels at the Site.

E. Historical environmental investigations at the Site are limited to surface sediment quality characterization conducted by the Port in 2001. The results of the investigation (contained in the 2002 Landua Associates, Inc. report) identified the release of tributyltin (TBT), polycyclic aromatic hydrocarbons (PAHs), metals, and semivolatile organic compounds (SVOCs) to sediment at the Site. Some of these releases exceed Sediment Management Standards (SMS; WAC 173-204) cleanup standards and pose a threat to human health and the environment. No environmental investigations have been conducted at the upland portion of the Site.

VI. ECOLOGY DETERMINATIONS

A. The Port is an “owner or operator” as defined in RCW 70.105D.020(17) of a “facility” as defined in RCW 70.105D.020(5).

B. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(25) and RCW 70.105D.020(10), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to the Port dated December 27, 2011, pursuant to RCW 70.105D.040–020(16) and WAC 173-340-500. By letter dated January 3, 2012, the Port voluntarily waived its rights to notice and comment and accepted Ecology’s determination that the Port is a PLP under RCW 70.105D.040. On January 12, 2012, Ecology issued a determination letter to the Port that it is a PLP under RCW 70.105D.040.

D. Pursuant to RCW 70.105D.030(1) and .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 upon the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the Port take the following remedial actions at the Site, as more fully described in the Scope of Work (Exhibit B), and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

A. Within ninety (90) days of the effective date of this Order, the Port shall prepare a RI work plan for Ecology's review and approval. Within sixty (60) days of the receipt of Ecology's comments, the Port shall incorporate Ecology's comments and submit a revised RI work plan for review. The revised RI work plan will be considered final after Ecology's approval. Upon approval by Ecology, the RI work plan becomes an integral and enforceable part of this Order, and the Port is required to perform the RI according to the work plan and schedule contained therein.

B. Within one hundred and eighty (180) days following Ecology's approval of the final RI work plan, the Port shall complete the RI field work.

C. Within seventy-five (75) days following validation of all RI data, the Port shall submit to Ecology an RI data summary technical memorandum.

D. Within one hundred and eighty (180) days following the completion of the RI work, the Port shall prepare a RI draft report for Ecology's review and approval. Within seventy-five (75) days of the receipt of Ecology's comments, the Port shall incorporate Ecology's comments and submit a revised RI draft report for review.

E. Within ninety (90) days following Ecology's approval of the RI report, the Port shall prepare an FS draft report for Ecology's review and approval. Within sixty (60) days of the receipt of Ecology's comments, the Port shall incorporate Ecology's comments and submit a revised FS report for review.

F. Within forty-five (45) days of the completion of the public comment period, the Port shall incorporate any changes required based upon public comment and submit a final RI and FS report to Ecology.

G. Within ninety (90) days following Ecology's approval of the final RI and FS reports, the Port shall submit a DCAP to Ecology.

H. The Port shall submit monthly progress reports for work conducted under this Order, unless Ecology notifies the Port, in writing, that less frequent reporting is required for these reports. Progress reports shall contain information as described in Exhibit B to this Order. Progress reports shall be submitted in electronic format to Ecology until satisfaction of the Order in accordance with Section IX of this Order. Progress reports shall be submitted to the Ecology project coordinator.

I. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by Section VII of this Order, Ecology may complete and issue the final deliverable as follows: Ecology will provide written notice to the Port that it has fifteen (15) days to demonstrate sufficient progress in preparation of the required deliverable(s) and will include a description of the alleged deficiency. If, in Ecology's estimation, the Port fails to demonstrate sufficient progress within fifteen (15) days, Ecology may then complete and issue the final deliverable. Ecology need only provide an opportunity to cure once per deliverable.

J. The Port may propose that interim actions be taken. 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. Ecology will determine whether an interim action is warranted. Should Ecology determine a particular interim action proposed by the Port may be warranted, the Port will prepare and submit a work plan that includes a proposed scope of work and schedule (Work Plan) for Ecology's review and approval. Interim action work plans are subject to public review and comment. Upon approval by Ecology following public review, the Work Plan

becomes an integral and enforceable part of this Order, and the Port is required to perform the interim action according to the work plan and schedule contained therein.

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notice

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations that indicate to Ecology that this Order is inadequate or improper in any respect.

B. 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 Chapter 70.105D RCW, 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). Ecology has accumulated \$708.57 in remedial action costs related to this facility as of September 30, 2012. Payment for this amount shall be submitted within thirty (30) days of the effective date of this Order. For all costs incurred subsequent to September 30, 2012, 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 70.105D.055, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

C. Implementation of Remedial Action

If Ecology determines that the Port has failed without good cause 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 that remain incomplete. If Ecology performs all or portions of the remedial action because of the Port's failure to comply with its obligations under this Order, the Port shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.B (Remedial Action Costs), provided that the Port is not obligated under this section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

Except where necessary to abate an emergency situation, the Port shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

D. Designated Project Coordinators

The project coordinator for Ecology is:

Jing Liu
Washington Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008
(425) 649-4310
Email: jliu461@ecy.wa.gov

The project coordinator for the Port is:

Mike Stoner, Director of Environmental Programs
Port of Bellingham
1801 Roeder Avenue
Bellingham, WA 98227-1677
(360) 715-7365
Email: mikes@portofbellingham.com

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

documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working-level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

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.

E. Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist licensed in the State of Washington or under the direct supervision of an engineer registered in the State of Washington, except as otherwise provided for by Chapters 18.220 and 18.43 RCW.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered in 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 in the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrologic or engineering work shall be under the seal of an appropriately licensed professional as required by Chapter 18.220 RCW or RCW 18.43.130.

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

F. Access

Ecology or any Ecology-authorized representative shall have the full authority 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. The Port shall make all reasonable 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. 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.

G. Sampling, Data Submittal, and Availability

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

If requested by Ecology, the Port shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the Port pursuant to implementation of this Order. The Port shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the Port and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.F (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 Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

H. Public Participation

A Public Participation Plan is required for this Site. Ecology shall review any existing Public Participation Plan to determine its continued appropriateness and whether it requires amendment, or if no plan exists, Ecology shall develop a Public Participation Plan alone or in conjunction with the Port.

Ecology shall maintain the responsibility for public participation at the Site. However, the Port shall cooperate with Ecology, and shall:

1. If agreed to by Ecology, develop appropriate mailing list, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify the Port prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the Port that do not receive prior Ecology approval, the Port shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

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

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. Department of Ecology
Bellingham Field Office
1440 10th Street, Suite 102
Bellingham, WA 98225
- b. Bellingham Public Library
210 Central Avenue
Bellingham, WA 98227
- c. Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452

At a minimum, copies of all public notices, fact sheets, and press releases; all quality-assured monitoring data; remedial action plans and reports, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

I. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of 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. Upon request of Ecology, the Port shall make all records available to Ecology and allow access for review within a reasonable time.

J. Resolution of Disputes

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII.B (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

- a. Upon receipt of Ecology's project coordinator's written decision or the itemized billing statement, the Port has fourteen (14) days within which to notify

Ecology's project coordinator in writing of its objection to the decision or itemized statement.

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

c. The Port may then request regional management review of the decision. This request shall be submitted in writing to the Northwest Region Toxics Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's written decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of the Port's request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

K. Extension of Schedule

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension.

All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended;
- b. The length of the extension sought;
- c. The reason(s) for the extension; and

d. Any related deadline or schedule that would be affected if the extension were granted.

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

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

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

c. Endangerment as described in Section VIII.M (Endangerment).

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

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

4. 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:

a. Delays in the issuance of a necessary permit that was applied for in a timely manner;

b. Other circumstances deemed exceptional or extraordinary by Ecology; or

c. Endangerment as described in Section VIII.M (Endangerment).

L. Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.N (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. The Port shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J (Resolution of Disputes).

M. Endangerment

In the event Ecology determines that any activity being performed at the Site 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 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 Section VIII.M (Endangerment), the Port's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.K (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.

N. Reservation of Rights

This Order is not a settlement under Chapter 70.105D RCW. 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 Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and 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.

Although the Port is committing to performing 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, the right to assert any defenses to liability in the event of enforcement, and its rights with regard to any future agency action not covered by the scope of this Order.

O. 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 restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

P. Compliance with Applicable Laws

1. 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, except as provided in RCW 70.105D.090. At this time, no federal, state or local requirements have been identified as being applicable to the actions required by this Order.

2. Pursuant to RCW 70.105D.090(1), the Port is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW 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. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this Section.

The Port has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.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 70.105D.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.

3. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.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 70.105D.090(1), including any requirements to obtain permits.

Q. Indemnification

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

IX. SATISFACTION OF ORDER

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

X. ENFORCEMENT

Pursuant to RCW 70.105D.050, this Order may be enforced as follows:


- A. The Attorney General may bring an action to enforce this Order in a state or federal court.
- B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
- C. In the event the Port refuses, without sufficient cause, to comply with any term of this Order, the Port will be liable for:
 - a. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and
 - b. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.
- D. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: _____

PORT OF BELLINGHAM

**STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY**



Rob Fix
Executive Director
Port of Bellingham
Telephone: (360) 676-2500

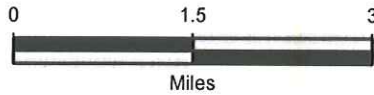
Robert W. Warren
Section Manager
Toxics Cleanup Program
Northwest Regional Office
Telephone: (425) 649-7054

EXHIBIT A

Site Diagram



Y:\Projects\0010340\10\012\Westman Marine Agreed Order\Figure_A-1.mxd



Data Source: ESRI 2008

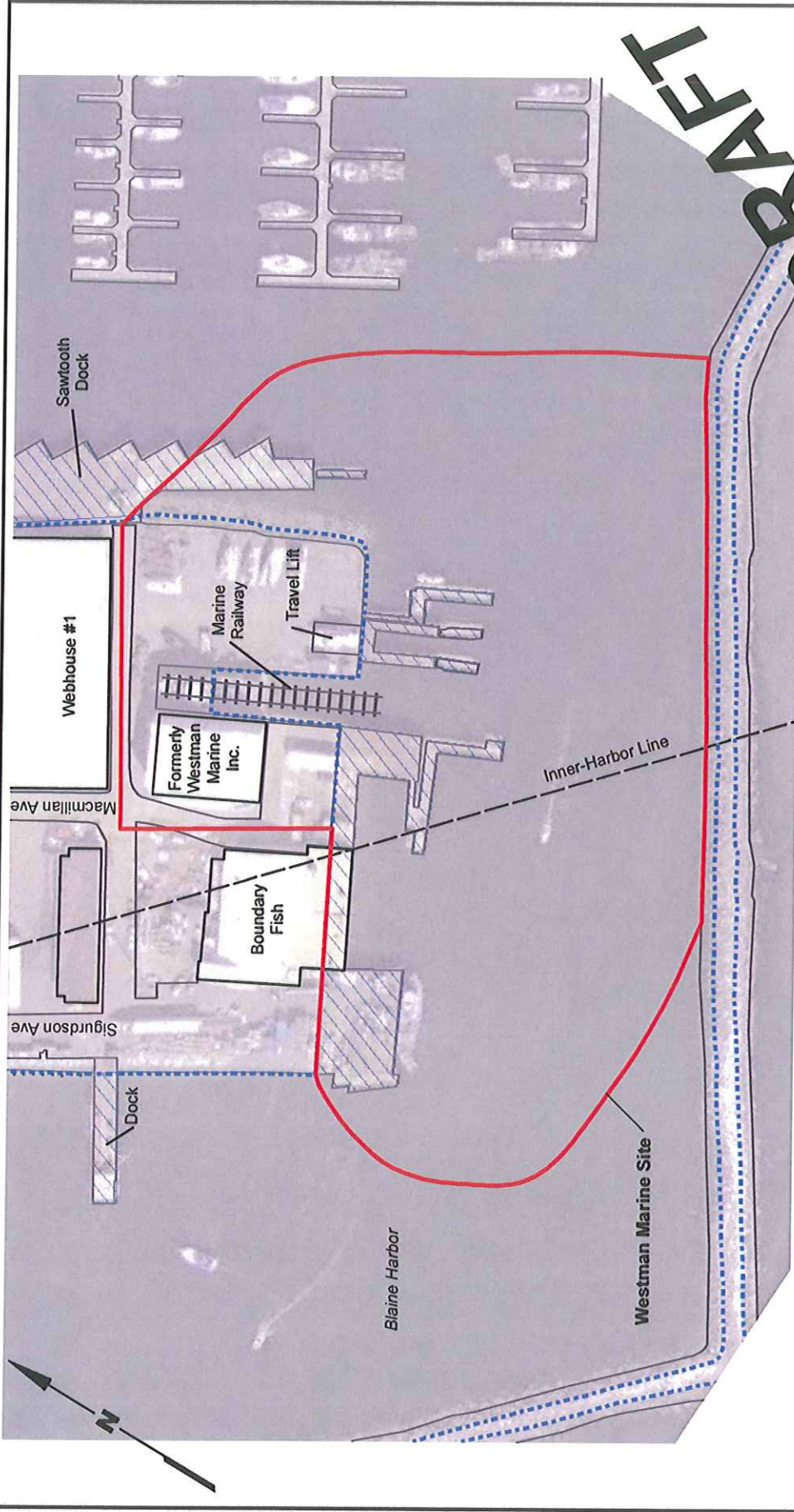


Westman Marine Site
Blaine Harbor
Blaine, Washington

Vicinity Map

Figure
A-1

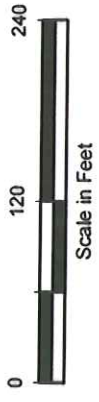
Y:\Projects\001034\01\0012\Westman Marine Agreed Order\Figure_A-2.mxd 4/19/2012 NAD 1983 StatePlane Washington North FIPS 4601 Feet



DRAFT

Legend

- Approximate Westman Marine Site Boundary; Existing Building Location
- MHHW - 9.5ft
- Structure Over Water



Data Sources: Wilson Engineering 2011; Port of Blaine 2011; Walker and Associates, Inc.; Google Earth Professional 2011

Note
1. Black and white reproduction of this color original may reduce its effectiveness and lead to incorrect interpretation.

LANDAU ASSOCIATES

Westman Marine Site
Blaine Harbor
Blaine, Washington

Westman Marine Site Plan

Figure
A-2

EXHIBIT B

Scope of Work

EXHIBIT B SCOPE OF WORK

PURPOSE

The work under this Agreed Order (Order) involves preparing a remedial investigation (RI) and feasibility study (FS) report, conducting additional interim actions if required or agreed to by the Washington State Department of Ecology (Ecology), and preparing a Draft Cleanup Action Plan (DCAP) to select a cleanup alternative. The purpose of the RI, FS and DCAP for the Westman Marine site (Site) is to provide sufficient data, analysis, and evaluations to enable Ecology to select a cleanup alternative for the Site.

TASK 1: PREPARE A REMEDIAL INVESTIGATION WORK PLAN

The Port will prepare a RI work plan that includes a scope of work to delineate and quantify the nature and magnitude of contamination in all potentially affected media (i.e., soil, groundwater, surface water, and adjacent marine sediments). The RI work plan will also address the proper handling of all investigation-derived wastes generated from the Site during the RI (e.g., soil cuttings, groundwater development and purge water, excess sediment sample material, etc.). The RI work plan will clearly describe the project management strategy for implementing and reporting on RI activities. The responsibility and authority of all organizations and key personnel involved in conducting the RI will be outlined.

The RI work plan will describe general facility information; Site history and conditions, including previous operations and ownership; past field investigations, including any data collection and analysis of soil, air, groundwater, surface water, and sediment; a conceptual site model showing potential contaminant sources, migration pathways, and receptors; geology and groundwater system characteristics; past, current, and anticipated future land use; identification

of natural resources and ecological receptors; hazardous substances and their sources, etc., in compliance with WAC 173-340-350 and WAC 173-204-560.

As part of the project background, existing environmental data will be compiled and evaluated for data gaps. The data gaps will be used as the basis for developing the scope of work for the Site RI. Because the existing data consist only of sediment data collected during a 2001 investigation, information regarding upland soil and groundwater quality is considered a data gap. The RI work plan will identify specific data collection and quality assurance/quality control (QA/QC) procedures in a sampling and analysis plan (SAP) in compliance with WAC 173-340-820 and WAC 173-204-600 as an appendix to the work plan. The work plan will also contain a health and safety plan to be followed during the RI.

The SAP will identify the proposed number and location of all environmental samples, including soil borings, groundwater monitoring wells, soil, groundwater, and marine sediment samples. The SAP will describe the sampling objectives, the rationale for the sampling approach (based upon the identified data gaps), and plans for data use, and shall provide a detailed description of sampling tasks. The SAP will identify the nomenclature to be used for sample identifiers; sampling equipment; the type, number, and location of samples to be collected; the analyses to be performed; sample documentation; sample containers, collection and handling; data and records management; and schedule. The QA/QC portion of the SAP will be prepared following Ecology's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies (July 2004) and Sediment Sampling and Analysis Plan Appendix (February 2008). Laboratories must meet the accreditation standards established in Chapter 173-50 WAC.

The Port or its contractors will submit all new sampling data generated under this SAP and any other recently collected data to Ecology for entry into the Environmental Information Management (EIM) system in accordance with WAC 173-340-840(5) and Ecology's Toxics Cleanup Program Policy 840: Data Submittal Requirements. Only validated data will be entered into the EIM database.

The Port will prepare and submit to Ecology two (2) paper copies of the RI work plan, one (1) electronic copy of the RI work plan in PDF format, and one (1) electronic copy of the work plan text in Microsoft Word format. After addressing Ecology's comments on the RI work plan, the Port will prepare and submit two (2) paper copies and one (1) electronic (PDF) copy of the revised RI work plan to Ecology.

TASK 2: CONDUCT A REMEDIAL INVESTIGATION

The Port will conduct a RI that meets the requirements of WAC 173-340-350(7) and WAC 173-204-560 in accordance with the RI work plan approved by Ecology. The RI will determine the extent and magnitude of contamination exceeding Model Toxics Control Act (MTCA) cleanup levels, Sediment Management Standards (SMS) cleanup standards, and other applicable regulatory requirements.

Field sampling and analysis will be completed in general accordance with the RI work plan, and associated SAP and health and safety plan. Substantive deviation(s) from the approved RI work plan must be communicated to Ecology immediately and documented as required by Ecology.

TASK 3: PREPARE A RI DATA SUMMARY TECHNICAL MEMORANDUM

The Port will submit a RI data summary in the form of a technical memorandum following completion of the planned RI work and validation of the analytical data. The technical

memorandum is intended to be an informal document to inform Ecology of the RI results so a determination can be made regarding whether RI field activities are complete. The data summary technical memorandum will describe the RI analytical results, identify affected media, present preliminary screening levels, describe the extent of contamination (plotted on figures), and identify any data gaps that need to be filled to define the extent and magnitude of contamination and potential toxic effects.

The Port will prepare and submit to Ecology two (2) paper copies and one (1) electronic (PDF) copy of the RI data summary technical memorandum. Because of its informal nature as a RI working document, the technical memorandum will not be revised following submittal to Ecology, but any comments Ecology may have on the technical memorandum will be incorporated into the RI report or supplemental RI work plan, as applicable.

Ecology, in conjunction with the Port, will determine whether any additional Site characterization activities are required to complete the RI following review of the RI data summary technical memorandum. If additional RI activities are determined to be required, the Port will submit a supplemental RI work plan to Ecology for review and approval. The supplemental RI work plan, if required, will rely on the RI work plan for field and QA/QC procedures and methodologies, and will be a focused document that presents the scope of work for the supplemental RI activities.

TASK 4: PREPARE A RI REPORT

The Port will prepare a draft RI report that meets the requirements of WAC 173-340-350. The draft RI report will contain the results of the RI and will provide information regarding the full extent and magnitude of soil, groundwater, surface water, and adjacent marine sediment contamination including potential toxic effects.

The Port will prepare and submit to Ecology two (2) paper copies and one (1) electronic (PDF) copy of the draft RI report for review and comment. After addressing Ecology's comments on the draft RI report, the Port will prepare five (5) paper copies and one (1) electronic (PDF) copy of a draft final RI report for distribution and public comment. After addressing any changes to the draft final RI report requested by Ecology based on public comment, the Port will prepare and submit to Ecology two (2) paper copies and one (1) electronic (PDF) copy of the final RI report.

TASK 5: PREPARE A FS REPORT

The Port will prepare a draft FS report that meets the requirements of WAC 173-340-350. The draft FS report will present and evaluate cleanup action alternatives to address the identified contamination at the Site. Based on the alternatives [WAC 173-340-350(8)], the FS will identify a preferred cleanup action alternative for the Site in compliance with WAC 173-340-360.

The Port will prepare and submit to Ecology two (2) paper copies and one (1) electronic (PDF) copy of the draft FS report for review and comment. After addressing Ecology's comments on the draft FS report, the Port will prepare five (5) paper copies and one (1) electronic (PDF) copy of a draft final FS report for distribution and public comment. After addressing any changes to the draft final FS report requested by Ecology based on public comment, the Port will prepare and submit to Ecology two (2) paper copies and one (1) electronic (PDF) copy of the final FS report.

TASK 6: PREPARE A DRAFT CLEANUP ACTION PLAN

Upon Ecology approval of the final RI and FS report, the Port will prepare a DCAP in accordance with WAC 173-340-380 that provides a proposed remedial action to address the contamination present on the Site. Where contaminated sediments are included in the remedial

action, the DCAP will comply with WAC 173-204-580 in addition to the MTCA requirements cited above. The DCAP will include a general description of the proposed remedial actions, cleanup standards developed from the RI and FS and rationale regarding their selection, a schedule for implementation, a description of any institutional controls proposed, and a summary of applicable local, state, and federal laws pertinent to the proposed cleanup actions.

The Port will submit the DCAP for Ecology's review and approval. The DCAP will include, but not be limited to, the information listed under WAC 173-340-380. The Port will prepare two (2) paper copies and one (1) electronic (PDF) copy of the DCAP and submit them to Ecology for review and comment. The Port will revise the DCAP to address Ecology's comments and submit five (5) paper copies and one (1) electronic (PDF) copy of the public review draft of the DCAP.

TASK 7: SUBMIT PROGRESS REPORTS

The Port will submit progress reports monthly in electronic format. Progress reports will be submitted to Ecology until satisfaction of the Order in accordance with Section IX of this Order. Progress reports will be submitted to the Ecology project coordinator by the 30th of the month following the end of the reporting period. If this day is a weekend or holiday, deliverables will be submitted to Ecology on the next business day. At a minimum, progress reports will contain a description of the actions that have been taken to comply with the Order within the reporting period and a description of work planned for the next reporting period.