

Site: Former Shell Oil Tank Farm

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SIC # J1A96

ID # 4781157

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:

**PORT OF ANACORTES**

AGREED ORDER for REMEDIAL  
INVESTIGATION/FEASIBILITY STUDY  
FORMER SHELL OIL TANK FARM

No. DE-08TCPHQ-5474

TO: Port of Anacortes  
PO Box 297  
Anacortes, WA 98221

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## I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the Port of Anacortes (the 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 perform a remedial investigation/feasibility study (RI/FS) to collect, develop and evaluate sufficient information to develop a draft final cleanup action plan (DCAP) for the 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. 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 Former Shell Oil Tank Farm and is generally located between 13<sup>th</sup> and 14<sup>th</sup> Streets on Q Avenue in Anacortes, Washington. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. Based upon factors currently known to Ecology, the Site is more particularly described in Exhibit A to this Order, which includes a detailed Site diagram, location map and legal description. The Site constitutes a Facility under RCW 70.105D.020(5).

B. Parties: Refers to the State of Washington, Department of Ecology and the Port of Anacortes.

C. Potentially Liable Person (PLP): Refers to the Port of Anacortes.

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 located between 13<sup>th</sup> and 14<sup>th</sup> Streets on Q Avenue in Anacortes, Washington. The Site was purchased by the Port of Anacortes (the Port) in 1929 and was leased to the Shell Oil Company and various bulk product distributors of gasoline, diesel, oil, and other chemical products. Over time, the Site contained three 25,000 gallon, two 12,500 gallon, and one 4,000 gallon above ground storage tanks (ASTs). The storage tanks were removed in the 1980s. Currently the Site is used for parking boat trailers.

B. In 1987 the Port performed a limited environmental investigation of the Site. Petroleum hydrocarbon contamination was found in the two (2) locations sampled. Contaminated soil was partially removed as part of the lessee leaving the Site. The extent of impacted soil removal is, however, not well documented. *See* Exhibit C, the 1987 Preliminary Environmental Site Assessment Results, attached to this Order.

C. In 2005 the Port performed an investigation into the extent of soil and groundwater contamination at the Site. The Port’s investigations revealed that soil and groundwater around the former the ASTs was contaminated with gasoline and diesel. Soil and groundwater samples were collected from fourteen (14) locations in and down gradient of the Site. A total of twenty-five (25) soil and twelve (12) groundwater samples were collected and analyzed for petroleum hydrocarbon contaminants. Soil concentrations of gasoline and diesel exceeded MTCA Method A cleanup levels at three (3) of the sampling locations. Cleanup levels

for diesel and heavy oil were exceeded at three (3) of the sampling locations. *See* Exhibit D, the 2005 Limited Due Diligence Investigation Results. The full nature and extent of contamination has not been defined at the Site.

D. In December 2007 the Port conducted an independent remedial action. The independent action consisted of removal of soil from a trench that was excavated to install a new 12-inch diameter storm drain at the Site. The storm drain replacement trench was located along the west edge of the Site and was approximately 280 feet long and 5 to 6 feet deep. Soil in the trench was characterized by excavating four test pits along the new storm drain alignment. The storm drain re-alignment project was conducted by the City of Anacortes to help reduce the potential for adverse stormwater impacts to the marina waters where the storm system discharges.

Soil samples from the test pits were screened in the field for the potential presence of petroleum hydrocarbons and selected samples from each test pit were submitted for chemical analysis of gasoline-, diesel- and heavy oil-range petroleum hydrocarbons; volatile organic compounds (VOCs); polycyclic aromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs) and metals (lead, arsenic, cadmium, chromium, and mercury). Results of field screening did not indicate the presence of elevated petroleum hydrocarbons concentrations. With one exception, contaminants were not detected or were detected at concentrations less than preliminary MTCA cleanup levels for the Site. Cadmium was detected at a concentration exceeding the MTCA Method A cleanup level in a soil sample obtained at a depth of 6 feet below ground surface (bgs) near the south end of the alignment (test pit bottom sample). Cadmium was not detected in a sample from 8 feet bgs in the same test pit and in the samples from three other test pits along the storm drain alignment. However, more investigation will be conducted during the remedial investigation phase to define the full extent of cadmium contamination near the south end of the trench.

Based on field screening observations and the results of the soil chemical analyses for the test pit samples, the soil excavated from the storm drain trench was considered clean and suitable

for use as excavation backfill with the exception of a small volume of soil that was determined to be geotechnically unsuitable for use as backfill. With the exception of the geotechnically unsuitable material, the excavated soil was used to backfill the trench. The excess soil was transported off-site for placement as clean fill at another Port property. *See* Exhibit G, the December 2007 independent action table of results, attached to this Order.

## 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) because it is the current owner of the Site.

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 July 19, 2006, pursuant to RCW 70.105D.040, -.020(21), 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 70.105D.040 and notified the Port of this determination by letter dated August 16, 2006.

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 on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

E. The previous remedial actions described in Section V.D are incorporated as part of this Order. However, actual Ecology grant funding for costs incurred during the remedial actions described in Section V.D is subject to the approval of Ecology’s Remedial Action Grant Program and is contingent upon the availability of funds through legislative appropriation and allotment, and such other conditions not reasonably foreseeable by Ecology that may render

performance impossible. Further, reimbursement for specific project tasks under a grant agreement with Ecology is contingent upon the determination by Ecology's Toxic Cleanup Program that the work performed complies with applicable standards and is consistent with the remedial action required under this Order.

## **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 and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

A. The Port shall conduct the remedial actions fully described below according to the schedule in Exhibit B to this Order. Generally, the Port shall perform a remedial investigation and feasibility study including, but not limited to, the follow tasks:

**1. Preparation of a Draft Remedial Investigation/Feasibility Study Work Plan (Work Plan)**

**a. Remedial Investigation**

The draft Work Plan shall describe general facility information, site history and conditions, field investigations (data collection and analysis of soils, groundwater and surface water), conceptual site model, contaminant migration pathways, geology and groundwater system characteristics, land use, natural resources and ecological receptors, hazardous substances sources etc. in compliance with WAC 173-340-350(7).

As part of the project background, existing environmental data on Site soil and groundwater will be compiled and evaluated for data gaps in support of conducting additional site investigations and selection of a remedial alternative for the Site. The draft Work Plan will also identify preliminary cleanup levels, specific data collection procedures in a Sampling and Analysis Plan (SAP) and Quality Assurance Project Plan (QAPP) in compliance with WAC 173-340-720 through -747 and WAC 173-340-820 respectively for defining the full nature and extent of contamination. If the data collected during this investigation is

insufficient to define the full nature and extent of contamination, an additional phase of investigation shall be conducted to define the extent of contamination.

A public participation plan and a site specific health and safety plan will also be included in the draft Work Plan meeting the requirements of WAC 173-340-600 and -810 respectively, describing the process for public involvement process and worker safety during the project. The Port shall submit the draft Work Plan to Ecology for review and approval.

**b. Feasibility Study**

The feasibility study (FS) will evaluate remedial alternatives for Site cleanup, consistent with MTCA requirements to ensure protection of human health and the environment by eliminating, reducing, or otherwise controlling risk posed through each exposure pathway and migration route (WAC 173-340-350(8)).

Media-specific general response actions for the Site will be screened as an initial element of the FS. General response actions are broad categories of remedial measures that can potentially be used to achieve the remedial action objectives for the Site. Potentially applicable remedial technologies can be categorized by response actions. Practicable remedial alternatives for the Site will be screened relative to MTCA criteria. The screening process removes from further consideration technologies that are not applicable or feasible for the Site, or that can be represented by other, comparable technologies in order to simplify the development of remedial alternatives. The technology identification and screening process will be focused in this case by limiting the universe of technologies to those that have been successfully applied at other similar sites.

The media-specific remedial technologies that pass the screening process will be combined into Site-wide remedial alternatives. The remedial

alternatives that are implementable and practicable will be assembled for detailed evaluation.

A detailed analysis of each remedial alternative will be conducted according to the requirements of WAC 173-340-350, *State Remedial Investigation and Feasibility Study*. The remedial alternatives will be evaluated for compliance with the requirements of WAC 173-340-360, *Selection of Cleanup Actions*, including a detailed evaluation of remedial alternatives relative to the following criteria:

- Compliance with Cleanup Standards and Applicable Laws
- Protection of Human Health
- Protection of the Environment
- Provision for a Reasonable Restoration Time Frame
- Use of Permanent Solutions to the Maximum Extent Practicable
- The Degree to which Recycling, Reuse, and Waste Minimization are Employed
- Short-term Effectiveness
- Long-Term Effectiveness
- Net Environmental Benefit
- Implementability
- Provision for Compliance Monitoring
- Cost-Effectiveness
- Prospective Community Acceptance

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

The Port shall submit a draft RI/FS work plan to Ecology for its review and approval.

## **2. Field Data Collection to Fill Data Gaps Identified in the Work Plan**

Field sampling and analysis will be completed in general accordance with the SAP and QAPP. The SAP identifies the proposed number of soil borings, groundwater monitoring wells, number of soil and groundwater samples (but does not



limit the number of such locations and samples), approximate depths, and includes a quality assurance/quality control plan.

**3. Preparation of Draft Remedial Investigation/Feasibility Study Report**

The draft Remedial Investigation/Feasibility Study reports will present the conclusions of the remedial investigation activities including delineation of the nature and extent of groundwater and soil contamination, and a conceptual site model based on the identified contamination migration pathways. The feasibility study will present and evaluate remedial alternatives to address the identified contamination at the Site. Based on the evaluation of alternatives (WAC 173-340-350(8)), the feasibility study will identify a preferred remedial alternative in compliance with WAC 173-340-360 for the Site. The draft Remedial Investigation/Feasibility Study reports may be combined as a single document. The Port shall submit the draft Remedial Investigation/Feasibility Study report or reports to Ecology for review and approval.

**4. Preparation of a Draft Cleanup Action Plan**

Upon Ecology approval of the final Remedial Investigation/Feasibility Study report, the Port shall prepare a draft cleanup action plan (DCAP) in accordance with WAC 173-340-380 that provides a proposed remedial action to address the contamination present on the Site. The DCAP shall include a general description of the proposed remedial actions, cleanup standards developed from the Remedial Investigation/Feasibility Study and rationale regarding their selection, a schedule for implementation, description of any institutional controls proposed, and a summary of applicable local, state, and federal laws pertinent to the proposed cleanup actions.

B. The Port shall perform the remedial actions required by this Order according to the schedule included in Exhibit B.

C. 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 Exhibit B, Ecology may complete and issue the final deliverable.

D. The Port shall submit to Ecology a progress report the first week of each month regarding the progress of RI/FS work until such time as the Port has completed the work required in the RI/FS Work Plan. The monthly progress report shall include work completed to date, problems encountered and how they were resolved, and work scheduled for the subsequent month. Electronic submittals are acceptable.

### **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 which 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 (retroactive to August 1, 2006) 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). The Port shall pay the required amount within ninety (90) 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.

Pursuant to RCW 70.105D.055, Ecology has authority to recover unreimbursed remedial action costs by filing a lien against real property subject to the remedial actions.

**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:

Sandra Caldwell  
Toxics Cleanup Program  
PO Box 47600, Olympia, WA 98504-7600  
(360) 407-7209  
E-mail: [saca461@ecy.wa.gov](mailto:saca461@ecy.wa.gov)

The project coordinator for the Port is:

Connie Thoman  
Port of Anacortes  
PO Box 297, Anacortes, WA 98221  
(360) 299-1818  
Email: [connie@portofanacortes.com](mailto:connie@portofanacortes.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. Attached as Exhibit E is Ecology Policy 840, Data Submittal Requirements.

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 RI/FS work 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. Anacortes Public Library  
1220 10<sup>th</sup> Street  
Anacortes, WA 98221
- b. Washington Department of Ecology  
Headquarters Office  
300 Desmond Drive  
Lacey, WA 98503

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 Toxics Cleanup Land & Aquatic Lands 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 which 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.

**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. The exempt permits or approvals and the applicable substantive requirements of those permits or approvals, as they are known at the time of entry of this Order, have been identified in Exhibit F.

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

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 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

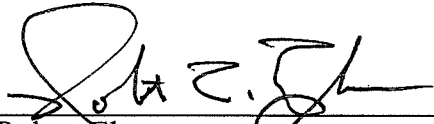
b. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

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.

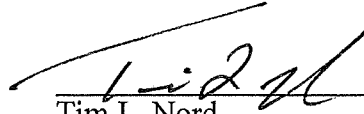
Effective date of this Order: June 6, 2008

**PORT OF ANACORTES**



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**STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY**



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