

## **RESPONSIVENESS SUMMARY**

### **Agreed Order DE 9553 – PORT OF TACOMA, EARLEY BUSINESS CENTER**

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the Port of Tacoma (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. The Order requires the Port to compile information and data from previously performed investigations. In addition, the Port shall conduct a Remedial Investigation/Feasibility Study to document the full nature and extent of contaminants and identify cleanup alternatives for the Site. The Port will perform an interim action to remove certain underground storage tanks at the Site. The Port will then prepare and submit an initial draft of a Cleanup Action Plan, based on the findings of the Feasibility Study.

The Draft Agreed Order was issued for public comment on February 11, 2013 with the public comment period ending March 13, 2013. During the public comment period, the only comments received by Ecology were comments submitted by Environmental Protection Agency (EPA) Region X. The comments were received by Ecology on March 13, 2013. Ecology and the Port responded to EPA's comments by making changes to the draft Order and reissuing it to the Port for their representative's signature. The Port has signed the modified Order and it awaits the signature of Ecology's representative. The following are the comments provided by EPA. Following that is a "red line" draft of the changes that were made so that the reader can see what the original language consisted of and how it was modified to address EPA's comments. The entire Order can be viewed at this public involvement website.

# EPA'S COMMENTS

March 13, 2013

EPA Comments on Draft Agreed Order between Ecology and the Port of Tacoma for the Earley Business Center (401 Alexander Avenue) RI/FS partly within the Occidental Site

Commencement Bay Nearshore/Tideflats CERCLA Site, Tacoma, WA

## Occidental Site Contextual Information and Work to be Performed

1) EPA recommends removing the following language (page 7) as it could suggest a degree of hydraulic control and contaminant removal/treatment beyond what the current P&T system is accomplishing.

“Further lateral migration of contaminant plumes in the upper water bearing zones (to between 50 and 75 feet below ground surface) at the EBC is currently being controlled, at least in part, by a groundwater extraction and treatment system that OCC has operated since 1996.”

2) EPA recommends removing the statement (page 8) that “...the Port is not a PLP for this contamination...” and replacing the statement with “...the Port has not been identified as a PLP for this contamination. Current owners of contaminated properties are subject to being named as Potentially Responsible Parties (PRPs) under CERCLA and Potentially Liable Parties (PLPs) under MTCA. The Port of Tacoma currently owns contaminated property within the Occidental Site. EPA and Ecology have previously alerted the Port of Tacoma about its potential liability. However, neither Agency has yet identified and/or determined that the Port of Tacoma is an Occidental Site PRP or PLP.

3) EPA recommends removing the statement (page 8), “It is anticipated the OCC plume is either not comingled or collocated with any contamination to be addressed by this Order, or that it is severable based on its nature and extent.” The presence of vinyl chloride and other Occidental Site COCs found in some shallow monitoring wells does suggest comingling of contamination. The degree of comingling and how it can best be addressed is yet to be determined.

4) EPA recommends removing the Corps of Engineers from the list of reviewing/commenting agencies on page 8. The Corps was providing technical advice to EPA under an inter-agency agreement for oversight of Mouth of Hylebos performing party response actions.

5) EPA recommends language in Section VII, Work to be Performed (pages 10-14), which clarifies that this Agreed Order is to address COC releases which are not governed by the Occidental Site AOC, and will not impede or interfere with work to be performed under the Occidental Site AOC. Of course, it is understood that data will need to be shared between Occidental and the Port of Tacoma, and coordination will also occur between regulatory agency staff, since the EBC property is part of the Occidental Site.

# ORIGINAL AND MODIFIED LANGUAGE IN THE FINAL ORDER

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sandblast grit, cleaned the impacted catch basins, and instituted an inspection and maintenance plan for the catch basins. The catch basins currently operate with particulate filter inserts, and inspection and maintenance activities are regularly scheduled and ongoing.

7. Former AK-WA Gianotti Shipyard. Soil sampling conducted in 1998 in a 2.5 acre area in the northwestern portion of the EBC identified an area of surficial soil impacted by petroleum hydrocarbons, metals, and PCBs. The contamination appeared to be associated with the 30-plus years of ship dismantling in the area and a nearby transformer. Shortly after discovery, the Port demolished a number of buildings in the area and excavated 167 cubic yards of soil. The Port documentation for the cleanup is incomplete, but file notes reference two soil samples adjacent to the "seawall" (interpreted to be the shoreline between Piers 24 and 25) where petroleum hydrocarbons were detected above MTCA Method A cleanup levels. This area is now paved.

G. The following facts relate to sites or areas on Port Parcel 1b that are *not covered* as part of the collective EBC Site or under this Order:

1. OCC Site. Between 1929 and 2002, Occidental Chemical Corporation (OCC) and its predecessor Hooker Chemical operated a chemical manufacturing plant on land adjacent to the EBC. Operations included a chlor-alkali plant (1929-2002) and a TCE/PCE manufacturing facility (1947-1973). Contamination from those activities (chlorinated organic chemicals, alkaline conditions, PCBs, pesticides, and metals) extends onto the EBC property and under the adjacent Hylebos Waterway, which is land also owned by the Port of Tacoma. The OCC contamination on the EBC property is associated with gravity- and groundwater gradient-induced transport of volatile organics, with the highest contaminant concentrations found at significant depth.

~~Further lateral migration of contaminant plumes in the upper water bearing zones (to between 50 and 75 feet below ground surface) at the EBC is currently being controlled, at least in part, by a groundwater extraction and treatment system that OCC has~~

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~~operated since 1996. An~~The extraction system extends onto the EBC property. The OCC contamination is being addressed by OCC under an Agreed Order on Consent (AOC) with Ecology and EPA. ~~Ecology has not identified The Port as a PLP for this contamination. The Port is not a PLP for this contamination, but is actively cooperating with OCC, EPA, and Ecology to expedite cleanup. It is anticipated the OCC plume is either not commingled or collocated with any contamination to be addressed by this Order, or that it is severable based on its nature and extent.~~

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2. South 400 feet at Pier 25. In 2007 and 2008 the Port completed sediment remedial actions at EBC Piers 24 (in Commencement Bay) and 25 (on the Hylebos Waterway) pursuant to the 2005 Mouth of Hylebos Consent Decree noted above. Some of the contaminated sediments and debris along the embankment beneath the piers and along the intervening shoreline areas were removed and the remaining sediments were capped. These remedial actions were conducted under the direction of EPA, with additional review and comment provided by Ecology, ~~the U.S. Army Corps of Engineers~~, and NOAA Fisheries. EPA, the Port and OCC agreed that remediation of the south 400 ft. of the shoreline at Pier 25 (project south; true east) will be incorporated into the sediment remediation activities to be accomplished under the OCC AOC.

## VI. ECOLOGY DETERMINATIONS

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

- A. The Port is an "owner" 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 November 1, 2012, 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 December 3, 2012.

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. 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, RI/FS or design of a cleanup action. Ecology has determined that an interim action to remove certain USTs is warranted at this Site, as required below in the Work to Be Performed Section.

Ecology or the Port may propose additional interim actions at the Site. After consulting with the Port, Ecology will determine if the interim action(s) is warranted under WAC 173-340-430. Any interim action must be approved by Ecology under Section VII.D.

F. Ecology hereby incorporates into this Order the previous remedial actions described in the Findings of Fact that were conducted independently by the Port in the areas or sites that are now part of the EBC Site. Reimbursement eligibility 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 the substantive requirements of Chapter 173-340 WAC and is consistent with the remedial action required under this Order. The

costs associated with Ecology's determinations on the past independent remedial actions for the EBC Site that are described in the Findings of Fact are recoverable under this Order.

G. This Agreed Order is intended to address COC's related to releases at the EBC Site. It is intended that the remedial work necessary to address releases at the EBC Site will not negatively interfere with remedial work necessary to address releases from the OCC Site.

#### **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. Previous Investigation Results Report: Various parties have previously gathered data within discrete areas of the Site to partially or wholly determine the extent and nature of contaminants and meet the requirements for a remedial investigation pursuant to WAC 173-340-350(7), as noted in Section V.E (Findings of Fact). Data from these investigations are reported in the documents listed in Exhibit C. The Port of Tacoma shall compile the information from the previous investigation reports and present the compiled data in a Previous Investigation Results Report. The report shall also include a section identifying remaining data gaps regarding the nature and extent of contamination in the sites or areas covered by this Order. The report will be submitted as a draft for Ecology review and comment, and a final report will be prepared after receipt and incorporation of Ecology comments on the draft report.

B. Remedial Investigation/Feasibility Study (RI/FS):

The Port of Tacoma shall conduct a remedial investigation and feasibility study in accordance with WAC 173-340-350 for the EBC Site, as follows:

1. The Port shall prepare for Ecology review and approval a draft RI Work Plan, which shall include a Sampling and Analysis Plan, QA/QC procedures, and a Health and Safety Plan. The draft RI Work Plan will be submitted as a draft for Ecology review, and a final RI Work Plan will be prepared after receipt and incorporation of Ecology comments on the draft work plan. The RI Work Plan shall address filling the data gaps