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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

MAR 27 2013

WA State Department
of Ecology (SWRO)

In the Matter of Remedial Action by:

AGREED ORDER

The Port of Tacoma, Earley Business Center
401 Alexander Avenue
Tacoma, WA

No. DE 9553

TO: Port of Tacoma
Attn: John Wolfe
P.O. Box 1837
Tacoma, WA 98401

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I. INTRODUCTION

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. This Order requires the Port to compile information and data from the previously performed investigations listed in Exhibit C. 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. 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 Earley Business Center Site. This Order, however, actually covers the specific areas or “sites” identified below that are located on a single parcel of property, Port Parcel 1b, generally located at 401 Alexander Avenue, Tacoma, WA, which are impacted by what is anticipated to be discrete or severable releases of contamination from past property operations. It is anticipated that remedial investigation will confirm the discrete or severable nature of each of these sites. These various sites are collectively, and for administrative purposes, called the Earley Business Center Site (Site). Each site is defined by the extent of contamination caused by the release of hazardous substances at the site. Site boundaries may change due to investigative results. The term “EBC Site “or “Site” shall herein refer collectively to the sites identified below. These sites are located on the property shown on Exhibit A, which is more particularly described in Exhibit B, and are described further in the Findings of Fact. Assuming the discrete or severable nature of these sites, the sites constitute facilities under RCW 70.105D.020(5):

- i. SW Debris layer
- ii. Blair Shoreline Soil and Groundwater
- iii. Historical USTs
- iv. Pier 23 Soil and Groundwater
- v. “Zinc Hotspot” near Pier 24
- vi. Sandblast grit
- vii. Former AK-WA Gianotti Shipyard

Port Parcel 1b has also been impacted in other areas by contamination or in the same area but by distinct contamination. These severable sites or impacted areas as so identified and listed in the Findings of Fact are not addressed as part of the Early Business Site under this Order.

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

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

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 Earley Business Center (EBC) property is located at 401 Alexander Avenue in Tacoma, Washington at the end of the Blair-Hylebos peninsula (Exhibit A). Approximately 50 acres of the approximately 80 acres of the EBC property is upland area, created by the placement of dredge material from the surrounding waterways onto mudflats of Commencement Bay circa 1917. The remaining thirty acres of the EBC property consist of intertidal and subtidal land in Commencement Bay and the adjacent Blair and Hylebos Waterways.

B. The earliest known uses of the property included a World War I era shipyard and sawmill. Shipbuilding recommenced during World War II, with ships constructed on intertidal shipways and support work conducted upland and on wharfs/piers along the waterways. After World War II until approximately 1960, the wharfs/piers and some of the upland facilities at the shipyard were used for ship repair, dismantling, and salvage.

C. The Port of Tacoma purchased the EBC property in 1960 and is the current owner. Since 1960, the EBC property has been leased to various Port tenants for commercial and industrial purposes, including freight hauling and distribution, furniture manufacturing, fishing fleet outfitting and support drilling services, lumber milling, and vessel mooring, maintenance, decommissioning and dismantling. From the mid-1960s until 1995, the Washington State National Guard leased portions of the EBC under and near Pier 23 for moorage, vessel maintenance, and training. The United States Army Reserve has leased the same approximate footprint for training and other marine-related purposes since 1995. For the purposes of this Agreed Order, the US Government leasehold and owned infrastructure within the EBC will be referred to as "Pier 23".

D. In 1983, the U.S. Environmental Protection Agency (EPA) placed approximately 10 square miles of shallow water, shoreline, and upland areas located within Commencement Bay on the National Priorities List (NPL) as the CBN/T Superfund Site. The mouth of the Hylebos Waterway on the north side of the EBC was identified as a problem area within the

larger CBN/T Superfund Site. The Port and Occidental Chemical Corporation (OCC) are conducting remedial activities to address this problem area under a 2005 RD/RA Consent Decree for the Mouth of the Hylebos Waterway and the Statement of Work appended thereto (Civil Action C-05-5103FDB).

E. Environmental investigations previously completed on EBC property have identified the presence of contaminants in discrete areas of soil, sediment, and groundwater. Areas of the property where soil, sediment, or groundwater have been documented to contain hazardous substances above MTCA cleanup levels are largely discussed in documents listed in Exhibit C and discussed in brief below. For some areas, actions have or are being taken under different administrative mechanisms to address the contamination in question.

F. The following facts relate to sites or areas on Port Parcel 1b that are *covered* as part of the collective EBC Site under this Order:

1. SW Debris layer. In 1998 during storm drain construction within the southwestern portion of the EBC, a 6-12 inch layer of hard asphaltic sands and miscellaneous debris attributed to past shipbuilding/dismantling was encountered within 3 ft. of the ground surface. This area is fully paved. Investigations at the time of the discovery and subsequently have focused on the approximate extent of the debris layer and identified petroleum hydrocarbons, PCBs, and metals at varying concentrations within the debris material.

2. Blair Shoreline Soil and Groundwater. Soil testing along the Blair Waterway shoreline in 2007 for future dredge disposal characterization identified two locations where soil contained PCBs above MTCA Method A Industrial cleanup levels, but at or below MTCA Method C Industrial cleanup levels. PCBs were not detected in groundwater samples collected in the area in 2008, however, the detection limit was above the marine surface water quality criterion for PCBs.

3. Historical USTs. Port records identify 16 USTs at 8 locations within the EBC that were reportedly utilized to support historical shipyard and other industrial

operations. In 2009, the Port tested soil and groundwater at 10 of these USTs and independently documented them to meet MTCA cleanup levels for petroleum hydrocarbon. This testing also identified chlorinated solvents in both media near one UST, which are attributed to the OCC Site.

Low levels of soil and groundwater contamination were identified in 2009 in the vicinity of the other 6 USTs that were co-located near a former Navy shipyard steam plant. In addition, a small unlisted (and possibly exempt) UST was discovered in the same area. The UST was found to contain fluid, although whether the fluid is primarily product or water has not been established.

4. Pier 23 Soil and Groundwater. Investigations completed between 1991 and 2008 at Pier 23 identified several contaminants (petroleum hydrocarbons, PAHs, PCBs, and metals) in soil. In 2002 Ecology issued a No Further Action letter to the Army following excavation of petroleum contamination in soil attributed to releases from a former waste oil AST. In 2003 additional petroleum-impacted soil was encountered in the vicinity of the AST and a former Bunker C fuel line. Most of that impacted soil was reportedly removed during construction of the Army Reserve Center building. However, 2008 sampling indicated residual signs of petroleum impact to soils. The 2008 data also showed elevated levels of arsenic and selenium in some wells, and vinyl chloride in an upgradient deep well.

5. "Zinc Hotspot" near Pier 24. Shallow groundwater near the foot of Pier 24 was found to contain zinc above marine surface water criteria in a 2006 investigation performed for the Mouth of Hylebos Waterway Superfund work. Follow-up sampling in 2008 confirmed the presence of elevated zinc in groundwater in a limited upland area.

6. Sandblast grit. In 1992, Ecology sampling of stormwater catch basin sediment in the northern portion of the EBC identified elevated metals attributed to spent sandblast grit that had accumulated on the ground. In 1993, the Port removed the

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. An 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.

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, 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 identified in the Previous Investigation Results Report and any additional work which Ecology deems necessary following review of the Previous Investigation Results Report.

2. Upon Ecology approval of the final RI Work Plan, the Port shall implement the remedial investigation as described in the work plan and according to the schedule outlined below.

3. Using the results of the remedial investigation, previous reports and studies, and the results of the feasibility study, the Port of Tacoma shall prepare a Draft Remedial Investigation/Feasibility Study (RI/FS) Report in accordance with WAC 173-340-350. The RI/FS Report shall provide information adequately documenting the nature and extent of contamination at the Site and an analysis of potential remedial alternatives that meet Ecology's requirements and expectations for cleanup actions outlined in WAC 173-340-350 through 173-340-390, cost estimates, and time frames for completion. The report shall also identify the preferred cleanup action(s). The Draft RI/FS Report will be submitted to Ecology for review and approval, and if no additional interim actions are to be performed, a final draft report will be prepared and submitted to Ecology for review and approval after receipt and incorporation of Ecology comments on the draft report. The RI/FS will be subjected to public notice and opportunity to comment before final approval by Ecology, in accordance with WAC 173-340-600(13)(c).

C. Interim Action to Remove USTs:

The Port of Tacoma will conduct an interim action to remove certain USTs identified in-place near the former central steam plant and surrounding impacted soil. The Port shall prepare a draft Interim Action Work Plan for Ecology review and approval. The draft Interim Action Work Plan shall include a Sampling and Analysis Plan, QA/QC procedures, and a Health and Safety Plan. The draft Interim Action (IA) Work Plan will be submitted as a draft for Ecology review, and a final Interim Action Work Plan will be prepared after receipt and incorporation of Ecology comments on the draft IA Work Plan.

D. If Ecology determines any additional interim action is warranted under Section VI.E, the Port of Tacoma shall, according to the schedule below, prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule. Ecology will provide public notice and opportunity to comment on the IA Work Plan in accordance with WAC 173-340-600(16). The Port of Tacoma shall not conduct the interim action until Ecology approves the IA Work Plan. Upon approval by Ecology, the IA Work Plan becomes an integral and

enforceable part of this Order, and the Port of Tacoma is required to conduct the interim action in accordance with the approved IA Work Plan.

In the event additional interim actions are undertaken, the Port of Tacoma shall prepare and submit to Ecology for review a revised draft RI/FS report by the date determined by Ecology. The revised report will incorporate new data and other relevant information from the Interim action(s). Upon receipt and incorporation of Ecology comments on the revised draft report, the Port of Tacoma shall finalize the RI/FS report and submit the report to Ecology for approval. The RI/FS report will be subject to public notice and opportunity to comment before final approval by Ecology, in accordance with WAC 173-340-600(13)(c).

E. Draft Cleanup Action Plan (DCAP):

Upon Ecology approval of the final RI/FS report, the Port of Tacoma shall submit an initial Draft Cleanup Action Plan (DCAP) according to the schedule below, and in accordance with WAC 173-340-380, for Ecology's use in preparing the Draft Cleanup Action Plan under WAC 173-340-380. The DCAP shall describe the proposed cleanup action(s) and shall summarize other cleanup action alternatives evaluated in the RI/FS and the rationale for selecting the proposed cleanup action(s). A proposed schedule for implementation, identification of any required institutional controls, and a list of state and federal laws applicable to the proposed cleanup action(s) shall also be included. At Ecology's request, the Port may assist Ecology in further development of the Final Cleanup Action Plan. Implementation of the Final Cleanup Action Plan cleanup will be covered under a subsequent legal agreement.

F. Schedule:

1. Previous Investigation Results Report: The Port shall submit the draft Previous Investigation Results Report and supporting information to Ecology within ninety (90) days of the effective date of the Order. Within thirty (30) days of the receipt of Ecology's comments on the submittal, the Port shall provide a final Previous Investigation Results Report.

2. RI/FS Work Plan: The Port shall submit the draft RI/FS Work Plan (per VII.E) to Ecology for review and approval within sixty (60) days of the final Previous Investigation Results Report submittal date. The RI/FS Work Plan shall include the Sampling and Analysis Plan, QA/QC Plan, and Health and Safety Plan for the RI/FS activities. The Port shall then submit a final RI/FS Work Plan to Ecology for review and approval within thirty (30) days of receipt of Ecology's comments.

3. Performance of RI work: The Port shall conduct a remedial investigation as described in the Ecology approved work plan. As work progresses, the Port and Ecology will meet as milestones in the work are achieved to discuss findings to date, identify remaining data gaps, and plan continued work. The purpose of these meetings is to expedite the production of a RI/FS report that can be approved in one iteration.

4. RI/FS Report: The Port shall submit the draft RI/FS report to Ecology for review and comment within ninety (90) days of the completion of field work. The Port shall submit a final RI/FS report to Ecology for review and approval within thirty (30) days of receipt of Ecology's comments.

5. UST Removal IA Work Plan and Performance of Interim Action: The draft IA Work Plan for the UST Removal Interim Action shall be submitted to Ecology for review and comment within sixty (60) days of submittal of the draft RI/FS report; draft IA Work Plans for other interim actions, if any, shall be due within sixty (60) days of notice from Ecology that an additional interim action(s) is warranted under WAC 173-340-430. The Port shall submit final IA Work Plans to Ecology for review and approval within thirty (30) days of receipt and incorporation of Ecology's comments. Performance of the UST Removal Interim Action and other interim actions, if any, shall follow the schedule set forth and approved by Ecology in the IA Work Plan(s).

G. During the course of activities the Port shall provide monthly reports that provide a synopsis of the previous month's activities, initial findings and observations in the field, unexpected findings or events, and expected activities for the upcoming month. Whenever data

sets are ready to review or other milestones are met, Ecology and the Port shall meet to discuss the latest developments so that decisions can be made in real time during field activities, rather than waiting until after the draft RI/FS report has been generated.

H. Data collected in the remedial investigation shall be submitted electronically to Ecology, in accordance with WAC 173-340-840(5) and Ecology Toxics Cleanup Program Policy 840 (Data Submittal Requirements).

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 this Section, Ecology may complete and issue the final deliverable.

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 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 \$2,892.61 in remedial action costs related to this facility as of June 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 June 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:

Marv Coleman
Department of Ecology
P.O. Box 47775, Olympia, WA 98504-7775
(360) 407-6259

The project coordinator for the Port is:

Leslee Conner
Port of Tacoma
P.O. Box 1837, Tacoma, WA 98401

One Sitcum Plaza, Tacoma, WA 98421
(253) 592-6732

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 the 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 Chapters 18.220 RCW and 18.43 RCW.

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 lists, 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. Citizens for a Healthy Bay
917 Pacific Avenue, Suite 100
Tacoma, WA 98402
(253) 383-2429
- b. Ecology Southwest Regional Office
300 Desmond Drive SE
Lacey, WA 98503
(360) 407-6300
- c. Tacoma Public Library – Main Branch
Northwest Room
1102 Tacoma Avenue South
Tacoma, WA 98402

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this site shall be maintained in the repository at Ecology's Southwest Regional Office in Lacey, Washington.

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.

Nothing in this Order is intended by the Port to waive any right it may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If the Port withholds any requested records based on an assertion of privilege, the Port shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

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

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

If Ecology concurs with or orders a work stoppage pursuant to 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.

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

O. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any the Portion of the Site shall be consummated by the Port without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

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

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 or state permits 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, as they are known at the time of entry of this Order, have been identified in Exhibit D. The substantive requirements for these exempt permits or approvals will be identified in the RI Work Plan or IA Work Plan. Ecology's approval of the Final RI Work Plan or Final IA Work Plan will constitute Ecology's determination on what substantive requirements apply.

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

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. A liable party who refuses, without sufficient cause, to comply with any term of this Order, 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

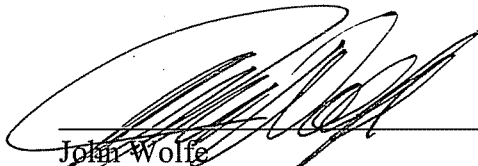
b. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

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: 4/2/2013

PORT OF TACOMA

**STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY**



John Wolfe
Chief Executive Officer
Port of Tacoma
Telephone: (253) 383-5841



Rebecca Lawson, P.E., LHG
Section Manager
Toxics Cleanup Program
Southwest Regional Office
Telephone: (360) 407-6241

**EXHIBIT A
SITE DIAGRAM**

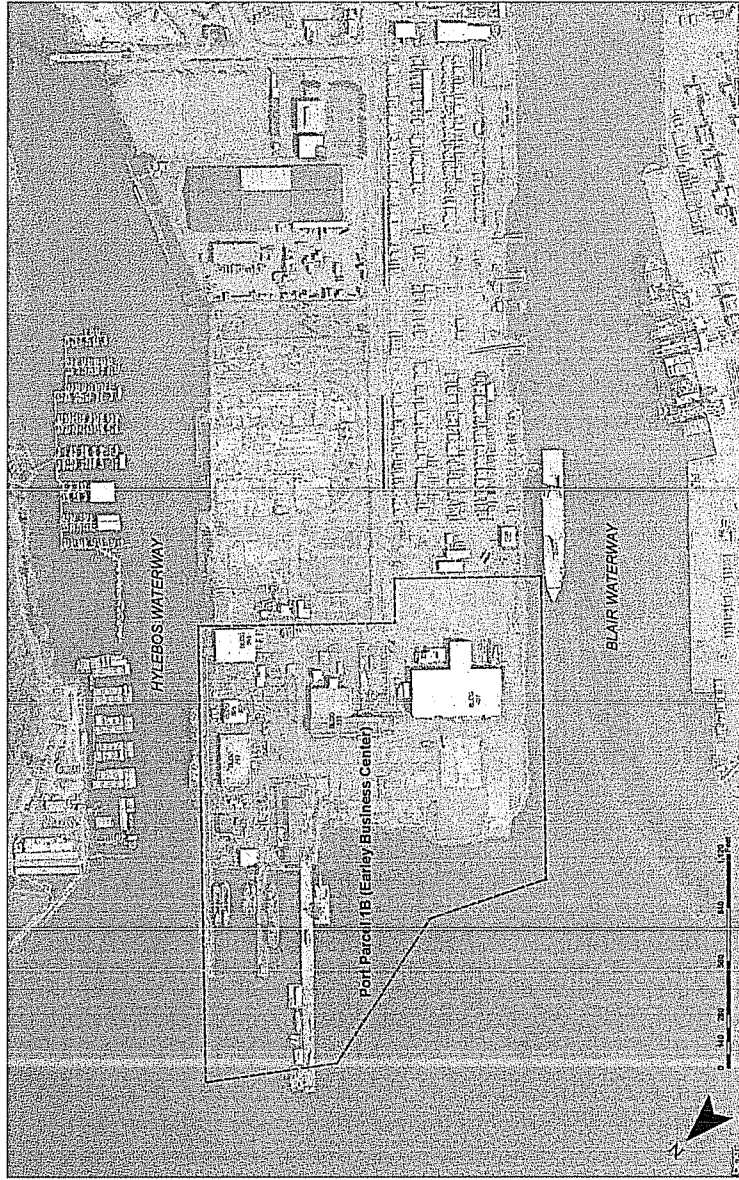


EXHIBIT B
LEGAL DESCRIPTION

The EBC Site is located on the following parcel of property:

All of Pierce County Tax Assessor Parcel 5000350013: Section 27 Township 21 Range 03 Quarter 13 PORT OF TACOMA ASSESSORS TRACTS: PORT OF TACOMA ASSESSORS TRACTS & 227520-001-1 NW & NE & SW 27-21-03E TR 1-B DESC AS B 1 ASHTONS RPT BLKS 13-48 TAC TDLDS EXC FOLL BEG AT SE COR SD B 1 TH N 47 DEG 15 MIN W 887.14 FT TH N 42 DEG 45 MIN E 770 FT TO INT SLY LI OF ALEXANDER AVE EXT WLY TH S 47 DEG 15 MIN E 887.14 FT TH S 42 DEG 45 MIN 24 SEC W 770 FT TO POB ALSO EXC FOLL COM AT SE COR SD B 1 TH N 42 DEG 44 MIN 24 SEC E 910 FT TO NE COR SD B 1 TH N 47 DEG 15 MIN 36 SEC W 500 FT TH S 42 DEG 44 MIN 24 SEC W 910 FT TO INT WLY EXT OF NLY LI OF ALEXANDER AVE TH S 47 DEG 15 MIN 36 SEC E 500 FT TO POB APPROX 3,233,850 SQ FT (74.24 ACS) EXC BLDG #580 & PIER 23 (IMP VALUE ONLY) ASSESSED AS 227520-001-2 OUT OF 001-2 SEG H-0668 JU 3/6/96JU

Plus the northern (peninsula north) ~ 387 feet of Pierce County Tax Assessor Parcel 5000350011: Section 27 Township 21 Range 03 Quarter 44 PORT OF TACOMA ASSESSORS TRACTS TR 1-A ALSO DESC AS THAT POR OF B 1 ASHTONS RPT BLKS 13-48 TAC TDLDS DESC AS FOLL BEG AT SE COR SD B 1 TH N 47 DEG 15 MIN W 887.14 FT TH N 42 DEG 45 MIN E 770 FT TO INT SLY LI OF ALEXANDER AVE EXT WLY TH S 47 DEG 15 MIN E 887.14 FT TH S 42 DEG 45 MIN W 770 FT TO POB ALSO B 13 & 14 SD ASHTONS RPT BLKS 13-48 TAC TDLDS TOG/W 20 FT VAC ALEXANDER AVE ALSO TOG/W 1/2 POR VAC E 11TH ST ABUTT PER ORD 25746 SUBJ TO EASE COMB 227520-060-0, 059-0, 002-0 & 003-0 SEG F-0261JU 07-29-93CL DC7/1/98JU

EXHIBIT C
PREVIOUSLY PERFORMED INVESTIGATIONS REPORTS

Conestoga-Rovers & Associates, 2011. *Updated Draft Site Characterization Report, Groundwater and Sediment Remediation, Occidental Chemical Corporation, Tacoma, Washington*. For Occidental Chemical Corporation, April.

Dames and Moore, 1998. *Subsurface Investigation, Earley Business Center Parcel 1A [sic], 401 Alexander Avenue, Tacoma, Washington*. For the Port of Tacoma, May 21.

General Construction Company, 2011. *Removal Action Completion Report, Army Reserve Pier 23 Replacement, Contract NO. W912QR-09-C-0050*. December 20.

GeoEngineers, 2007. *Revised Draft Study Phase Characterization, East Blair Waterway, Port of Tacoma, Washington*. For the Port of Tacoma, August 1.

GeoEngineers, 2008. *Final Dredge Material Characterization Report, Blair-Hylebos Terminal Redevelopment Project, Port of Tacoma, Tacoma, Washington*. For the US Army Corps of Engineers Seattle District. November 24.

Harding Lawson Associates, 1993. Letter report from Mark Winters and Daniel Balbiani to Suzanne Dudziak, Port of Tacoma, regarding "Interim Catch Basin Sediment Report, Port of Tacoma Industrial Yard". November 15.

Hart Crowser, 2008. *[draft] Zinc Hot Spot Upland Groundwater Investigation, Piers 24 & 25 Embankment Capping Project E1934, Hylebos Waterway, Commencement Bay, Tacoma, Washington*. For the Port of Tacoma, October 20.

Hart Crowser, 2009. *Environmental Site Characterization Data Report, Proposed Terminal Development, Port of Tacoma, Washington*. For the Port of Tacoma, February 27.

Hart Crowser, 2009. *Baseline Sediment Characterization Report (2009), Earley Business Center (EBC), 401 East Alexander Avenue, Port of Tacoma, Washington, Projects E5301, E5206, and E4301*. For the Port of Tacoma, December 1.

Hart Crowser, 2009. *Upland Environmental Characterization Report, Earley Business Center (EBC), 401 East Alexander Avenue, Port of Tacoma, Washington*. For the Port of Tacoma, December 1.

Hart Crowser, 2012. *USTs N-1,2,3,4,25,&26 Site-Specific Summary Report Addendum, Port of Tacoma UST Remediation Program, Tacoma, Washington*. For the Port of Tacoma, April 5.

Hart Crowser, 2012. *Revised Final, USTs N-18 and N-19 Site-Specific Summary Report, Port of Tacoma UST Remediation Program, Tacoma, Washington*. For the Port of Tacoma, July 16.

Hart Crowser, 2012. *Revised Final, UST N-1,2,3,4,25, &26 Site-Specific Summary Report, Port of Tacoma UST Remediation Program, Tacoma, Washington*. For the Port of Tacoma, July 19.

Hart Crowser, 2012. *Revised Final, UST N-17 Site-Specific Summary Report, Port of Tacoma UST Remediation Program, Tacoma, Washington*. For the Port of Tacoma, July 19.

Hart Crowser, 2012. *Revised Final, USTs N-23 and N-24 (P-15 and P-16) Site-Specific Summary Report, Port of Tacoma UST Remediation Program, Tacoma, Washington*. For the Port of Tacoma, July 31.

Hart Crowser, 2012. *Revised Final, UST N-6 Site-Specific Summary Report, Port of Tacoma UST Remediation Program, Tacoma, Washington.* For the Port of Tacoma, August 3.

Hart Crowser, 2012. *Revised Final, UST P-17 Site-Specific Summary Report, Port of Tacoma UST Remediation Program, Tacoma, Washington.* For the Port of Tacoma, August 8.

Hart Crowser, 2012. *Revised Final, UST P-13 (N-5), Site-Specific Summary Report, Port of Tacoma UST Remediation Program, Tacoma, Washington.* For the Port of Tacoma, August 10.

Kemron Environmental Services, 2008. *Final Feasibility Study, Pier 23, United States Army Reserve, 70th RRC, Tacoma, Washington, Contract # W911SO-04-F0017.* For United States Army Environmental Command. December 22.

Kemron Environmental Services, 2009. *Final Uplands Investigation Report, Pier 23, United States Army Reserve, 70th RRC, Tacoma, Washington, Contract # W911SO-04-F0017.* For United States Army Environmental Command. February 27.

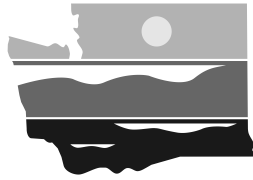
Port of Tacoma, 1999. Letter from Tina Stotz to Dave Smith, Washington State Department of Ecology Southwest Regional Office regarding "Independent Remedial Action at the Former AK-WA/Gianotti Shipyard, 401 Alexander Avenue, Tacoma, WA". March 16.

EXHIBIT D
EXEMPT PERMITS OR APPROVALS

The PLP shall meet the substantive requirements of the following permits or approvals, which are exempt under RCW 70.105D.090:

- City of Tacoma Municipal Code – Chapter 70 (Uniform Building Code – Excavation and Grading Permit);
- City of Tacoma Fire Department - Permit 2000.3 (Underground Tank Removal and Decommissioning – Commercial)
- Tacoma Pierce County Health Department – Environmental Health Code, Chapter 4 (Permit for Underground Storage Tank Removal).

EXHIBIT E
PUBLIC PARTICIPATION PLAN



DEPARTMENT OF
ECOLOGY
State of Washington

EXHIBIT E

PUBLIC PARTICIPATION PLAN

**Port of Tacoma Earley Business Center
401 Alexander Ave.
Tacoma, Washington**

Prepared by
Washington State Department of Ecology
Southwest Regional Office
Toxics Cleanup Program
PO Box 47775
Olympia, Washington 98504-7775

January / 2013

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INTRODUCTION

Department of Ecology has developed this Public Participation Plan to promote meaningful community involvement during the investigation and cleanup of the Port of Tacoma Earley Business Center (EBC) site. This plan describes the tools that Ecology uses to inform the public about site activities and identify opportunities for the community involvement.

LOCATION AND SITE BACKGROUND

A. The ECB site consists of those impacted areas identified in the Agreed Order that are located on approximately 80 acres in the Tacoma tideflats, at 401 Alexander Avenue (see map on page 7).

B. The earliest known uses of the property on which these areas or sites are located included a World War I era shipyard and sawmill. Shipbuilding recommenced during World War II, with ships constructed on intertidal shipways and support work conducted upland and on wharfs/piers along the waterways. After World War II until approximately 1960, the wharfs/piers and some of the upland facilities at the shipyard were used for ship repair, dismantling and salvage.

C. The Port of Tacoma purchased the EBC property in 1960 and is the current owner. Since 1960, the EBC property has been leased to various Port tenants for commercial and industrial purposes, including freight hauling and distribution, furniture manufacturing, fishing fleet outfitting and support drilling services, lumber milling, and vessel mooring, maintenance, decommissioning and dismantling. From the mid-1960s until 1995, the WA State National Guard leased portions of the EBC under and near Pier 23 for moorage, vessel maintenance, and training. The United States Army Reserve has leased the same approximate footprint for training and other marine-related purposes since 1995. For the purposes of this Agreed Order, the US Government leasehold and owned infrastructure within the EBC will be referred to as "Pier 23".

D. In 1983, the US Environmental Protection Agency (EPA) placed approximately 10 square miles of shallow water, shoreline, and upland areas located within Commencement Bay on the National Priorities List as the CBN/T Superfund Site. The mouth of the Hylebos Waterway on the north side of the EBC was identified as a problem area within the larger CBN/T Superfund Site. The Port and Occidental Chemical Corporation are conducting remedial activities to address this problem area under a 2005 RD/RA Consent Decree for the Mouth of the Hylebos Waterway and the Statement of Work appended thereto (Civil Action C-05-5103FDB).

Site Contamination

Environmental investigations previously completed on EBC property have identified the

presence of contaminants in discrete areas of soil, sediment, and groundwater.

Cleanup Activities

Cleanup activities at the EBC site fall under Washington's Model Toxics Control Act (MTCA) and accompanying regulations. MTCA has procedures for the cleanup of contaminated sites to standards that are safe for both human health and the environment. Ecology is responsible for implementing and enforcing MTCA. For more information, visit Ecology's website: <http://www.ecy.wa.gov/biblio/ftc94129.html>.

Under the current Agreed Order with Ecology, the Port and Ecology have identified specific impacted areas on the property that are to be covered by the Agreed Order. The Port of Tacoma will finish investigating contamination in these areas. The port must then write a Remedial Investigation and Feasibility Study report, which describes all contamination at the site and evaluates cleanup options. This report will include information from these areas. Ecology, with the Port's assistance, will then draft a Cleanup Action Plan, which outlines the final cleanup steps. Certain other impacted areas on this property are being addressed under different administrative mechanisms.

SITE CLEANUP PROCESS

Toxic sites are cleaned up in stages, described below. Each stage has a related report or plan that the public is welcome to review and comment on.

Remedial Investigation & Feasibility Study (RI/FS) - The RI/FS looks at the extent and type of pollution on the site. It is used to evaluate possible human health and environmental impacts, and to find cleanup alternatives.

Interim Actions - Ecology may sometimes take or require Interim Actions to partially clean up a site before the final cleanup plan is complete.

Cleanup Action Plan (CAP) - The CAP describes the cleanup methods and how they will meet Ecology's cleanup standards.

Cleanup - Toxic substances are removed from the site, contained on the site, or treated to make them less toxic. Ecology will make sure that the CAP has been followed and can require that the site be monitored. Major changes to the CAP require a public notice before they can be finalized.

Delisting - Ecology keeps track of toxic cleanup sites on the Hazardous Sites List. Once cleanup is complete, the public will have a chance to comment before a site is taken off the list.

More information about toxic cleanups is available on Ecology's Web site:
http://www.ecy.wa.gov/programs/tcp/cu_support/cu_process_steps_defns.htm.

PUBLIC PARTICIPATION ACTIVITIES AND RESPONSIBILITIES

The purpose of this Public Participation Plan is to promote public understanding and participation in the cleanup activities planned for this site. This section of the plan describes how Ecology will share information and receive public comments on the site activities. The following is a list of the public involvement activities that Ecology will use, their purposes, and descriptions of when and how they will be used during cleanup of the EBC site.

Formal Public Comment Periods

Comment periods are the primary method Ecology uses to get feedback from the public on proposed cleanup decisions. They usually last 30 days and are required at key points during the investigation and cleanup process before final decisions are made. During a comment period, the public can comment in writing. Verbal comments are taken if a public hearing is held. After comment periods, Ecology reviews all comments received and may respond in a document called a Responsiveness Summary. Ecology considers the need for changes or revisions to a document or decision based on input from the public. If significant changes are made, a second comment period may be held. If no significant changes are made, the draft document(s) will be finalized.

Public Meetings and Hearings

Public meetings may be held at key points during the investigation and cleanup process. Ecology also may offer public meetings for actions expected to be of particular interest to the community. These meetings will be held at locations convenient to the community. A public meeting will also be scheduled if ten or more people request one.

Information Repositories

Information repositories are places where the public may read and review site information, including documents that are the subject of public comment. Ecology has three repositories for the EBC cleanup:

- Tacoma Public Library, 1102 Tacoma Avenue, Tacoma, WA 98402, (253) 591-5666.
- Citizens for a Healthy Bay, 917 Pacific Avenue, Suite 100, Tacoma, WA 98402, (253) 383-2429.
- Washington State Department of Ecology, 300 Desmond Drive, Lacey, WA 98516. Please call (360) 407-6045 for an appointment.

Site information also will be posted on Ecology's Web site: <https://fortress.wa.gov/ecy/gs/Website.aspx?csid=2395>

Site Register

Ecology's Toxics Cleanup Program uses its bimonthly Site Register to announce all of its public meetings and comment periods, as well as many other activities. To receive the Site Register in electronic or hard copy format, contact Seth Preston at (360) 407-6848 or by e-mail at Seth.Preston@ecy.wa.gov. It is also available on Ecology's Web site: http://www.ecy.wa.gov/programs/tcp/pub_inv/pub_inv2.html.

Mailing List

Ecology has compiled a mailing list for the site. It includes neighbors, public agencies, and other known interested parties. The list will be maintained at Ecology's Southwest Regional Office and will be updated as needed. Please contact Michael Bergman at (360) 407-0067 or by e-mail at Michael.Bergman@ecy.wa.gov if you would like to be involved or have your address added to or deleted from this mailing list.

Fact Sheets

Ecology will mail fact sheets to persons and organizations interested in the Port site cleanup to inform them of public meetings and comment opportunities and important site activities. Ecology also may mail fact sheets about cleanup progress.

Newspaper Display Ads

Ecology will place ads in the Tacoma News Tribune to announce public comment periods and public meetings or hearings for the site.

Plan Update

This Public Participation Plan may be updated as the project proceeds. If an update is necessary, the revised plan will be submitted for public comment.

Contacts

For questions or more information about this plan or the EBC cleanup, please contact:

Marv Coleman, Site Manager
Washington State Department of Ecology
PO Box 47775
Olympia, WA 98504-7775
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Tacoma Port Earley Business Center Site includes certain identified areas on the property located at 401 Alexander Ave., Tacoma

GLOSSARY

Agreed Order: A legal agreement between Ecology and a potentially liable person to conduct work toward a cleanup.

Cleanup: Actions taken to deal with a release, or threatened release of hazardous substances that could affect public health or the environment. The term "cleanup" is often used broadly to describe various response actions or phases of cleanup.

Cleanup Action Plan (CAP): A document that explains which cleanup alternative(s) will be used at sites for the cleanup. The cleanup action plan is based on information and technical analysis generated during the remedial investigation/feasibility study and consideration of public comments and community concerns.

Contaminant: Any hazardous substance that does not occur naturally or occurs at greater than natural background levels

Groundwater: Water found beneath the earth's surface that fills pores between materials such as sand, soil, or gravel. In some aquifers, ground water occurs in sufficient quantities that it can be used for drinking water, irrigation and other purposes.

Information Repository: A file containing current information, technical reports, and reference documents available for public review. The information repository is usually located in a public building that is convenient for local residents such as a public school, city hall, or library.

Model Toxics Control Act (MTCA): Legislation passed by citizens of the State of Washington through an initiative in 1988. Its purpose is to identify, investigate, and clean up facilities where hazardous substances have been released. It defines the role of Ecology and encourages public involvement in the decision making process. MTCA regulations are administered by the Washington State Department of Ecology.

Potentially Liable Person: Any individual(s) or company(s) potentially responsible for, or contributing to, the contamination problems at a site. Whenever possible, Ecology requires these PLPs, through administrative and legal actions, to clean up sites.

Risk: The probability that a hazardous substance, when released into the environment, will cause an adverse effect in the exposed humans or living organisms.

Site: Any building, structure, installation, equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft; or any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

Toxicity: The degree to which a substance at a particular concentration is capable of causing harm to living organisms, including people, plants and animals.