

Baywood Products Site
SIC: J1A34 FSID: 4438651
Isaac Standen

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

The Port of Everett

AGREED ORDER for

**Remedial Investigation/Feasibility Study
and Draft Cleanup Action Plan – Bay Wood
Products Site**

No. DE 5490

TO: Port of Everett
Attention: Jerry W. Heller, Chief Administrative Officer
2911 Bond Street
Everett, WA 98206

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EXHIBITS

- EXHIBIT A: SITE LOCATION AND PROPERTY LOCATION INFORMATION
- EXHIBIT B: SCOPE OF WORK & SCHEDULE
- EXHIBIT C: ECOLOGY POLICY 840 – DATA SUBMITTAL REQUIREMENTS
- EXHIBIT D: PUBLIC PARTICIPATION PLAN

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Port of Everett (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 conduct a Remedial Investigation and Feasibility Study (RI/FS) per WAC 173-340-350 and develop a draft Cleanup Action Plan per WAC 173-340-350 through 173-340-380 addressing both potential upland and in-water (i.e., adjacent marine sediment) contamination 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 authority of 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 the 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 used in this Order.

A. Site: The Site (or Facility) is referred to as the Bay Wood Products Site (the Site) and is generally located at 200 West Marine View Drive, Everett, Snohomish County,

Washington. The Site is owned by the Port and encompasses approximately 13 acres of upland area. The final limits of the Site, which may include both upland and in-water areas, will be determined in the RI/FS. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site and is not limited by property boundaries. The Site includes areas where hazardous substances have been deposited, stored, disposed of, placed, or otherwise come to be located. Based upon factors currently known to Ecology, the Site is more particularly described in **Exhibit A** to this Order, which includes general site maps and photographs (**Exhibit A**, Figures 1 through 6), a site location description, and information from the Snohomish County Assessor's Office. Based on the results of previous investigations (see Section V, Subsections C-E to this Order), the Site includes both upland and in-water areas (i.e., adjacent marine sediment) as defined below. 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 Everett.

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

D. Agreed Order or Order: Refers to this Order and each of the exhibits and attachments to the Order. All exhibits and attachments are integral parts of this Order. In addition, **Exhibits A** through **D** are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits and attachments to the Order.

E. Upland Area: Refers to areas of the Site that fall outside the In-Water Area, as generally depicted in **Exhibit A**, Figures 1 through 5.

F. In-Water Area: Refers to the intertidal (areas exposed to air at low tide) and subtidal (areas always covered by water) parts of the Site associated with adjacent marine waters, as generally depicted in **Exhibit A**, Figures 1 through 5.

V. FINDINGS OF FACT

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

A. The Site is generally located at 200 West Marine View Drive, Everett, Snohomish County, Washington. The Site location is generally depicted in the diagrams attached to this Agreed Order as **Exhibit A**. The facility is generally depicted in **Exhibit A** (Figures 1 through 6). **Exhibit A** also contains a legal description of the property (located after Figure 9 of **Exhibit A**). The Site is located on a fill area of Port Gardner Bay and has no structures or pavement. The Site is listed on the Department of Ecology's Hazardous Sites List as "Bay Wood Products" with the Facility Site ID No. 4438651.

B. The Port is the "owner", as defined in RCW 70.105D.020(17), of the Site.

C. According to a Phase I Environmental Site Assessment (ESA) conducted for Bay Wood Products, Inc. in 1989, a sawmill was operated at the Site beginning sometime prior to 1946 and ending in 1979. Historical lease information for the property presented in the Phase I ESA indicates that the sawmill was initially operated by Washington Wood Products (later known as Washington Timber Products, Ltd) from before 1946 to 1970. A Metsker's Snohomish County Atlas shows that Parker Lumber & Mill Company occupied the Site in 1936. Since 1970, the operation at the Site transitioned between the following companies:

- From 1970 to 1976, Publishers Timber Company operated a sawmill at the Site.
- From 1976 to 1978, West Coast Orient Lumber Mills, Inc. operated a sawmill at the Site.
- From 1978 to 1979, West Coast Lumber Operations, Inc. operated a sawmill at the Site.
- From 1979 to 1994, Bay Wood Products, Inc. used the Site for log handling and storage.

The sawmill and former buildings operated by parties prior to Bay Wood Products were located on the eastern portion of the property. Sometime prior to 1985, Bay Wood Products dismantled

the sawmill, removed the older buildings and constructed three buildings in the southeastern portion of the property, consisting of an office building with an attached shop area, a large covered shed, and a shop building. At the time of the 1989 Phase I ESA, several above ground storage tanks (ASTs) containing diesel fuel and drums containing motor and hydraulic oil were present in and around the buildings and oil staining was observed on the ground near the tanks and drums.

D. Several environmental assessments and associated cleanup actions were conducted at the Site subsequent to the 1989 Phase I ESA. Between 1992 and 1993, a limited soil investigation and subsequent soil cleanup was conducted by Geoengineers, Inc. on behalf of the Port to address a small area of residual polychlorinated biphenyl (PCB) contamination related to a former leaky electrical transformer. According to the 1989 Phase I ESA, an initial cleanup of the PCB contaminated soil was conducted in 1985, but this cleanup did not result in complete removal of PCBs above the Model Toxics Control Act (MTCA) Method A cleanup level for unrestricted site use. About 45 cubic yards of PCB-affected soil was removed in 1993 and associated soil quality data indicate that all soil above the MTCA Method A residential (unrestricted) cleanup level for PCB mixtures was removed and disposed of at an offsite disposal facility.

E. Wood debris deposits were delineated by Landau Associates on behalf of the Port across the upland portion of the site in 1994. Much of the significant deposits of upland wood debris was removed from the upland portion of the Site in 1995 by Forest Industries Engineering Systems on behalf of the Port. Wood debris was present as both surface and subsurface deposits, and was encountered at depths up to elevation -4 ft Mean Lower Low Water (MLLW). Removal of the deeper deposits required construction of dikes along the perimeter of the western two thirds of the upland portion of the Site. More than 100,000 cubic yards of wood debris and intermixed rock and soil were removed from the Site during the 1995 removal action. The area from which the subsurface wood debris was removed was filled with Snohomish River dredge sediments to match the existing Site grades to the east. The Bay Wood Products buildings were also removed from the Site in 1994 or 1995.

F. The Site has remained unoccupied and unused since wood removal and filling activities were performed in 1995. Environmental conditions not previously evaluated at the Site include:

- The potential presence of wood debris within the aquatic portion of the site.
- The potential release of petroleum hydrocarbons related to the former ASTs and drums noted in the 1989 Phase I ESA.
- The potential release of hazardous substances during historic sawmilling operations.

G. The presence of wood debris has been documented at the Site. Previous investigations have documented the extent of wood debris in upland areas and aerial photographs taken in 1966 and 1977 (included in **Exhibit A**, Figures 2 and 3) reveal extensive log rafting and scattered sunken logs in in-water areas of the Site. As depicted in the aerial photographs, log rafting was extensively practiced in the tidal mud flats that surround the facility, and log transfer activities into and out of the water at the Site occurred for many years. Log transfer activities are the greatest potential source of wood debris and these practices were evident at the western-most end of the site and along the southern boundary where logs were floated to the former sawmill feed or “log way” as shown in the 1966 and 1977 aerial photographs (**Exhibit A**, Figures 2 and 3). The “log way” was identified in the revised 1957 Sanborn Map (**Exhibit A**, Figure 6 (Key Sections 96 and 97)).

H. Recent site photographs and observations show the presence of wood debris (logs, branches, small pieces of wood, and bark) in intertidal sediments where the former transfer point or “log way” was located at the terminus of the inlet bounding the southern portion of the property (**Exhibit A**, Figures 7, 8 and 9). The photographs also reveal the discharge of anoxic waters from an area of the bank of the Site during low tide (Figure 8 and the upper left part of Figure 9), possibly from accumulated wood debris.

I. The accumulation of wood debris in an aquatic environment is known to impose physical and chemical impacts to the biological resources that reside on surface sediments. It smothers organisms that are dependent upon access to overlying water for respiration or food (e.g., clams). It also prevents access to the sediment/water interface necessary for recruitment of new year-classes of animals. As wood debris decays it reduces dissolved oxygen from the sediment porewater and from the overlying layers of water. The resulting anoxia is directly toxic to some organisms. In addition, significant volumes of wood debris accumulation in the marine environment are associated with releases of hazardous substances including but not limited to ammonia, hydrogen sulfide, phenol, 4-methylphenol, and 2, 4-dimethylphenol which all impose additional toxicity both individually and collectively to the benthic community.

VI. ECOLOGY DETERMINATIONS

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 December 19, 2007, pursuant to RCW 70.105D.040, RCW 70.105D.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 a letter dated February 5, 2008.

D. Pursuant to RCW 70.105D.030(1) and RCW 70.105D.050(1), Ecology may require the Port 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 limited amount of investigative information presented in previous site reports is not sufficient to show that all of the potential contamination at this Site has been adequately characterized or cleaned up.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the Port take the following remedial actions at the Site, as more fully described in the Scope of Work & Schedule attached to this Order as **Exhibit B**, and that these actions be conducted in accordance with Chapters 173-340 and 173-204 WAC unless otherwise specifically provided for herein:

A. The Port shall conduct the remedial actions fully described in **Exhibit B** to this Order. Generally, the Port shall perform the following:

- Develop a work plan for an RI/FS.
- Perform an RI/FS study.
- Prepare an RI/FS report.
- Develop a draft cleanup action plan (CAP) for the Site.

B. The Port shall perform the remedial actions required by this Order according to the work schedule set forth 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 under the Scope of Work & Schedule (**Exhibit B**), Ecology may complete and issue the final deliverable.

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notices

RCW 70.105D.030(2)(a) requires that at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations that indicate to Ecology that the 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 the Order. 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 description 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 Chapter 70.105D.055 RCW, Ecology also has authority to recover unreimbursed remedial action costs by filing a lien against real property subject to the remedial action.

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 their 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:

Isaac Standen
Toxics Cleanup Program
PO Box 47600, Olympia, WA 98504
Phone: 360-407-6776
E-Mail: ista461@ecy.wa.gov

The project coordinator for the Port of Everett is:

R. Scott Miller
SLR International Corp.
1800 Blankenship Road, Suite 440
West Linn, OR 97068
Phone: 505-723-4423
E-mail: smiller@slrcorp.com

The project coordinator(s) shall be responsible for overseeing the implementation of this Order. The Ecology 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 coordinator(s). 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.

Ecology and the Port may change their respective project coordinators. Written notification shall be given to other party at least ten (10) 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 that contain 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 or controls, and have 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 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 paragraph shall comply with the approved health and safety plan, if any. Ecology employees and their representative shall not be required to sign any 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 C** is Ecology Policy 840, Data submittal Requirements.

If requested by Ecology, the Port shall allow split or duplicate samples to be taken by Ecology and/or its authorized representative of any samples collected by the Port pursuant to implementation of this Order. The Port shall notify Ecology seven (7) days in advance of collecting samples or work activity at the Site pursuant to this Order. However, Ecology may waive this notification requirement and accept samples when they were collected during construction projects or other circumstances where sampling was prudent or necessary but unplanned. Ecology shall upon request, allow the Port and/or their 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) of this Order, 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 in writing by Ecology.

H. Public Participation

A Public Participation Plan (see WAC 173-340-600) that is required for this Site, has been developed and is included as **Exhibit D**. 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, draft cleanup action plan, 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. Everett Public Library
2702 Hoyt Ave
Everett, WA 98201
- b. Department of Ecology
Toxics Cleanup Program
Headquarters Office
300 Desmond Drive SE
Olympia, Washington 98504-7600

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. 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 the Ecology project coordinator's decision or the itemized billing statement, the Port has fourteen (14) days within which to notify Ecology's project coordinator 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 Headquarters Land and 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 utilize the dispute resolution process only 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.

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 includes, 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, earthquake, storm, or other unavoidable casualty.

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 in a timely fashion of any extensions granted pursuant to the 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 be granted only 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.
- 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 fourteen (14) 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 be formally amended only 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 the Order represents a substantial change, Ecology will provide additional 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) of this Order.

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 this section, the Port's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section 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 Ecology 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. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this Section.

The Port has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the Port determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or the Port shall be responsible to contact the

appropriate state and/or local agencies. If Ecology so requires, the Port shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the Port and on how the Port must meet those requirements. Ecology shall inform the Port in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The Port shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Ecology shall ensure that notice and opportunity for comment is provided to the public and appropriate agencies prior to establishing the substantive requirements under this section.

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 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

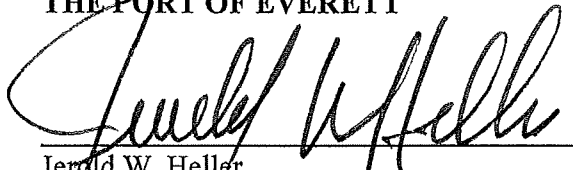
Pursuant to RCW 70.105D.050, this Order may be enforced as follows:

1. The Attorney General may bring an action to enforce this Order in a state or federal court.
2. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for remedial actions and orders related to the Site.
3. 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.
 - b. Civil penalties of up to \$25,000 per day for each day it refuses to comply.
4. 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: October 3, 2008

THE PORT OF EVERETT



Jerold W. Heller
Chief Administrative Officer
The Port of Everett
2911 Bond Street

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**



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Exhibit A