

Site: Prosser airport aircraft  
Applicators

Manager: Mark Dunbar

Site: 7474148

SIC: J1A5B

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:

AGREED ORDER

Port of Benton

No. DE 6070

TO: Port of Benton  
3100 George Washington Way  
Richland, WA 99354

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## I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Port of Benton 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 Port of Benton to complete the interim action currently in progress and perform confirmatory soil sampling and groundwater monitoring sufficient to demonstrate successful remediation of hazardous waste located at the Site. Ecology believes the actions required by this Order are in the public interest.

## II. JURISDICTION

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

## III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. Port of Benton agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Port of Benton's responsibility under this Order. Port of Benton 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 Prosser Airport Aircraft Applicators and is generally located at 221 Nunn Road, Prosser. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. Based upon factors currently known to

Ecology, the Site is more particularly described in the Site Diagram (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(4).

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

C. Potentially Liable Person (PLP): Refers to Port of Benton and Marvin Bonney, Aircraft Operators, Inc.

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 Port of Benton:

A. The Port of Benton has owned the Prosser Airport property since 1961. The Benton County Assessor's parcel number for the property on which the Site is located is 102842000011000. The hangar structure associated with the Site was owned and operated by Mr. Marvin Bonny, owner/operator of Aircraft Applicators, Inc. The hangar was constructed on land leased from the Port of Benton. The Port of Benton acquired the hangar February 2, 2007, when the official Lease Termination Agreement between the Port of Benton and Aircraft Applicators, Inc. became effective.

B. Activities consistent with operation of an aerial pesticide application business occurred on the site, including storage, mixing, and loading of pesticides onto aircraft, and fueling and maintenance of aircraft. White Shield, Inc. (an environmental contractor hired by the Port of Benton) performed initial soil sampling on the site May 2, 2006, prior to transfer of the hangar structure to the Port of Benton. Analytical results of sampling performed by White Shield, Inc. indicated pesticides, primarily DDT, present in soil at concentrations above MTCA cleanup levels.

C. Additional site characterization and subsequent independent remedial activities performed by White Shield, Inc. confirmed petroleum contamination and

pesticides present in both soil and groundwater at concentrations above MTCA cleanup levels.

- D. In March 2007, White Shield conducted an independent remedial action, whereby excavation and disposal of 1,331 tons of DDT contaminated soils were removed. This excavation uncovered additional areas of pesticide and herbicide contaminated soil, as well as petroleum-contaminated soils from a former underground aviation fuel tank. At that time, approximately 198 tons of petroleum-contaminated soil was also excavated and disposed of properly.
- E. In June 2007, White Shield installed four groundwater-monitoring wells at the site. The wells were sampled upon installation, and again in December 2007. Sampling results confirmed the presence of the petroleum constituents, dieldrin, mecoprop, and dinoseb at concentrations above MTCA cleanup levels. Organophosphorus and carbamate pesticides were not detected above MTCA cleanup levels. In addition, the site's irrigation well was sampled in December 2007, and results showed no detection of pesticides, herbicides, or petroleum.
- F. In February 2008, White Shield performed grid sampling of the soils at the site. Shallow soil samples were collected on a 25-foot grid across the site and on a 15-foot grid in the former pesticide storage yard. Samples from beneath the floor of the storage shed were also collected and analyzed. Results showed no detection of pesticides or herbicides in areas not previously known to contain them.
- G. In late February 2008, White Shield excavated additional pesticide and petroleum contaminated soils at the site. Approximately 4,056 tons of pesticide-contaminated soils were disposed of properly, and approximately 9,965 tons of petroleum soils were recycled at an asphalt batch plant. Prior to backfilling the excavation, approximately 114,450 pounds of RegenOx were added to the water in the excavation.

## VI. ECOLOGY DETERMINATIONS

A. Port of Benton is an "owner or operator" as defined in RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4). Marvin Bonny is an "owner or operator" as defined in RCW 70.105D.020(12) of a "facility" as defined in RCW 70.105D.020(4).

B. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(20) and RCW 70.105D.020(7), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to Port of Benton dated May 20, 2008, pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500. By letter dated May 28, 2008, Port of Benton voluntarily waived its rights to notice and comment and accepted Ecology's determination that Port of Benton is a PLP under RCW 70.105D.040.] Based upon credible evidence, Ecology issued a PLP status letter to Marvin Bonny dated May 20, 2008, pursuant to RCW 70.105D.040, -.020(16) and WAC 173-340-500. After providing for notice and opportunity for comment, and receiving no comments, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that Marvin Bonny is a PLP under RCW 70.105D.040 and notified Marvin Bonny of this determination by letter dated July 14, 2008. However, Marvin Bonny is not a party to this Agreed Order.

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, remedial investigation/feasibility study or design of a cleanup action.

The site is an aircraft hangar and surrounding property that was the location of an aerial pesticide applicator operation. On July 26, 2006, Ecology was notified of a release or potential release at the Site. Ecology conducted an initial investigation on September 12, 2006. An extensive area of dark stained soil and several smaller areas of stained soil were observed adjacent to the hangar. Sampling performed by White Shield Inc. during site characterization and during the subsequent remedial activities indicated heptachlor, DDE, DDT, dieldrin, and dinoseb present in soil at concentrations above MTCA cleanup levels. During subsequent independent remedial actions by the Port of Benton petroleum contamination was also identified. Both pesticide and petroleum contamination has been confirmed in soil and groundwater at the Site. The groundwater table at the site fluctuates from approximately ten feet below ground surface during the winter to approximately two feet during the summer irrigation season. The presence of pesticides in surface soils provides a pathway for direct contact, inhalation of dust, and possible ingestion. Conditions at the Site warranted an interim action consistent with WAC 173-340-430.

## **VII. WORK TO BE PERFORMED**

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that Port of Benton 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. Port of Benton shall complete the Interim Action currently in progress. This includes: 1) backfilling the current excavation; 2) installation of four (4) additional groundwater monitoring wells to monitor the efficacy of the interim action; and 3) instituting a post-interim action groundwater monitoring program using all of the future and existing monitoring wells at the site. These tasks are more particularly described in Exhibit B – Work Plan. Once all elements of the Work Plan have been completed, the Port of Benton shall submit a Final Interim Action Report documenting all aspects and the efficacy of the interim action in accordance with WAC 173-340-430(7).

B. The Port of Benton shall complete the work required under the Order in such a manner to meet the schedule on the following page:

Deliverable Required	Date Due to Ecology
Work Plan implementation	Immediately upon issued of Agreed Order
Submit Worker Safety and Health Plan	30 days after the issue date of the Agreed Order
Submit Sampling and Analysis Plan	30 days after the issue date of the Agreed Order
Bi-Monthly (Every Other Month) Interim Action Progress Reports	15 <sup>th</sup> of every other month for work completed the prior 2 months
Post-interim Action Semi-annual Progress Reports	15 <sup>th</sup> of the month for work completed the prior 6 months
Final Interim Action Report	90 days after completion of the interim action and receipt of the results from the 1 <sup>st</sup> groundwater sampling event
EIM data submittal	Ongoing

C. In addition to the items outlined in Exhibit B – Work Plan, Port of Benton shall also:

- a. Submit to Ecology for review and approval, a Worker Safety and Health Plan in accordance with WAC 173-340-810.
- b. Submit to Ecology for review and approval, a Sampling and Analysis Plan in accordance with WAC 173-340-820.
- c. Submit sampling data in accordance with Ecology’s Environmental Information Management (EIM) guidelines.
- d. Provide bi-monthly (every other month) progress reports until the interim action is complete, documenting work accomplished, any sample results obtained during the reporting period, and identification of problems encountered. Once the interim action is complete, semi-annual progress reports, containing the same information, shall be submitted. Progress reports are due on the 15<sup>th</sup> of the month after completion of the reporting period.

D. 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

Port of Benton 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). Port of Benton shall pay the required amount within ninety (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

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

### C. Implementation of Remedial Action

If Ecology determines that Port of Benton has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to Port of Benton, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of Port of Benton's failure to comply with its obligations under this



Order, Port of Benton shall reimburse Ecology for the costs of doing such work in accordance with Section VIII. B – Remedial Action Costs, provided that Port of Benton 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, Port of Benton 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:

Mark Dunbar  
Central Regional Office  
15 W Yakima Ave, Ste 200  
Yakima, WA 98902-3452  
(509) 454-7836

The project coordinator for Port of Benton is:

John D. Haakenson  
3100 George Washington Way  
Richland, WA 99354  
(509) 375-3060

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

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

**E. Performance**

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist licensed in the State of Washington or under the direct

supervision of an engineer registered in the State of Washington, except as otherwise provided for by Chapters 18.220 and 18.43 RCW.

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

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

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

Port of Benton 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 Port of Benton 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 Port of Benton'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 Port of Benton. Port of Benton shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by Port of Benton 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 Port of Benton 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, Port of Benton 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, Port of Benton shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by Port of Benton pursuant to implementation of this Order. Port of Benton shall notify Ecology seven (7) days in advance of any scheduled sample collection or work activity at the Site. Ecology shall, upon request, allow Port of Benton 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 Port of Benton 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**

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

1. If agreed to by Ecology, develop appropriate mailing list, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering

design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify Port of Benton 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 Port of Benton that do not receive prior Ecology approval, Port of Benton 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. Port of Benton  
3100 George Washington Way  
Richland, WA 99354
- b. Ecology's Central Regional Office  
15 W Yakima Ave, Ste 200  
Yakima, WA 98902-3452

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, Port of Benton 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, Port of Benton shall make all records available to Ecology and allow access for review within a reasonable time.

**J. Resolution of Disputes**

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

a. Upon receipt of Ecology's project coordinator's written decision or the itemized billing statement, Port of Benton 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. Port of Benton may then request regional management review of the decision. This request shall be submitted in writing to the Central 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 Port of Benton's request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter. If the Port still has objections, it reserves the right to contact Ecology's management up to the level of the Director.

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 Port of Benton 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 Port of Benton 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 Port of Benton;
- 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 Port of Benton.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give Port of Benton 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. Minor changes include but are not limited to: 1) short-term schedule changes to accommodate the Port's or their consultant's activities, 2) voluntary sampling by the Port of additional wells or soils on a one-time basis, 3) changes, with the agreement of Ecology, to indicator parameters used in the groundwater monitoring program but not changes to the parameters for site closure, 4) replacement of damaged or ineffective monitoring wells and 5) the drilling of one or two additional monitoring wells to enhance monitoring or due to changes in site conditions .

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. Substantial changes include but are not limited to: 1) major changes in schedule for sampling or report submittal, 2) addition of analytical parameters to the groundwater monitoring program, 3) changes to the remedial options used at the site, 4) drilling of more than one or two additional monitoring wells, and 5) the addition or removal of monitoring wells from the monitoring program. This Order may only be formally amended by the written consent of both Ecology and Port of Benton. Port of Benton shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a

proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J (Resolution of Disputes).

**M. Endangerment**

In the event Ecology determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct Port of Benton to cease such activities for such period of time as it deems necessary to abate the danger. Port of Benton shall immediately comply with such direction.

In the event Port of Benton 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, Port of Benton may cease such activities. Port of Benton 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 Port of Benton shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Port of Benton's cessation of activities, it may direct Port of Benton to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to Section VIII.M (Endangerment), Port of Benton'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 Port of Benton to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against Port of Benton regarding remedial actions required by this Order, provided Port of Benton 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 Port of Benton 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 Port of Benton's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, Port of Benton 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, Port of Benton shall notify Ecology of said transfer. Upon transfer of any interest, Port of Benton 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 Port of Benton 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), Port of Benton 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, Port of Benton 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 of Benton 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 Port of Benton 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 Port of Benton shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Port of Benton 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 Port of Benton and on how Port of Benton must meet those requirements. Ecology shall inform Port of Benton in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Port of Benton 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 Port of Benton 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**

Port of Benton 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 Port of Benton, its officers, employees, agents, or contractors in entering into and implementing this Order. However, Port of Benton 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 Port of Benton's receipt of written notification from Ecology that Port of Benton has completed the remedial activity required by this Order, as amended by any modifications, and that Port of Benton has complied with all other provisions of this Agreed Order.

**X. ENFORCEMENT**

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

- A. The Attorney General may bring an action to enforce this Order in a state or federal court.
- B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
- C. In the event Port of Benton refuses, without sufficient cause, to comply with any term of this Order, Port of Benton 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: September 17, 2008.

**PORT OF BENTON**



Scott D. Keller  
Executive Director  
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(509) 375-3060

**STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY**



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Toxics Cleanup Program  
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