

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

The Port of Olympia  
915 Washington Street NE  
Olympia, WA 98501

AMENDMENT NO. 2 TO  
AGREED ORDER

NO. DE 00TCPSR-753

TO: The Port of Olympia  
915 Washington Street NE  
Olympia, WA 98501

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## **INTRODUCTION**

Agreed Order No. DE 00TCPSR-753 ("Order"), entered into by the Department of Ecology ("Ecology") and the Port of Olympia ("Port") on April 11, 2000, as amended on July 3, 2004, ("First Amendment") requires that the Port perform interim sediment remedial actions and interim upland remedial actions at the former Cascade Pole-Olympia Site ("CPC Site"), shown on the vicinity map attached hereto as Exhibit A.

By this Second Amendment to Agreed Order No. DE 00TCPSR-753 ("Second Amendment"), Ecology requires the Port to perform an interim action for the North Point Area as detailed in the "Interim Action Work Plan North Point/Phase III Cascade Pole Site" attached hereto with appendices as Exhibit B. This action is referred to herein, and in attached work plan documents as the "Interim Action" or the "North Point/Phase III Project".

This Second Amendment does not attempt to recite all of the provisions of the Order or First Amendment. Provisions of the Order or First Amendment not specifically addressed in this Amendment remain in full force and effect. Format and section numbering of the Order and First Amendment has been maintained to the extent possible.

### **I. JURISDICTION**

This amendment to the Order is issued pursuant to the authority of RCW 70.105D.050(1) and WAC 173-340-530(8)(b).

### **II. FINDINGS OF FACT**

The Order and First Amendment, Section II (Findings of Fact), is hereby amended to add the following Findings of Fact. Ecology makes the following findings of fact, without any express or implied admissions of such facts by the Port.

1. The "Phase III area" is located within the northwest corner of the CPC Site as depicted on the map attached as Exhibit C. This area was formerly used for log storage and was not located in the vicinity of the historic primary wood treating operations.

2. Sampling investigations of the Phase III area identified the presence of carcinogenic polycyclic aromatic hydrocarbon compounds ("cPAHs") in shallow soil at concentrations exceeding the Model Toxics Control Act ("MTCA") cleanup level for

unrestricted land use. Dioxins also were detected at a concentration exceeding the MTCA cleanup level for unrestricted land use in one soil sample. An evaluation of the vertical extent of cPAHs demonstrates that cPAHs are confined to the upper one foot of soil. It is assumed that dioxins and furans display a limited vertical distribution similar to cPAHs. See Exhibit B characterization discussion.

3. To address the impacted shallow soil, the Port intends to conduct an interim action to excavate the impacted soil from the Phase III area outside the sediment containment cell and relocate the impacted soil to inside the sediment containment cell and the cutoff wall (see Exhibit C). As more fully described in Exhibit B, the relocated impacted soil will be graded and compacted over the existing soils. A geotextile separation layer will then be placed over the impacted soil. A low permeable asphalt cap will be placed over the project area within the slurry wall.

4. The North Point/Phase III Project is intended to achieve compliance with MTCA soil cleanup levels in the Phase III area. The successful removal of impacted soil from the Phase III area will be documented by confirmatory soil sampling as described in the Compliance Monitoring Plan attached as Appendix C to Exhibit B. After impacted soils are removed, the excavated area will be capped by placing a geotextile fabric on the subgrade, and clean imported fill will then be placed to raise finished grades approximately one (1) to two (2) feet above present-day grades. This area of the project will have long term storm water Best Management Practices in place to manage storm water until permanent storm water systems are constructed during future development activities. Construction storm water encountered during project implementation will be managed consistent with the Interim Action Plan (Exhibit B).

### **III. ECOLOGY DETERMINATIONS**

The Order, Section III (Ecology Determinations), is hereby amended to add the following determinations.

5. Ecology has determined that additional work, in the form of an interim action, as described herein, is necessary.

6. Ecology believes the additional work to be performed as required by this Second Amendment is in the public interest.

7. Based on all information known to Ecology, Ecology has determined that the additional interim action required by this Second Amendment is technically necessary to reduce a threat to human health or the environment by substantially reducing one or more pathways for exposure, to correct a problem that may become substantially worse or cost substantially more to address if remedial action is delayed, and to help provide for completion of design of a cleanup action. WAC 173-340-430(1).

#### **IV. WORK TO BE PERFORMED**

The Order, Section IV (Work to be Performed), is hereby amended to authorize the Interim Action and add the following information and requirements.

##### **Interim Action North Point/Phase III**

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the Port take the following interim remedial action at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein. These plans are more specifically described in the attached "Interim Action Work Plan North Point/Phase III Cascade Pole Site" (Exhibit B). This exhibit and its appendices are an integral and enforceable part of this Agreed Order.

A. Scope of Work. The Port shall implement the Interim Action Work Plan, attached hereto as Exhibit B with Appendices A - C.

B. Within 120 days of completion of construction of the North Point/Phase III Project, the Port shall submit to Ecology for review and approval, a Construction Completion Report for Phase I, Phase II and North Point/Phase III. The as-built plans and specifications should be submitted only for North Point/Phase III consistent with WAC 173-340-400(6)(b). All tasks and deliverables shall be conducted in accordance with Exhibit B.

C. Quality Assurance/Quality Control shall be implemented in accordance with the Compliance Monitoring Plan as set forth in Exhibit B, Appendix C. Prior to commencing field

work, the Port shall provide Ecology with a set of 60% Plans and Specifications for the North Point/Phase III Project.

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.

#### **V. TERMS AND CONDITIONS OF ORDER**

The Order, Section V (Terms and Conditions of Order), is hereby amended to add the following requirements:

##### **2. Public Notice**

RCW 70.105D.030(2)(a) requires that, at a minimum, this Second Amendment 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 Second Amendment should public comment disclose facts or considerations which indicate to Ecology that this Second Amendment is inadequate or improper in any respect.

##### **3. Remedial Action Costs**

The Port shall pay to Ecology costs incurred by Ecology pursuant to the Second Amendment 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 the Second Amendment preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Second Amendment. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). The Port shall pay the required amount within 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.

#### **5. Performance**

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

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

The Port shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms of this Second Amendment, in advance of their involvement at the Site.

#### **6. 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 Second Amendment; reviewing the Port's progress in carrying out the terms of this Second Amendment; 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 Second Amendment; 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 Second Amendment. 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.

**7. Public Participation**

The Order Section V.7 (Public Participation) is replaced as follows. A Public Participation Plan is required for this Site. Ecology developed a Public Participation Plan.

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

A. 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.

B. 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.

C. 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.

D. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. Olympia Timberland Library  
318 8<sup>th</sup> Ave. SE  
Olympia, WA  
(360) 352-0595
- b. Ecology's Southwest Regional Office  
300 Desmond Drive  
Lacey, WA 98503  
(360) 407-6045

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.

## 9. **Dispute Resolution**

The Order Section V.9. (Dispute Resolution) is replaced as follows:

A. 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 V.3 (Remedial Action Costs), the parties to this Order 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.

B. 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.

C. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Second Amendment, unless Ecology agrees in writing to a schedule extension.

### **13. 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 Second Amendment, the Port shall reimburse Ecology for the costs of doing such work in accordance with Section V.3 (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 Second Amendment.

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 Second Amendment, unless Ecology concurs, in writing, with such additional remedial actions.

**14. Sampling, Data Submittal, and Availability**

With respect to the implementation of this Second Amendment, 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 IV (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 Second Amendment. 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 Second Amendment, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section V.6 (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.

**15. Extension of Schedule**

A. 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.

B. 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 V.17 (Endangerment).

However, neither increased costs of performance of the terms of this Second Amendment nor changed economic circumstances shall be considered circumstances beyond the reasonable control of the Port.

C. 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 Second Amendment. 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 Second Amendment to the Order pursuant to Section V.16 (Amendment of the Order) when a schedule extension is granted.

D. 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 V.17 (Endangerment).

**16. Amendment of the Order**

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending the Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in the Order Section V.10 (Reservation of Rights/No Settlement), substantial changes to the work to be performed shall require formal amendment of the Order. The 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 the 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 V.9 (Dispute Resolution).

**17. 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 V.15 (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

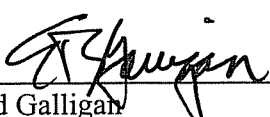
Nothing in this Second Amendment shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

**18. Indemnification**

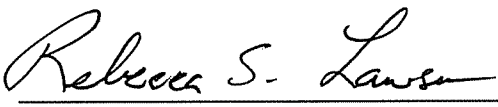
The Port agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property to the extent arising from or on account of acts or omissions of the Port, its officers, employees, agents, or contractors in entering into and implementing this Second Amendment. 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 Second Amendment.

Effective date of this Second Amendment: 6/21/10

THE PORT OF OLYMPIA

  
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