

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

AGREED ORDER

**Port of Tacoma
(former Arkema 3009 Taylor Way Site)
(Arkema Containment Cell Removal)**

No. DE 6129

TO: **Port of Tacoma
PO Box 1837
Tacoma, WA 98401-1837**

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Port of Tacoma (Port) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the Port to prepare and implement an Interim Action work plan for removal of the existing landfill mound, to prepare and implement work plans for a Remedial Investigation (RI) and Feasibility Study (FS), and to prepare a draft cleanup action plan (CAP) for the former Arkema log sort yard facility at 3009 Taylor Way in Tacoma, Washington. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

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

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. The Port agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the Port's responsibility under this Order. The Port shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as former Arkema Property and is generally located at 3009 Taylor Way in Tacoma, Washington. 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(5).

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

C. Potentially Liable Person (PLP): Refers to the Port for purposes of this Agreed Order. Other PLPs identified with respect to this Site include Arkema, Inc. (formerly known as (f/k/a) ATOFINA Chemicals, Inc., f/k/a Elf Atochem North America, Inc., f/k/a Atochem North America, Inc., f/k/a Pennwalt Corporation, a Pennsylvania corporation) (hereinafter "Arkema"), Asarco, Inc., Dunlap Towing Company, and Echo Lumber Company.

D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits to this Order.

V. FINDINGS OF FACT

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

A. The Port (a Washington State municipal corporation) is the current owner of the former Arkema property located at 3009 Taylor Way, Tacoma, Washington (Property).

B. The Port purchased the Property, along with other Arkema properties (2901 Taylor Way and Wypenn property) in May 2007 from Arkema.

C. The Property had been operated as a log sort yard in the 1980s by Dunlap Towing Company and Echo Lumber Company and by other entities prior to that time. The Property owner had been Arkema, Inc. (f/k/a: Atofina Chemicals, Atochem, Elf Atochem North America, and Pennwalt Chemicals) during its use as a sort yard, and up until 2007 when it was sold to the Port.

D. Slag from the former Asarco, Inc. smelter had been used as road bed rock for the unpaved sort yard on the Property. The Asarco slag contains elevated levels of heavy metals, including arsenic, copper, lead, and zinc. These metals were released into the environment until

a remedial action was taken pursuant to Consent Decree No. 92-2-11351-7, dated December 11, 1992 (Consent Decree), issued to Asarco, Inc., Dunlap Towing Company, and Arkema's predecessor, Elf Atochem North America, Inc. (hereinafter collectively Defendants). The remedial action consisted of the creation of a capped and lined landfill (containment cell) constructed during 1992 on the Property for the contaminated soils, wood waste and slag ("1992 Remedial Action"). Because the 1992 cleanup action resulted in the creation of an on-site containment cell containing hazardous substances, a restrictive covenant was required for the Site. The restrictive covenant restricts activity in the containment cell area, referred to as the "Remedial Action Area" ("RAA"). The 1992 Remedial Action selection and completion was documented in the numerous Ecology reviewed and approved reports as well as the Final Cleanup Action Plan as summarized below:

Remedial Investigation Revised Final Report, 3009 Taylor Way Site, Tacoma, Washington. ENSR Consulting and Engineering. August 1989.

Results of Sampling and Analysis of Processed Wood Material from the Expedited Response Action at the 3009 Taylor Way Site, Tacoma, Washington. ENSR Consulting and Engineering. February 1990.

Feasibility Study Report, 3009 Taylor Way Site, Tacoma, Washington. ENSR Consulting and Engineering. December 1991.

Final Cleanup Action Plan, 3009 Taylor Way Site, Tacoma, Washington. Washington State Department of Ecology. December 1991.

Engineering Design Report, 3009 Taylor Way Site, Tacoma, Washington. ENSR Consulting and Engineering. May 1992.

Operation and Maintenance Plan for Woodwaste/Slag Containment Cell, 3009 Taylor Way Site, Tacoma, Washington. ENSR Consulting and Engineering. September 1992.

Final Construction Quality Assurance/Quality Control Report, 3009 Taylor Way Site, Tacoma, Washington. ENSR Consulting and Engineering. April 1993.

Well Installation and Baseline Groundwater Monitoring Report, 3009 Taylor Way Site, Tacoma, Washington. ENSR Consulting and Engineering. August 1993.

E. Groundwater and surface water monitoring have continued to be required by the Consent Decree. This monitoring is needed in order to ensure that the containment cell did not begin to leak, and to ensure that the groundwater cleanup objectives established by the Consent

Decree continue to be maintained. The groundwater monitoring system consists of four (4) groundwater monitoring wells, located around the four sides of the approximately rectangular containment cell. Surface water was monitored from a point at the site which had been graded such that any surface water runoff from the site would drain to the waterway through that point.

The cleanup objectives required by the Consent Decree are as follows:

For groundwater:

arsenic – .04 milligrams per liter (mg/l)

copper – .01 mg/l

lead – .01 mg/l

zinc – 0.1 mg/l

phenol – 5.8 mg/l

For soil:

arsenic – 200 milligrams per kilogram (mg/kg)

lead – 1000 mg/kg

Groundwater monitoring data was generated from 30 sampling events at the four monitoring wells (one up-gradient well and three down-gradient wells) surrounding the containment cell from 1992 through 2003, as summarized on Table 2-3 of Enclosure 1 to Exhibit B, Scope of Work. All of the monitoring results from the three down-gradient wells have all remained in compliance with the groundwater site cleanup objectives for every sampling event. All of the monitoring results at the upgradient well were in compliance with the groundwater site cleanup objectives except for nine sampling events where arsenic exceeded the site cleanup objective by as much as two times. The last two monitoring events at the upgradient well (December 2002 and March 2003) yielded arsenic concentrations of 0.02 mg/l and 0.068 mg/l, respectively.

Surface water monitoring was completed five times (1993, 1995, 1997, 1998, and 2000) at a surface runoff discharge point located adjacent to Hylebos Waterway. Although surface water cleanup objectives were not set forth in the Final Cleanup Action Plan, surface water was

monitored for the same parameters as groundwater. Four of the five sampling events yielded results that met the groundwater site cleanup objectives. The 2000 surface water sampling indicated a surface water arsenic concentration of 0.05 mg/l, just over the groundwater cleanup objective of 0.04 mg/l arsenic.

F. The Port purchased the Property located at 3009 Taylor Way on May 31, 2007. Arkema provided notice of transfer of title under the Consent Decree to Ecology and the Attorney General's Office on June 8, 2007. The Port was issued a final PLP Notification for the Site on April 3, 2008, pursuant to MTCA and its implementing regulation Chapter 173-340 WAC. The Consent Decree remains in effect, until the work called for in the Consent Decree has been satisfactorily completed or until Ecology and the Defendants agree that the Consent Decree should be terminated and/or a Court directs that the Consent Decree be terminated.

G. The Port desires to remove the material contained in the containment cell on the Site and haul the material off-site to a licensed disposal facility, so that the Port can construct a road and railway on the Site. The Port anticipates that the proposed development will not commence at least until after the Port submits a draft RI/FS to Ecology pursuant to this Order, if not later. The Port has already submitted an Interim Action Work Plan, which comprises the following documents describing the containment cell removal action: "Work Plan, Removal of Woodwaste/Slag Containment Cell, 3009 Taylor Way, Tacoma, Washington," dated March 2008; "Sampling and Analysis Data Report, Woodwaste/Slag Containment Cell, 3009 Taylor Way, Tacoma, Washington," dated April 15, 2008; "Engineering Design Report Addendum - 90% Design, Removal of Woodwaste/Slag Containment Cell, 3009 Taylor Way, Tacoma, Washington," dated May 26, 2008; and Final Plans and Specifications sent on August 29, 2008. The Interim Action Work Plan documents are included in this Agreed Order as Enclosures 1, 2, 3, and 4 to Exhibit B, the Scope of Work. Ecology has tentatively approved the Interim Action Work Plan, subject to public comment.

H. A waste removal action, similar to that described by Enclosures 1, 2, 3, and 4 to Exhibit B (Scope of Work), had previously been evaluated by Ecology and subject to public

review as part of the Site Feasibility Study and Final Cleanup Action Plan pursuant to MTCA under the 1992 Consent Decree, and had been found to be preferable to the existing containment cell, which was chosen and implemented pursuant to the Consent Decree. The reason that the containment cell remedy was chosen at that time was because of the very high price of disposal of the waste material at a Subtitle C (hazardous waste) landfill. The hazardous waste disposal law has subsequently been amended to allow these wastes to be disposed at a Subtitle D landfill, at a much lower cost.

I. After implementing the remedial actions required under this Order, the Port desires to redevelop the Property to support maritime industrial use.

VI. ECOLOGY DETERMINATIONS

A. The Port is an "owner or operator" as defined in RCW 70.105D.020(12) 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 pursuant to RCW 70.105D.040, -.020(21) and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that the Port is a PLP under RCW 70.105D.040 and notified the Port of this determination by letter dated April 3, 2008.

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. Because the Port intends to change the use of the Site, the Port is proposing to remove the containment cell. This interim action is warranted at the Site because it will facilitate a more permanent cleanup at the Site, remove the hazardous material from its location adjacent to Puget Sound, and will expedite the completion of a supplemental RI/FS. After removal of the containment cell, the Port will conduct a Remedial Investigation (RI) and Feasibility Study (FS) to assess the residual levels of soil and groundwater contamination at the site. The Port will then develop a Preliminary Draft Cleanup Action Plan (Preliminary DCAP) that describes site cleanup levels, a schedule for implementation of a cleanup action plan, institutional controls if any, and any additional requirements needed to achieve compliance with MTCA.

F. This Agreed Order is based on the unique facts that are specific to this Site, including the significant opportunity to combine the development proposed by the Port with achieving a more permanent cleanup at the Site.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the Port take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

A. **Scope of Work.** The Port shall implement the containment cell removal Interim Action, prepare and implement a RI/FS, and draft a Preliminary DCAP for the site, as described in the Scope of Work, attached hereto as Exhibit B. All tasks and deliverables shall be conducted in accordance with Exhibit B.

B. **Schedule.** Attached hereto as Exhibit C is the Schedule for the Scope of Work. The Port shall submit to Ecology all deliverables required by the Scope of Work according to the schedule set forth in Exhibit C.

C. Each deliverable, once approved by Ecology, becomes an integral and enforceable part of this Order.

D. **Completion of Deliverable by Ecology.** 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 shall provide written notice to the Port that it has 30 days to demonstrate sufficient progress in preparation of the required deliverables. If not cured within 30 days, then Ecology may complete and issue the final deliverable. Ecology need provide this written notice and thirty day opportunity to cure only once per deliverable.

E. **Restrictive Covenant.** The actions undertaken pursuant to this Order are consistent with the existing restrictive covenant set forth as Exhibit B to the Consent Decree for the site. The Port shall not perform any work at the site inconsistent with the terms of the restrictive covenant prior to public comment and approval by Ecology.

VIII. TERMS AND CONDITIONS OF ORDER

A. **Public Notice**

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that this Order is inadequate or improper in any respect.

B. **Remedial Action Costs**

The Port shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and

Order preparation, negotiation, oversight, and administration. These costs shall include work performed 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). 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 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 the Port has failed without good cause to implement any remedial action required by Section VII of this Order, in whole or in part, Ecology may perform any or all portions of such remedial action that remain incomplete. If Ecology performs all or portions of any remedial action because of the Port's failure to comply with its obligations under this Order, the Port shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.B (Remedial Action Costs), provided that the Port is not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

Because the final cleanup action is not known at this time, any actions undertaken by the Port, including actions undertaken as part of development of the Site, shall not foreclose reasonable alternatives for the final cleanup action. 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. Additionally, Ecology must approve of any action taken at the site which is inconsistent with the terms of the existing restrictive covenant.

D. Designated Project Coordinators

The project coordinator for Ecology is:

Dom Reale
PO Box 47775
Olympia, WA 98504-7775
(360) 407-6266

The project coordinator for the Port is:

Scott Hooton
PO Box 1837
Tacoma, WA 98401-1837
(253) 383-9428

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the Port, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

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

E. Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist 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 Chapter 18.43 RCW.

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

F. Access

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that the Port either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the Port's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the Port. The Port shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the Port where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the Port unless an emergency prevents such notice. All persons who access the Site pursuant to this Section shall comply with any applicable Health and Safety Plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

G. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the Port shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, the Port shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the Port pursuant to implementation of this Order. The Port shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the Port and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.F (Access), Ecology shall notify the Port prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

H. Public Participation

A Public Participation Plan is required for this Site. Ecology shall develop a Public Participation Plan alone or in conjunction with the Port.

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

1. If requested 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 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. **Tacoma Public Library**
1102 Tacoma Avenue
Tacoma, WA 98402
(253) 591-5666
- b. **Citizens for a Healthy Bay**
917 Pacific Avenue, Suite 100
Tacoma, WA 98402
(253) 383-2429
- c. **WA Department of Ecology**
SWRO Toxics Cleanup Program
300 Desmond Drive
PO Box 47775
Olympia, WA 98504-7775
(360) 407-6365
dene461@ecy.wa.gov

At a minimum, copies of 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 and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, the Port shall make all records available to Ecology and allow access for review within a reasonable time. Nothing in this Order is intended by the Port to waive any right it may have under applicable law to limit disclosure of documents protected by the attorney work-product and/or attorney-client privilege. If the Port withholds any requested records based on an assertion of privilege, it shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No actual data collected on Site pursuant to this Order shall be considered privileged.

J. Resolution of Disputes

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

a. Upon receipt of Ecology's project coordinator's written decision or the itemized billing statement, the Port has fourteen (14) days within which to notify Ecology's project coordinator in writing of its objection to the decision or itemized statement.

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

c. The Port may then request regional management review of the decision. This request shall be submitted in writing to the Southwest Region Toxics Cleanup

Section Manager within seven (7) days of receipt of Ecology's project coordinator's written decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of the Port's request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

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

K. Extension of Schedule

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension.

All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended;
- b. The length of the extension sought;
- c. The reason(s) for the extension; and
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on the Port to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

- a. Circumstances beyond the reasonable control and despite the due diligence of the Port including delays caused by unrelated third parties or Ecology, such

as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the Port;

b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or

c. Endangerment as described in Section VIII.M (Endangerment).

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

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the Port written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.L (Amendment of Order) when a schedule extension is granted.

4. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:

a. Delays in the issuance of a necessary permit which was applied for in a timely manner;

b. Other circumstances deemed exceptional or extraordinary by Ecology; or

c. Endangerment as described in Section VIII.M (Endangerment).

L. Amendment of Order

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

Except as provided in Section VIII.N (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and the Port. The Port shall submit a

written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J (Resolution of Disputes).

M. Endangerment

In the event Ecology determines that any activity being performed at the Site 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 Section VIII.M (Endangerment), the Port's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.K (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

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

N. Reservation of Rights

This Order is not a settlement under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against the Port to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the Port regarding remedial actions required by this Order, provided the Port complies with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

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. The permits or specific federal, state or local requirements that the agency has determined are applicable and that are known at the time of entry of this Order have been identified in Exhibit D.

2. Pursuant to RCW 70.105D.090(1), the Port is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, the Port shall comply with the substantive requirements of such permits or approvals. The exempt permits or approvals and the applicable substantive requirements of those permits or approvals, as they are known at the time of entry of this Order, have been identified in Exhibit D.

The Port has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or the Port determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or the Port shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the Port shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by the Port and on how the Port must meet those requirements. Ecology shall inform the Port in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The Port shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

3. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is

necessary for the State to administer any federal law, the exemption shall not apply and the Port shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

Q. Indemnification

The Port agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action 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.

VIII. 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.

IX. 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 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; 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.

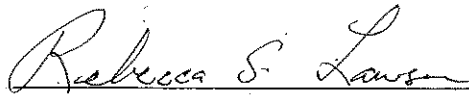
Effective date of this Order: November 10, 2008

PORT OF TACOMA



TIM FARRELL
Executive Director
Port of Tacoma
(253) 383-9410

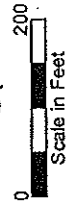
**STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY**



REBECCA S. LAWSON, P.E., L.H.G.
Section Manager
Toxics Cleanup Program
Southwest Regional Office
(360) 407-6241

PORT OF TACOMA
SITE DIAGRAM
3009 TAYLOR WAY - TACOMA, WA
EXHIBIT A

Dalton, Olmsted & Fuglevand, Inc.



SOURCE:
TOPOGRAPHIC SURVEY (INCLUDING PROPERTY
BOUNDARIES) BY PARAMETRIX FOR PORT OF TACOMA -
FOURTH QUARTER 2007.
PROPERTY BOUNDARIES ACQUIRED FROM CAD FILE
(E7001-XEBD.DWG) PROVIDED BY PORT OF TACOMA.

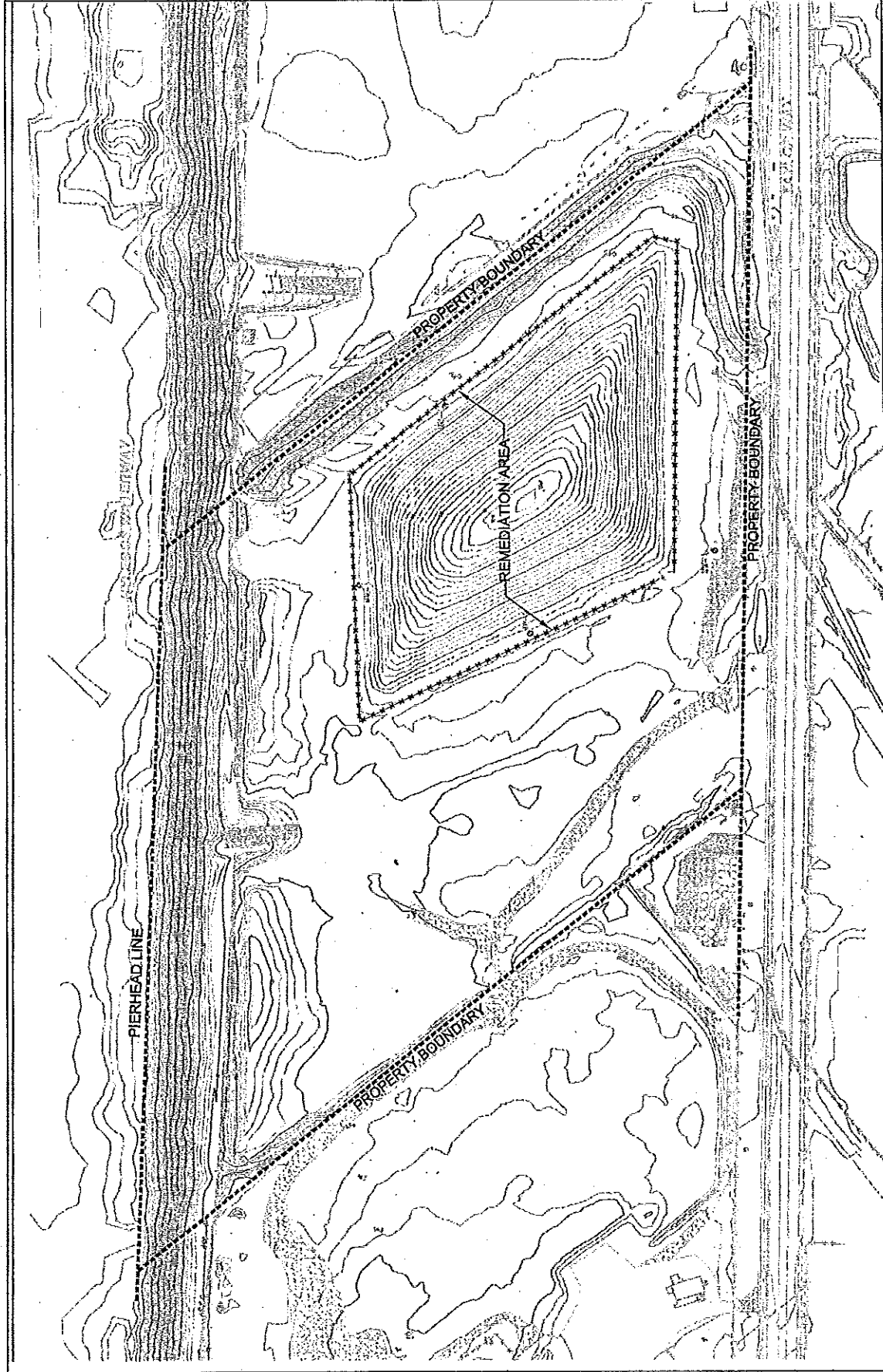


EXHIBIT B
SCOPE OF WORK

3009 TAYLOR WAY
TACOMA, WASHINGTON

1. Remove Woodwaste / Slag Containment Cell.
 - a. Prepare and submit to Ecology an Interim Action Work Plan for removal of the woodwaste/slag containment cell located on the former Arkema 3009 Taylor Way site. This documentation shall be prepared consistent with WAC 173-340-400(4)(a) and (b), WAC 173-340-430, and will also include a Health And Safety Plan (HASP) prepared in accordance with WAC 173-340-810, and a Sampling and Analysis Plan (SAP) per WAC 173-340-820. This documentation has already been provided to Ecology, and is included as Enclosures 1, 2, 3, & 4 to this Scope of Work. Ecology has tentatively approved the Interim Action Work Plan, subject to public comment.
 - b. After written approval of the Interim Action Work Plan by Ecology, implement the removal plan according to Exhibit C (Schedule).
2. After removal is complete, prepare an As-Built report to document the removal activities. The report will be prepared consistent with WAC 173-340-400(6)(b).
3. Meet (or teleconference) with Ecology's site manager once per month, as deemed necessary by Ecology, to confer as to the progress of the work and to coordinate, as appropriate, the remediation with the Port's proposed redevelopment project at 3009 Taylor Way.
4. Submit monthly progress reports describing actions taken during the previous month and work planned for the next six weeks. Monthly progress reports may be submitted electronically (PDF format).
5. Draft Remedial Investigation (RI)/Feasibility Study (FS) Work Plan (RI/FS Work Plan) consistent with WAC 173-340-350, including:
 - a. Compile and review existing soil and groundwater data pertinent to post-removal environmental conditions.
 - b. Compile and review existing sediment data along the site shoreline including the Hylebos Waterway and Kaiser Ditch.
 - c. Complete semi-annual groundwater monitoring in existing wells until Ecology approval of a Cleanup Action Plan (CAP). Any monitoring wells taken out of service to facilitate the removal of the containment cell shall be replaced within 30 days after the removal of the containment cell. Complete groundwater monitoring in accordance with the Confirmational and Performance Plan, 3009 Taylor Way, prepared by ENSR, May 5, 1992.
 - d. Update performance criteria for the following exposure pathways:
 - i. Soil contact (human health via ingestion and dermal contact).
 - ii. Surface water via groundwater discharges to the Hylebos Waterway to protect marine and sediment quality.

- e. Identify data gaps, if any, requiring further sampling and testing. Prepare a SAP consistent with WAC 173-340-820 and amend the site Health and Safety Plan, as appropriate.
 - f. Ecology expects that the SAP will include soil samples (recent or new) taken in a grid pattern spread throughout the site, and at a range of depths representing the known or expected range of contaminant depths (if any). Ecology also expects the SAP to include groundwater samples (recent or new) from the existing monitoring well system, as well as from other wells placed to represent the quality of groundwater of the Site and emanating from the Site into the waterway.
6. Prepare and submit to Ecology a Final RI/FS Work Plan, incorporating Ecology comments of Draft RI Work Plan.
 7. Implement the Final RI/FS Work Plan and prepare and submit to Ecology a Draft RI/FS Report consistent with WAC 173-340-350. The RI/FS Report shall identify supplemental cleanup actions as appropriate, and shall describe how the supplemental cleanup actions will be coordinated with the Port's proposed redevelopment plans. If the RI/FS Report indicates the Site is sufficiently clean so as to satisfy MTCA cleanup criteria, then the RI/FS Report shall include documentation to provide evidence of this finding. If Ecology concurs that MTCA cleanup criteria have been met as part of the written approval of the RI/FS Report, then this finding shall be carried forth into, and may greatly simplify, the Draft CAP.

Data submitted in the Draft RI/FS Report must be submitted simultaneously both as hard copy and also electronically, in accordance with WAC 173-340-840(5) and Ecology Toxics Cleanup Program Policy 840 (Data Submittal Requirements). For additional information regarding electronic format requirements, see the website <http://www.ecy.wa.gov/eim>.

8. Prepare and submit to Ecology a Final RI/FS Report, incorporating Ecology comments on the Draft RI/FS Report.
9. Prepare and submit to Ecology a Preliminary Draft Cleanup Action Plan (Preliminary DCAP) consistent with WAC 173-340-380.
10. Prepare and submit to Ecology a revised Preliminary Draft CAP incorporating Ecology comments on the Preliminary DCAP.

Enclosures (These four Enclosures comprise the Interim Action Work Plan):

1. "Work Plan, Removal of Woodwaste/Slag Containment Cell, 3009 Taylor Way, Tacoma, Washington". Dalton, Olmsted & Fuglevand, Inc. March 2008. The work plan provides background information and identifies the steps to be taken to remove the containment cell from the property. Chapter 2 of the document summarizes the existing soil, groundwater, and surface water data collected since the construction of the containment cell in 1992. Chapter 3 describes the Port's redevelopment plans for the Hylebos/Blair peninsula and the associated removal of the containment cell, identifies alternatives for the removal of the containment cell, presents an evaluation of each alternative based the

original Feasibility Study (FS) (1991) and the Cleanup Action Plan (CAP) (1991), and concludes that the proposed removal and off-site disposal is consistent with the FS and CAP, providing equal or better protection than existing on-site containment. Chapter 4 outlines the work to be performed, including sampling and analysis to profile the material in the containment cell for landfill disposal, design of the removal, and implementation of the removal of the containment cell. Chapter 5 lays out the proposed schedule for the work to be performed, with the objective of completing the removal by the end of 2008 to facilitate the Port's redevelopment plans. Chapter 6 is a listing of references. Documents attached to the work plan are related to the original construction of the containment cell and the associated post-construction monitoring as follows:

- Tab A – Construction QA/QC Report Text and As-Built Drawings. 1993
- Tab B – Pictures of the containment cell construction. 1992
- Tab C – Sample/testing results of processed woodwaste. 1990
- Tab D – Confirmation soil sampling maps. 1993
- Tab E – Monitoring well locations, logs, baseline water quality. 1993
- Tab F – Groundwater monitoring results. 1993-2003
- Tab G – Surface water monitoring results. 1994-2000

2. "Sampling and Analysis Data Report, Woodwaste/Slag Containment Cell, 3009 Taylor Way, Tacoma, Washington". Dalton, Olmsted & Fuglevand, Inc. April 2008. This report documents the March 2008 sampling and analysis of woodwaste / slag material from the containment cell to profile the material for landfill disposal. The report summarizes the soil boring program, sample handling and associated laboratory analysis (chemical and physical properties) of collected woodwaste / slag material. All of the chemical testing results indicate that the material is suitable for disposal in a municipal solid waste landfill, with none of the material classified as dangerous waste.
3. "Engineering Design Report Addendum – 90% Design, Removal of Woodwaste/Slag Containment Cell, 3009 Taylor Way, Tacoma, Washington". Dalton, Olmsted & Fuglevand, Inc. May 2008. This report presents the 90% design for the removal of the containment cell. It supplements the original Engineering Design Report (1992) for the construction of the containment cell. It addresses the remedial action goals (Chapter 2), summarizes the cleanup action (Chapter 3), updates the proposed schedule (Chapter 4), identifies the current owner of the property as the Port of Tacoma (Chapter 5), summarizes the removal and landfilling actions and summarizes the results of the March 2008 sampling and analysis of the woodwaste / slag material (Chapter 6), provides documentation and permit requirements (Chapter 7), and lists references (Chapter 8). Attachments are related to the planned removal action and include:
 - Addendum – Construction Specifications, 90% Design
 - Addendum – Drawings, 90% Design
 - Addendum – Site Specific Health and Safety Plan
 - Addendum – Construction Quality Assurance / Quality Control Plan
4. Final Plans and Specifications. Dalton, Olmsted & Fuglevand, Inc. August 28, 2008. These documents present the final design of the removal action, and supplement the Engineering Design Report as follows:
 - Addendum – Construction Specifications, Final Design
 - Addendum – Drawings, Final Design

**EXHIBIT C
SCHEDULE**

**3009 TAYLOR WAY
TACOMA, WASHINGTON**

The schedule for major project milestones is outlined below. These milestones are detailed in Exhibit B to the Order, the Scope of Work. Days are calendar days, if due dates fall on a weekend or holiday, deliverables will be submitted to Ecology on the next business day. Where the deliverable due date is triggered by notification, comments, or approval, the starting date for the period shown is the date of actual receipt by the PLPs of the notification, comments, or approval, unless otherwise shown. Where triggered by Ecology receipt of a deliverable, the starting date for the period shown is based on the date of actual receipt by Ecology.

The Port has assumed for planning purposes that Ecology review periods will be 30 days for draft documents and 30 days for draft final and final documents. Ecology hopes to meet or exceed these review timeframes, but actual review times may vary, based on current circumstances, Ecology resources, and other factors. Documents become final upon written approval by Ecology and after public notice, as appropriate.

PROJECT MILESTONES	SCHEDULES
1. Complete removal of woodwaste/slag containment cell in accordance with the Interim Action Work Plan, including Final Plans and Specifications submitted August 29, 2008.	Within 210 days of Ecology's written approval of the Interim Action Work Plan, incorporating any public comment.
2. Submittal of As-Built Report to Ecology.	Within 60 days of the removal of the woodwaste/slag containment cell.
3. Meet (or teleconference) with Ecology site manager as necessary regarding progress of the work and to coordinate, as appropriate, the remediation with the Port's proposed redevelopment of 3009 Taylor Way.	Meet monthly, as deemed necessary by Ecology, until completion of the scope of work or until the Ecology site manager determines monthly meetings are no longer necessary.
4. Progress reports.	Monthly reports are due by the 10th of the month until completion of the scope of work or until the Ecology site manager determines monthly reports are no longer necessary.

<p>5. Draft Remedial Investigation Feasibility Study Work Plan (RI/FS Work Plan) submitted to Ecology, including compilation and review of existing data, updated performance criteria, identification of data gaps, a sampling and analysis plan (SAP), and health and safety plan (HASP).</p>	<p>Within 60 days of the completion of the removal of the woodwaste/slag containment cell.</p>
<p>6. Final RI/FS Work Plan submitted to Ecology.</p>	<p>Within 30 days of receipt of Ecology comments on the Draft RI/FS Work Plan.</p>
<p>7. Draft Remedial Investigation and Feasibility Study Report (RI/FS Report) submitted to Ecology.</p>	<p>Within 180 days of receipt of Ecology written approval of the Final RI/FS Work Plan.</p>
<p>8. Submittal of Final RI/FS Report to Ecology.</p>	<p>Within 30 days from receipt of Ecology comments on the Draft RI Report.</p>
<p>9. Preliminary Draft Cleanup Action Plan (Preliminary DCAP) submitted to Ecology.</p>	<p>Within 60 days from receipt of Ecology's comments on the Draft RI/FS Report.</p>
<p>10. Revised Preliminary Draft CAP submitted to Ecology.</p>	<p>Within 30 days from receipt of Ecology's comments on the Preliminary DCAP.</p>
<p>11. Results of semi-annual groundwater monitoring submitted to Ecology.</p>	<p>Within 45 days of collecting the groundwater samples per the existing Consent Decree Schedule.</p>

EXHIBIT D

Permits and Substantive Requirements

Laws and regulations addressing permits or federal, state, or local requirements that Ecology believes may be applicable at the time of entry of this Order are listed below. This list may not include all pertinent laws and regulations. Work performed shall be in accordance within the substantive requirements of any applicable law or regulation.

Substantive Requirements Associated with this Action:

1. Chapter 90.58 RCW (Shoreline Management Act) and Chapter 173-27 WAC (Shoreline Management Act Rules).
 - Do not build any permanent structures.
2. Chapter 70.105D RCW (Model Toxics Control Act), and Chapter 173-340 WAC (MTCA Regulations).
 - Implement this Agreed Order
3. Chapter 70.105 RCW (Washington State Hazardous Waste Management Act), and Chapter 173-303 WAC (State Dangerous Waste Regulations).
 - Tacoma Pierce County Health Department (TPCHD) approval for disposal of soils at their Pierce County Recycling, Disposal, & Composting, dba Land Recovery, Incorporated (LRI) Subtitle D landfill facility.
4. Chapter 173-160 RCW (Minimum Standards for Construction and Maintenance of Wells).
 - Records documenting well destructions and installations will be submitted by a licensed contractor.
5. Washington Industrial Safety and Health Act (WISHA).
 - Contractor will develop a written Health and Safety Plan (HASP).

Permits associated with this action:

1. Chapter 90.58 RCW (State Water Pollution Control Act) and Chapter 173-220 WAC (National Pollution Discharge Elimination System (NPDES) Permit Program Regulations - Construction Stormwater permit).
 - Compliance with Construction Stormwater General Permit WAR-010740.
 - Contractor will submit a Construction Stormwater Pollution Prevention Plan (SWPPP) that meets or exceeds control measures required by Ecology.

- Construction water treatment/disposal will be performed in accordance with the final plans and specification included in the Scope of Work.