

Proj. mgr John Keeling

SIC J1A45
Project # 87787

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by:

AGREED ORDER

Jorgensen Forge Corporation

No. DE 4127

TO: Jorgensen Forge Corporation
Attn: Mr. Ron Altier
8531 E Marginal Way S
Tukwila, WA 98108-4018

TABLE OF CONTENTS

I	INTRODUCTION	2
II	JURISDICTION	2
III	PARTIES BOUND	2
IV	DEFINITIONS	2
V	FINDINGS OF FACT	4
VI	ECOLOGY DETERMINATIONS	6
VII	WORK TO BE PERFORMED	7
VIII	TERMS AND CONDITIONS OF ORDER	7
	A. Public Notice	7
	B. Remedial Action Costs	7
	C. Implementation of Remedial Action	7
	D. Designated Project Coordinators	7
	E. Performance	7
	F. Access	7
	G. Sampling, Data Submittal, and Availability	7
	H. Public Participation	7
	I. Retention of Records	7
	J. Resolution of Disputes	7
	K. Extension of Schedule	7
	L. Amendment of Order	7
	M. Endangerment	7
	N. Reservation of Rights	7
	O. Transfer of Interest in Property	7
	P. Compliance with Applicable Laws	7
	Q. Indemnification	7
IX	SATISFACTION OF ORDER	7
X	ENFORCEMENT	7

- EXHIBIT A. Agreed Order Sediment Investigation Area Vicinity Map
- EXHIBIT B. Statement of Work
- EXHIBIT C. Schedule for Performance and Deliverables

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology), and Jorgensen Forge Corporation (Jorgensen) 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 that may have migrated to or have the potential to migrate to Lower Duwamish Waterway (LDW) sediments. This Order requires Jorgensen to perform certain activities to determine if the Jorgensen Property located at 8531 East Marginal Way South in Seattle, Washington (the Jorgensen Property) is an on-going source of contamination to sediments in the LDW. 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. Jorgensen agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Jorgensen's responsibility under this Order. Jorgensen 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. Sediment Investigation Area: For purposes of the investigation to be conducted pursuant to this Order, the “Sediment Investigation Area” is approximately located within the Jorgensen Property, as that property is identified below. The Sediment Investigation Area also includes and is further defined by the extent of hazardous substance contamination at or originating from the Jorgensen Property that is currently migrating to, or may have the potential to migrate to, LDW sediments and is resulting in, or could result in, violations of the Ecology Sediment Management Standards (WAC 173-204) criteria and pending LDW sediment cleanup goals. The Sediment Investigation Area will not include (a) the LDW sediments or shoreline bank area adjacent to the Jorgensen Property that will be addressed under the EPA Superfund process or (b) the areas addressed during activities undertaken pursuant to RCRA on the adjacent Boeing property. The Sediment Investigation Area is generally depicted in the Sediment Investigation Area Diagram (Exhibit A).
- B. Parties: Refers to the State of Washington, Department of Ecology, and Jorgensen.
- C. Potentially Liable Person (PLP): Refers to Jorgensen.
- 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.
- E. Jorgensen Property: The Jorgensen Property is defined as the property owned and/or occupied by Jorgenson located at 8531 E. Marginal Way S. Seattle, WA 98108-4018 and is delineated on the Agreed Order Sediment Investigation Area Diagram (Exhibit A). The Jorgensen Property is a “facility” or is part of a “facility” under RCW 70 105D.020(4).

V. FINDINGS OF FACT

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

- A. The Jorgensen Property occupies 21.6 acres on the east bank of the LDW, between East Marginal Way and the LDW. The plant's street address is 8531 E Marginal Way South, Seattle, WA 98108. The latitude of the center of the main building, as estimated from a USGS map is 47 degrees; 30 minutes and 63.8 seconds north the longitude estimated from the same map is 122 degrees, 15 minutes and 52.5 seconds west. The King County tax parcel is 000160-0023.

- B. The Jorgensen Property was developed in 1942, and operated from 1942 to 1965 as a fabricator of structural steel, and tractor and road equipment. On-property operations included forging and heat-treating by Isaacson Iron Works, which operated as a U.S. naval vessel manufacturer from 1942 to 1965. Bethlehem Steel operated a steel distribution center on the northwestern portion of the Jorgensen Property from approximately 1951 to 1963. Bethlehem Steel operations consisted of cutting prefabricated steel rods to customers' specifications. From 1965 to 1992, the Jorgensen Property was owned and operated by Earle M. Jorgensen Company (EMJ).

- C. In July 1992, the facility was purchased by the plant management group and became the Jorgensen Forge Corporation. From 1992 to the present, the Jorgensen Property has been owned and operated by Jorgensen. EMJ is named as Grantor and Jorgensen is named as the Grantee in Warranty Deed No. 199206221436 for the Jorgensen Property, as filed with the King County Assessor.

- D. The Boeing Company owns neighboring properties adjacent to the Jorgensen Property, including the Boeing Plant 2 facility to the north of the Jorgensen Property and the Boeing/Isaacson property to the south of the Jorgensen Property
- E. The U.S. Environmental Protection Agency (EPA) added the LDW to the federal Superfund list on September 13, 2001. EPA has entered into a Memorandum of Understanding with Ecology under which Ecology has been designated the Lead Agency to implement efforts to investigate and control sources of contamination to LDW sediments. Ecology has developed a Lower Duwamish Waterway Source Control Strategy (Ecology 2004) that provides the strategy and approach for upland site source control to date. According to the strategy, source control will be focused on chemicals with the potential to exceed Sediment Management Standards, WAC Ch. 173-204 (SMS), or other LDW sediment cleanup goals. Soil, groundwater, surface water, or other contamination issues within the property vicinity that do not have the potential to migrate to the LDW and exceed sediment cleanup goals will generally not be addressed by this source control program. Contaminants identified in LDW sediments that are the focus of these source control efforts include polychlorinated biphenyls (PCBs), polycyclic aromatic hydrocarbons (PAHs), mercury and other metals, and phthalates.
- F. The following reports have been received by the Department with regard to the Jorgensen Property:
- Underground Storage Tank Removal Investigation Earl M. Jorgensen Company 8531 East Marginal Way South Seattle, Washington, dated 4/30/91 by SEACOR*
- Draft Area 1 Hollow-bore Location Focused Remedial Investigation Feasibility Study Forge Facility 8531 East Marginal Way South Seattle, Washington, dated 2/19/1993 by SEACOR*
- Draft Area three former UST Area Focused Remedial Investigation/ Feasibility Study Forge Facility 8531 East Marginal Way South Seattle, Washington, dated 4/1/1993 by SEACOR*

Report Subsurface Investigation Aluminum Heat Treating Building Area Jorgensen Forge Facility Seattle, Washington, dated 7/17/1999 by Dames & Moore

U.S. EPA DOCKET NO. CERCLA 10-2003-0111, dated 07/10/03 by Farallon Consulting, L.L.C. and Anchor Environmental, L.L.C.

Second Draft Environmental Sampling Work Plan, Jorgensen Forge Facility 8531 East Marginal Way South, Seattle, Washington, dated May 12, 2004 by Anchor Environmental, L.L.C. and Farallon Consulting, L.L.C.

Environmental Sampling Work Plan Addendum, Jorgensen Forge Facility 8531 East Marginal Way South, Seattle, Washington, dated April 2005 by Farallon Consulting, L.L.C. and Anchor Environmental, L.L.C.

Final Investigation Data Summary Report, Jorgensen Forge Facility 8531 East Marginal Way South, Seattle, Washington, dated February 13, 2006 by Farallon Consulting, L.L.C. and Anchor Environmental, L.L.C.

VI. ECOLOGY DETERMINATIONS

- A. Ecology has determined that Jorgensen Forge Corporation is the current owner and 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 facility.
- C. Based upon credible evidence, Ecology issued a PLP status letter to Jorgensen dated November 16, 2005, pursuant to RCW 70.105D.040, -.020(16) 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 Jorgensen is a PLP under RCW 70.105D.040 and notified Jorgensen of this determination by letter dated November 16, 2005.

- 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.

VII. WORK TO BE PERFORMED

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

- A. The scope of work for this Order includes: (a) conducting a source control evaluation of existing data related to any existing or potential sources of LDW sediment contamination within the Sediment Investigation Area and (b) if necessary, conducting additional investigation within the Sediment Investigation Area to fill identified data gaps necessary to adequately document the status of source control from the Jorgensen Property to the LDW sediments. Soil, groundwater, surface water, or other contamination issues that do not have the potential to exceed SMS or otherwise violate LDW sediment cleanup goals will not be addressed by this Order. The scope of work is more particularly described in Exhibit B, "Scope of Work." Exhibit B is incorporated by reference and is an integral and enforceable part of this Order.
- B. The schedule of performance and list of deliverables is described in Exhibit C, "Schedule for Performance and Deliverables." Exhibit C is incorporated by reference and is an integral and enforceable part of this Order.

- C. Given the nature of the activities under the proposed Scope of Work and discussions with Ecology, Jorgensen will submit monthly progress reports via electronic mail until completion of the activities required by this Order.

- 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

Jorgensen 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 within the Sediment Investigation Area 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). Jorgensen 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 Jorgensen has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to Jorgensen, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of Jorgensen's failure to comply with its obligations under this Order, Jorgensen shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.B (Remedial Action Costs), provided that Jorgensen 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, Jorgensen shall not perform any remedial actions within the Sediment Investigation Area 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:

John Keeling
Project Manager
Department of Ecology Northwest Regional Office
3190 160 Ave. SE
Bellevue, WA 98008-5452

The project coordinator for the Jorgensen Forge Corporation is:

Jorgensen Forge Corporation
Attn: Mr. Ron Altier
8531 E Marginal Way S
Seattle, WA 98108-4018

With a copy to:
Anchor Environmental, LLC
Attn: Mr. Ryan Barth
1423 Third Avenue, Suite 300
Seattle, WA 98101-2226

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 Sediment Investigation Area. To the maximum extent possible, communications between Ecology and Jorgensen, 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 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.

Jorgensen 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 Sediment Investigation Area.

F. Access

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all areas covered by this Order that Jorgensen 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 Jorgensen'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 Jorgensen. Ecology or any Ecology authorized representative shall give reasonable notice before entering the Jorgensen Property unless an emergency prevents such notice. All persons who access the Jorgensen Property 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 Jorgensen Property access.

G. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, Jorgensen 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, Jorgensen shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by Jorgensen pursuant to implementation of this Order, if practicable to obtain sufficient sample volume for split samples and the collection does not interfere with Jorgensen's sampling. Jorgensen shall notify Ecology fourteen (14) days in advance of any sample collection or work activity undertaken pursuant to this Order. Ecology shall, upon request, allow Jorgensen and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, if practicable to obtain sufficient sample volume for split samples and the collection does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.F (Access), Ecology shall notify Jorgensen 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 Order. Ecology shall review any existing Public Participation Plan to determine its continued appropriateness and whether it requires amendment, or if no plan exists, Ecology shall develop a Public Participation Plan alone or in conjunction with Jorgensen.

Ecology shall maintain the responsibility for public participation under this Order. However, Jorgensen 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 Jorgensen 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 Jorgensen that do not receive prior Ecology approval, Jorgensen 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. Jorgensen Forge Corporation
8531 E Marginal Way S
Seattle, WA 98108-4018
- b. Ecology's Northwest Regional Office
3190 160th Ave SE
Bellevue, WA 98008-5456

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, Jorgensen 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, Jorgensen 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, Jorgensen 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. Jorgensen may then request regional management review of the decision. This request shall be submitted in writing to the Northwest 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 Jorgensen'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 Jorgensen 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 Jorgensen 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 Jorgensen;
- 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 Jorgensen.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give Jorgensen 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 Jorgensen. Jorgensen 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 under this Order is creating or has the potential to create a danger to human health or the environment on or surrounding the Sediment Investigation Area, Ecology may direct Jorgensen to cease such activities for such period of time as it deems necessary to abate the danger. Jorgensen shall immediately comply with such direction.

In the event Jorgensen determines that any activity being performed under this Order is creating or has the potential to create a danger to human health or the environment, Jorgensen may cease such activities. Jorgensen 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 Jorgensen shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Jorgensen's cessation of activities, it may direct Jorgensen to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to Section VIII.M (Endangerment), Jorgensen'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 Jorgensen to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against Jorgensen regarding remedial actions required by this Order, provided Jorgensen complies with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions within the Sediment Investigation Area 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 Sediment Investigation Area.

O. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Sediment Investigation Area shall be consummated by Jorgensen 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 Jorgensen's transfer of any interest in all or any portion of the Sediment Investigation Area, and during the effective period of this Order, Jorgensen 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, Jorgensen shall notify Ecology of said transfer. Upon transfer of any interest, Jorgensen 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 Jorgensen 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.A drilling permit under WAC 173-360 may be required. In the event the sediment source control investigation activities Jorgenson will be required to implement under this Order trigger permit requirements, Jorgenson and Ecology will identify in writing the permits and/or specific federal, state, or local requirements that are applicable to the investigation.
2. Pursuant to RCW 70.105D.090(1), Jorgensen 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, Jorgensen shall comply with the substantive requirements of such permits or approvals

Jorgensen 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 Jorgensen 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 Jorgensen shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Jorgensen 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 Jorgensen and on how Jorgensen must meet those requirements. Ecology shall inform Jorgensen in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Jorgensen 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 Jorgensen 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

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

C. In the event Jorgensen refuses, without sufficient cause, to comply with any term of this Order, Jorgensen 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: 7.12.07

JORGENSEN FORGE CORPORATION

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

Ron Alfier 3/30/07

Steven M. Alexander

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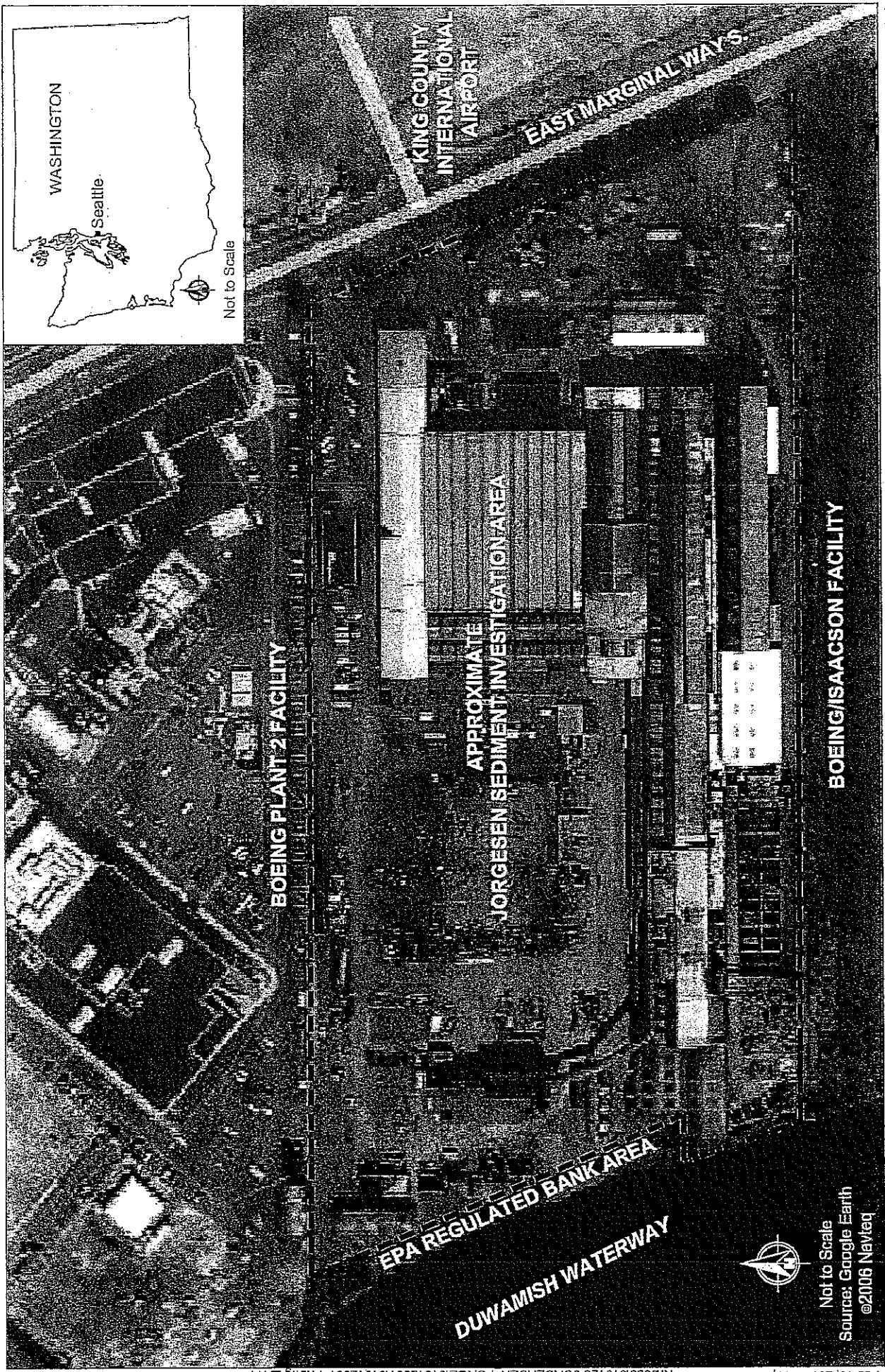


EXHIBIT A

Sediment Investigation Area (Approximate)
Jorgensen Forge Corporation



EXHIBIT B

STATEMENT OF WORK

This Statement of Work (SOW) defines the work to be completed in the Sediment Investigation Area as defined in Agreed Order Number 4127, the AO. The work consists of conducting a Source Control Investigation and producing a Source Control Evaluation Report.

The Source Control Investigation will determine whether the Sediment Investigation Area is an on-going source of contamination to sediments in the Lower Duwamish Waterway (LDW) that could cause a violation of Washington State Department of Ecology (Ecology) SMS (Chapter 173-204 Washington Administrative Code [WAC]) criteria and pending LDW sediment cleanup goals.

The results of the Source Control Investigation will be used to evaluate, and select effective measures to prevent or control sources of contamination migrating from the Sediment Investigation Area to the LDW. Any source control measures necessary to prevent recontamination of LDW sediments will be implemented under a separate Order or Decree. Source control measures will be "practicable" as defined in Chapter 173-340 WAC.

The Source Control Investigation will be conducted under Agreed Order Number 4127, and follow the guidance in the Lower Duwamish Source Control Strategy (Ecology Publication No. 04-09-043).

The Ecology and U.S. Environmental Protection Agency (EPA) Source Control team will aid in and review the production of the Source Control Investigation.

The Source Control Investigation will determine if soil, groundwater, surface water, or other potentially contaminated media are migrating, or can potentially migrate, and result a violation of Chapter 173-204 WAC. Any contamination identified in the Sediment Investigation Area that can't result in a violation, will not be the focus of the Source Control Evaluation Report.

Source Control Investigation activities will be limited to an area defined in the AO as the Sediment Investigation Area. The Sediment Investigation Area is illustrated on Exhibit A to the Agreed Order.

WORK TO BE PERFORMED

The Source Control Investigation includes conducting a source control evaluation of existing data, identifying data gaps, and, if necessary, an additional investigation to fill

the data gaps. The work necessary to complete the Source Control Investigation is outlined in the tasks below.

TASK 1 — SOURCE CONTROL INVESTIGATION

The Source Control Investigation will compile and evaluate currently available information to document sources of contamination in the Sediment Investigation Area. It will identify contaminants of concern. Contaminants of concern are those that have migrated from or have the potential to migrate from the Sediment Investigation Area to the LDW sediments and result in the exceedance of the Ecology SMS (WAC 173-204) criteria and pending LDW sediment cleanup goals.

The source control evaluation will:

- Combine historical information and current reports.
- Assess the quality of historical data through comparison of method reporting limits to applicable screening levels and evaluation of field/laboratory quality assurance/quality control data, where available.
- Compile information on currently and formerly used chemicals in the Sediment Investigation Area.
- Compile the analytical results for all media sampled in the Sediment Investigation Area, that have migrated to or have the potential to migrate to the LDW sediments.

If source control data gaps are identified, Task 1 will identify additional investigation activities (see Task 2) that are necessary to fill the identified data gaps.

Task 1 of the Source Control Investigation will include the following:

Property Description and History

- Definition of historic and current operations in the Sediment Investigation Area.
- Preparation of a figure covering the Sediment Investigation Area and illustrating the following features, to the extent information regarding these features is reasonably available: underground and above ground storage tanks, transformers, railroad tracks, Resource Conservation and Recovery Act (RCRA) designated areas, locations of oil-water separator(s), storm drains, outfalls, catch basins, paved and unpaved surfaces, subsurface areas containing light nonaqueous-phase liquid (LNAPL), and other features important to historic and current practices and chemical uses within the Sediment Investigation Area.

- Identification of chemicals used in current and former operations in the Sediment Investigation Area.
- Identification of current and historical upland structures in the Sediment Investigation Area.
- Identification of potentially contaminated upland media in the Sediment Investigation Area that have migrated to or have the potential to migrate to the LDW sediments.
- Identification of best management practices or other measures currently implemented in the Sediment Investigation Area that prevent or minimize contaminant migration from the Sediment Investigation Area to the LDW sediments.
- Identification of complete, or potentially complete, contaminant migration pathways from the Sediment Investigation Area to the LDW sediments.
- Develop a hydrogeological site model which characterizes the groundwater system including tidal influence.

Regulatory History

- Description of the Sediment Investigation Area regulatory history including:
 - Regulated tanks (above and below ground)
 - Hazardous waste and chemical management practices
 - Resource conservation and recovery act generator status
 - Chemical storage areas
 - Containment
 - Inspections
 - Reporting
 - Permits
- Violations
- Complaints/spills
- Spill response
- Cleanup status

Chemical Releases:

- Description of all known chemical releases from the Sediment Investigation Area and adjacent properties that have migrated to or have the potential to migrate to the LDW sediments
- Summarization of previous investigations and cleanups conducted in the Sediment Investigation Area

Source Evaluation

- Description of the nature and extent of chemicals in soil, groundwater, and surface water in the Sediment Investigation Area that have migrated to or have the potential to migrate to the LDW sediments
- Summarization of analytical results for media that have the potential to migrate from the Sediment Investigation Area to the LDW sediments and comparison of these results to applicable cleanup standards/goals
- Summarization of sources of contamination migrating onto the Sediment Investigation Area from adjacent properties that have migrated to or have the potential to further migrate to the LDW sediments

Pathway Evaluation

Task 1 of the Source Control Investigation will utilize existing environmental data to evaluate potential migration pathways for chemicals released or used in the Sediment Investigation Area, or that have migrated onto the Sediment Investigation Area from adjacent properties, to reach sediment in the LDW adjacent to the Sediment Investigation Area. The pathway analysis will include evaluation of the following potential migration pathways to the LDW sediments:

- Direct discharge via effluent
- Stormwater discharge
- Groundwater
- Erosion/leaching
- Spills, dumping, leaks, housekeeping, and management practices
- Airborne migration
- Sheet flow

Figures will be included as needed to support the source control evaluation process. These figures may include, but not be limited to, the following:

- Current and historical upland contaminant sources
- Sample locations for all environmental media
- Contaminant distribution
- Geologic cross sections
- Groundwater elevation and contour maps

Identification of Data Gaps

The Source Control Investigation will identify data gaps in the existing data necessary to support the evaluation of sources of contamination in the Sediment Investigation Area that could contaminate the sediments in the LDW. A scope of work will be developed to collect additional data, if necessary, to address the identified data gaps.

Source Control Evaluation Report

Source Control Evaluation Report will describe the results of the Source Control Investigation, including a discussion of any identified data gaps. If data gaps are identified, the Source Control Evaluation Report will contain a scope of work to collect sufficient data to fill the identified data gaps.

TASK 2 –ADDITIONAL INVESTIGATION, IF NECESSARY

If data gaps are identified during the Task 1 Source Control Investigation, additional investigation will be performed in the Sediment Investigation Area, as necessary to fill the identified data gaps. The detailed workplan for the additional investigation will be described in a Sampling and Analysis Plan (SAP), a Quality Assurance Project Plan (QAPP), and a Health and Safety Plan (HASP). Each of these supporting plans will be submitted as an appendix to the Source Control Evaluation Report for Ecology review and approval. The content of each of these plans is further described below.

Sampling and Analysis Plan

The SAP shall be prepared in accordance with Chapter 173-340-820 WAC and will describe the sampling objectives, the rationale for the sampling approach (based upon the identified data gaps) and plans for data use, and shall provide a detailed description of sampling tasks. The SAP shall describe specifications for sample identifiers; sampling equipment, the type, number, and location of samples to be collected; the analyses to be performed; descriptions of sampling equipment and methods to be used; sample documentation; sample containers, collection and handling; and, schedule. The plan shall provide 14 days advanced notice to Ecology prior to sampling initiation. Ecology may obtain split samples, if practicable. New data generated under this SAP will be entered in Ecology's Environmental Information Management System (EIM).

Quality Assurance Project Plan

A QAPP will be prepared in accordance with the *Guidance for Preparation of Quality Assurance Project Plans*, EPA Region 10, Quality Data Management Program, QA/R-5 and requirements of the EPA Contract Laboratory Program. The QAPP will also follow Ecology's Guidelines for Preparing Quality Assurance Project Plans for Environmental Studies (July 2004). Laboratories will meet the accreditation standards established in Chapter 173-50 WAC. Data quality objectives will reflect the criteria or threshold values used for the source control evaluation.

Health and Safety Plan

A HASP will be consistent with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Occupational Safety and Health Administration (OSHA), and the Washington Safety and Health Administration (WSHA). The HASP shall identify specific monitoring and management responsibilities and activities to ensure the protection of human health and to promote safety for the activities associated with investigation sampling. The HASP shall be modified as necessary to reflect changes or revisions to the SAP and QAPP based on agency comments.

TASK 3 – SOURCE CONTROL EVALUATION ADDENDUM REPORT

The results of any additional investigation conducted to fill identified data gaps during Task 2 will be summarized in a Source Control Evaluation Addendum Report. This report will include the following:

- Summary of field activities and methods including a discussion of any deviations from the Ecology-approved field sampling plans and the effect of such changes upon data usability
- Field log forms for the additional investigation
- Laboratory analytical and data validation reports
- Quality assurance analytical results for samples collected during the additional investigation
- Re-evaluation of migration pathway analysis using the additional investigation findings and documentation of the source control status

EXHIBIT C

SCHEDULE OF DELIVERABLES AND NOTIFICATIONS

The schedule for notifications to Ecology or submission of major deliverables to Ecology for this SOW is described below. If the date for submission of any item or notification required by this SOW occurs on a weekend, state or federal holiday, the date for submission of that item or notification is extended to the next business day following the weekend or holiday. Where a deliverable due date is triggered by Ecology notification, comments or approval, the starting date for the period shown is the date Jorgensen Forge received such notification, comments or approval by certified mail, return receipt requested, unless otherwise noted below. Where triggered by Ecology receipt of a deliverable, the starting date for the period shown is the date Ecology receives the deliverable by certified mail, return receipt requested, or the date of Ecology signature on a hand-delivery form.

Table 1

Schedule for Submission of Major Deliverables

	<i>Deliverable</i>	<i>Due Date^a</i>
1.	Outline for the "Source Control Evaluation Report"	30 days ^b after the AO ^c effective date
2.	Ecology Comments on the Outline for the "Source Control Evaluation Report"	15 days after the receipt or the outline for the "Source Control Evaluation Report".
3.	Draft Source Control Evaluation Report	45 days after receipt of Ecology/EPA Source Control Team comments on the outline or 90 days ^b after the AO ^c effective date, whichever is later.
4.	Ecology Comments on Draft Source Control Evaluation Report	60 days ^b after receipt of the draft report
5.	Final Source Control Evaluation Report, Including Sampling and Analysis Plan (if necessary)	45 days ^b after receipt of Ecology/EPA Source Control Team comments
6.	Additional Field Investigation Activities to Fill Identified Data Gaps (if any)	Initiated no later than 30 days ^b following Ecology/EPA Source Control Team approval of Final Source Control Evaluation Report
7.	Draft Source Control Evaluation Addendum Report	60 days ^b following receipt of additional investigation validated data
8.	Ecology Comments on Draft Source Control Evaluation Addendum Report	60 days ^b after receipt of the Draft report
9.	Final Source Control Evaluation Addendum Report	45 days ^b after receipt of Ecology comments

^a Due dates shown are for initial draft and final deliverables. This schedule assumes only a single revised document will be submitted following receipt of comments from Ecology. Documents become final upon approval by Ecology.

^b Days are calendar days. If due dates fall on a weekend or state or federal holiday deliverables will be submitted to Ecology on the next business day.

^c AO (Agreed Order) is effective upon signature by both Ecology and Jorgensen Forge.