

Wasser Winters  
FS 12/8

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

In the Matter of Remedial Action by: )  
 )  
PORT OF TACOMA ) AGREED ORDER  
Post Office Box 1837 )  
Tacoma, WA 98401-1837 ) No. DE 91-S248

TO: PORT OF TACOMA  
Post Office Box 1837  
Tacoma, WA 98401-1837

I.

Jurisdiction

This Agreed Order ("Order") is issued pursuant to the authority of RCW 70.105D.050(1).

II.

Findings of Fact

The Department of Ecology ("Ecology") makes the following Findings of Fact, without admission of such facts by the Port of Tacoma ("Port").

1. The Port presently owns approximately 12.6 acres of property at 1602 Marine View Drive, Tacoma, Washington ("Site"), which borders the head of Hylebos Waterway and is adjacent to Hylebos Creek. The property consists of about 11.4 upland acres and 1.2 water acres. This Order addresses only the upland 11.4 acres of the property (hereinafter called "Site"; see site location map in Exhibit A).

2. The Site was leased to Wasser and Winters, Inc. from 1972 to 1984 and used as a log sort yard. Since 1984, the Site has not been used.

3. The Site is located within the boundaries of the Commencement Bay/ Nearshore Tideflats Superfund Site. The Site has been determined to be a source of contamination to the Head of Hylebos Problem Area.

4. Copper smelting slag produced at the ASARCO facility in Tacoma, Washington, was placed on the Site as ballast.

5. An Ecology (1985) study, conducted between 1983 and 1984, reported elevated levels of metals in surface water runoff from the Site, and in adjacent Hylebos Waterway surface waters and bottom sediments. These metals included arsenic, copper, lead, and zinc, the primary inorganic contaminants of concern in the Hylebos Waterway.

In the same Ecology (1985) study, concentrations of arsenic (in 5 out of 5 samples), copper (5/5), nickel (3/5), lead (5/5), and zinc (5/5) in surface water runoff from the Site (see Table 8 in Ecology, 1985) exceeded U.S. Environmental Protection Agency acute ambient water quality criteria for the protection of marine aquatic life ("EPA marine acute criteria"). Similarly, concentrations of arsenic (5/5), copper (5/5), nickel (5/5), lead (5/5) and zinc (5/5) in surface water runoff from the Site (see Table 8 in Ecology, 1985) exceeded EPA chronic ambient water quality criteria for the protection of marine aquatic life ("EPA marine chronic criteria").

Surface water samples taken from the Hylebos Waterway near the site were found to contain concentrations of copper (4/4) that exceeded the EPA marine acute criteria, and concentrations of arsenic (3/3), copper (4/4), and lead (3/3) that exceeded the EPA marine chronic criteria. This Site, as well as other sites within the Hylebos Waterway drainage basin are suspected sources of elevated metals detected in surface water.

Surface water samples taken from Hylebos Creek near the site were found to contain concentrations of copper (2/2) that exceeded the EPA marine acute criteria, and concentrations of arsenic (1/2), copper (2/2), and lead (2/2) that exceeded the EPA marine chronic criteria. This Site, as well as other sites within the Hylebos Creek drainage basin are suspected are suspected sources of elevated metals detected in surface water.

Bottom sediment samples from the Hylebos Waterway near the Site displayed concentrations of total arsenic, copper, lead, and zinc that were two (2) to five (5) times higher than background sediments in the Hylebos Waterway (see Tables 18 and 19 in Ecology, 1985). Arsenic concentrations in the bottom sediments also exceeded the cleanup objectives for Commencement Bay sediments, stated in the Commencement Bay Nearshore/Tideflats Record of Decision (see Table 5 in U.S. EPA, 1989), in four (4) out of four (4) samples collected. This Site, as well as other sites within the Hylebos Creek/Hylebos Waterway drainage basin are suspected sources of elevated metals detected in bottom sediments.

6. Between February 16 and March 18, 1987, the U.S. Environmental Protection Agency's contractor, Ecology, and Environment, Inc., installed four monitoring wells and collected soil and ground water samples at the Site. Samples were analyzed for the entire EPA Target Compound List of contaminants, except cyanide. Arsenic was detected in three of four wells at concentration ranging from 0.001 mg/l to 0.035 mg/l; copper was detected in one well at an average concentration of 0.005 mg/l; lead was detected in two wells at concentrations ranging from 0.12 mg/l to 1.355 mg/l; and zinc was detected in three wells at concentrations ranging from 0.002 mg/l to 0.013 mg/l. Ground

7. Based on the foregoing facts, Ecology believes the remedial action required by this Order is in the public interest.

#### IV.

##### Work to be Performed

Based on the foregoing Facts and Determinations, it is hereby ordered and agreed that the Port conduct a Remedial Investigation/Feasibility Study (RI/FS) at the Site. The specific tasks for the RI/FS are outlined in this section and are described more comprehensively in the Workplan included in this Order as Exhibit B.

1. First, this Order requires that draft and final RI/FS workplans be submitted to Ecology for review, comment, and finally, for approval.

2. Second, this Order requires full implementation and completion of the RI/FS tasks, as designated in the final, approved RI/FS work plan.

3. Third, this Order requires that draft and final RI/FS reports be submitted to Ecology for review, comment, and finally, for approval.

#### V.

##### Incorporation of Exhibits

All exhibits are hereby incorporated into this Order by reference and are integral and enforceable parts of this Order.

#### VI.

##### Terms and Conditions of Order

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

2. Public Notices. RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. WAC 173-340-600(10)(c) requires that, for agreed orders covering a RI/FS, the public comment period shall be at least thirty days in duration and shall be completed before the agreed order becomes effective. 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 the Order is inadequate or improper in any respect. The Port reserves the right to withdraw their consent to this Order in the event Ecology modifies any provision without their written consent.

3. Remedial Action Costs. The Port agrees to pay to Ecology costs incurred by Ecology pursuant to this Agreed Order. These costs shall include work performed by Ecology or its contractors for investigations, remedial actions, and Order preparation, negotiations, oversight and administration. Ecology costs shall include costs of direct activities; e.g., employee salary, laboratory costs, travel costs, contractor fees, and employee benefit packages; and agency indirect costs of direct activities. The Port agrees to pay the required amount within 90 days of receiving from Ecology an itemized quarterly 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. Failure to pay Ecology's costs within 90 days of receipt of the itemized statement of costs may result in interest charges.

4. Designated Project Coordinators. The project coordinator for Ecology is:

Kevin Godbout  
Department of Ecology  
7272 Cleanwater Lane, LU-11  
Olympia, WA 98502-6811

The project coordinator for the Port is:

Suzanne Dudziak  
Port of Tacoma  
Post Office Box 1837  
Tacoma, WA 98401

The project coordinators shall be responsible for overseeing the implementation of this Order. 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. Should Ecology or the Port change project coordinators, written notification shall be provided to Ecology and the Port at least ten (10) calendar days prior to the change.

5. Performance. All work performed pursuant to this Order shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or similar expert, with appropriate training, experience and expertise in hazardous waste site investigation and cleanup. The Port shall notify Ecology as to the identity of such engineer(s) or hydrogeologist(s), and of any contractors and subcontractors to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

6. Access. Ecology or any Ecology authorized representative shall have the authority to enter and freely move about the Site 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 progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology or the project coordinator 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. By signing this Agreed Order, the Port agrees that this Order constitutes reasonable notice of access, and agrees to allow access to the Site at all reasonable times for purposes of overseeing work performed under this Order. Ecology shall allow split or replicate samples to be taken by the Port during an inspection unless doing so interferes with Ecology's sampling. The Port shall allow split or replicate samples to be taken by Ecology and shall provide seven (7) days notice before any scheduled sampling activity, except in the case of storm water runoff sampling, whereupon reasonable notice shall be provided.

7. Public Participation. The Port shall prepare a public participation plan for the Site. Ecology shall maintain the responsibility for public participation at the Site. Ecology shall provide the Port with fact sheets, press releases, and public notices no less than one day prior to the release of such information. The Port shall help coordinate and implement public participation for the Site.

8. Retention of Records. The Port shall preserve in a readily retrievable fashion, during the pendency of this Order and for ten (10) years from the date of completion of the work performed pursuant to this Order, all records, reports, documents, and underlying data in its possession relevant to this Order. Should any portion of the work performed hereunder be undertaken through contractors or agents of the Port, then the Port agrees to include in ~~their contract with such contractors or agents a record retention requirement~~ meeting the terms of this paragraph.

9. Dispute Resolution. The Port may request Ecology to resolve disputes which may arise during the implementation of this Order. Such requests shall be in writing and directed to the Project Manager, who will subsequently forward the request to the Southwest Regional Office Toxics Cleanup Program Section Head. A decision from the Section Head shall be issued to the Port within thirty (30) days of receipt of the request. Ecology resolution of the dispute shall be binding and final. The Port is not relieved of any requirement of this Order during the pendency of the dispute and remain responsible for timely compliance with the terms of the Order unless otherwise provided by Ecology in writing.

10. Reservation of Rights/No Settlement. This Agreed Order is not a settlement under Ch. 70.105D RCW. This Agreed Order does not cover Natural Resource Damages nor contribution for Natural Resources Damages should these releases constitute such damage. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against the Port to recover remedial action costs paid to and received by Ecology under this Agreed Order. In addition, Ecology will not take additional enforcement



actions against the Port to require those remedial actions required by this Agreed Order, provided the Port complies with this Agreed Order. Ecology reserves the right, however, to require additional remedial actions at the Site should it deem such actions necessary.

11. Endangerment. In the event Ecology determines that conditions at the Site are creating or have the potential to create a danger to the health or welfare of the people on the Site or in the surrounding area or to the environment, Ecology may order the Port to stop further implementation of this Order for such period of time as needed to abate the danger. Ecology will notify the Port when implementation of the Order shall be resumed.

Conversely, if the Port determines that conditions at the Site are creating or have the potential to create danger to the health and welfare of the people on the Site or in the surrounding area or to the environment, the Port has the right to cease implementation of this Order. If the conditions at the Site do not appear to present, or have the potential to present an immediate danger to life, health, and/or the environment, then the Port must notify Ecology of the decision to cease activities 24 hours prior to stopping work. However, if conditions at the Site present, or have the potential to present, an immediate danger to life, health, and/or the environment, then the Port may cease activities at the Site without delay. The Port must inform Ecology of this decision within 24 hours from the time it was made. In either case, Ecology will evaluate the situation to determine the magnitude of the danger and whether or not a period of work stoppage is needed to abate the danger. Ecology will notify the Port when implementation of the Order shall be resumed.

12. Transference of Property. No voluntary or involuntary 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 transfer of any legal or equitable interest the Port may have in the Site or any portions thereof, the Port shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least thirty (30) days prior to finalization of any transfer, the Port shall notify Ecology of the contemplated transfer.

13. Compliance with Other Applicable Laws. All actions carried out by the Port pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements.

## VII.

### Satisfaction of this Order

The provisions of this Order shall be deemed satisfied upon the Port's receipt of written notice from Ecology that the Port has completed the remedial activity required by this Order, as amended by any modifications, and that all other provisions of this Agreed Order have been complied with.

## VIII.

### Enforcement

1. 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 may be liable for:
- (1) up to three times the amount of any costs incurred by the State of Washington as a result of their/its refusal to comply; and
  - (2) civil penalties of up to \$25,000 per day for each day they/it refuse(s) to comply.
- D. This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided by RCW 70.105D.060.

Effective date of this Order: October 7, 1991

PORT OF TACOMA

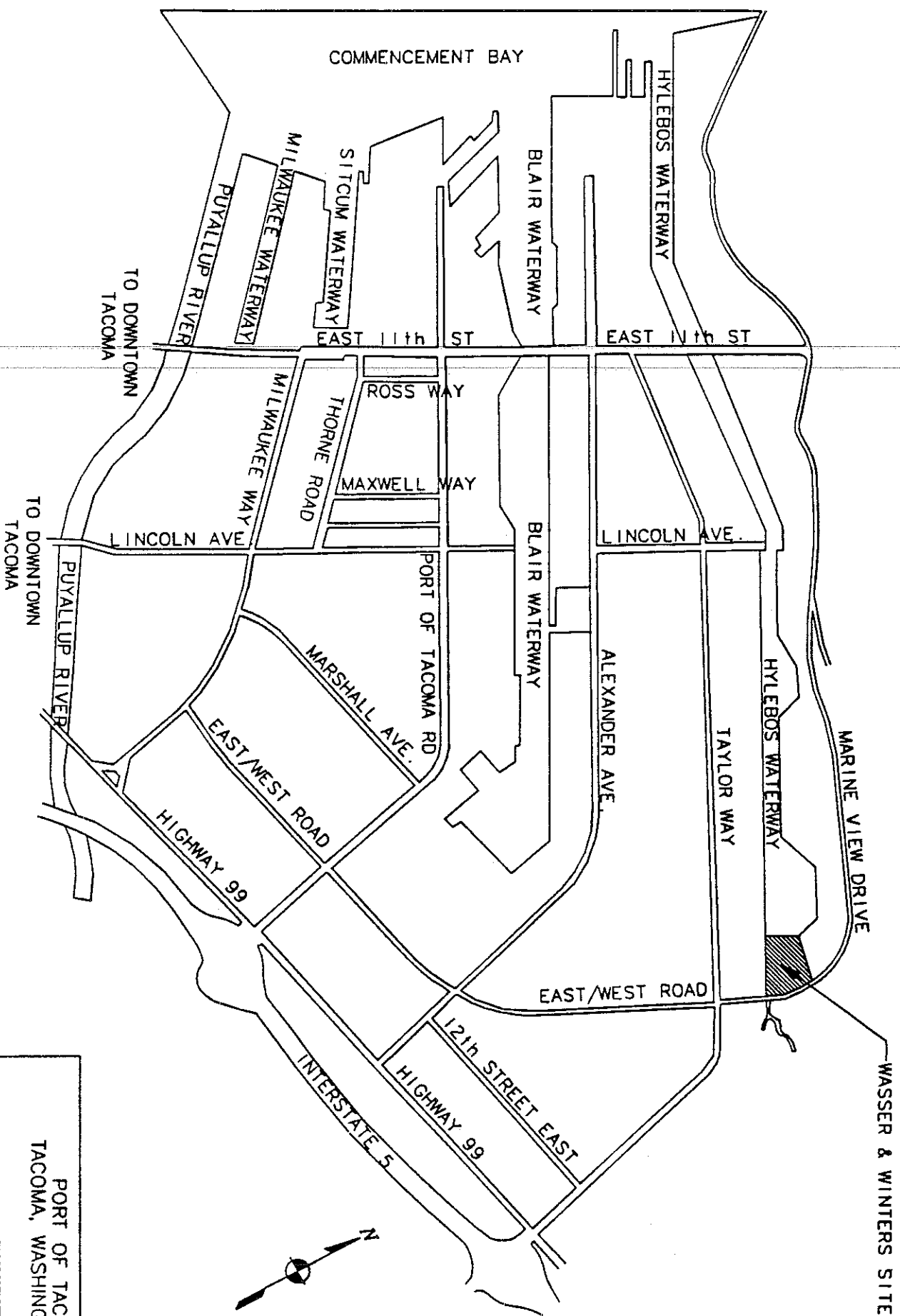
By *John Terpstra* 10/3/91  
Date

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

By *Megan White* 10/7/91  
Date  
Megan White  
Southwest Region Supervisor  
Toxics Cleanup Program

STATE OF WASHINGTON  
OFFICE OF THE ATTORNEY GENERAL

By *Ray Morris* 10/8/91  
Date  
*att. atty general*  
*Ecology Division*



SOURCE:  
 DIGITIZED FROM BASE MAP PROVIDED  
 BY SWEET-EDWARDS AND ASSOCIATES, INC. (1987).

PORT OF TACOMA  
 TACOMA, WASHINGTON  
**EXHIBIT 'A'**  
**SITE LOCATION**

ORDER No. DE 91-S248

## EXHIBIT B

### PORT OF TACOMA SCOPE OF WORK AND SCHEDULE FOR RI/FS

All work performed at and around the Site pursuant to this Agreed Order shall be accomplished in accordance with Ch. 173-340 WAC. All submittals shall be in accordance with the requirements in WAC 173-340-840.

#### TASK 1 - DRAFT RI/FS WORKPLAN

Requirement Overview: Prepare a remedial investigation/feasibility study (RI/FS) workplan per the requirements of WAC 173-340-350. Incorporate the following sub-tasks as elements of the workplan. Include a detailed scope and schedule of tasks, up to and including submittal of the draft RI/FS report. Submit the workplan to Ecology for review and comment.

Schedule: This task, sub-tasks included, shall be executed within six (6) weeks after the effective date of the Agreed Order.

##### SUB-TASK 1.1 - DRAFT SAMPLING AND ANALYSIS PLAN

Requirement: A draft sampling and analysis plan, which includes quality assurance/quality control activities, shall be prepared per the requirements of WAC 173-340-820. Proposed analytical procedures shall be in accordance with WAC 173-340-830.

##### SUB-TASK 1.2 - DRAFT HEALTH AND SAFETY PLAN

Requirement: All work performed at the site shall be in accordance with the provisions specified in WAC 173-340-810(1). A health and safety plan shall be prepared per WAC 173-340-810(2). Although the health and safety plan must be submitted to Ecology for review and comment, Ecology does not have the authority to approve the plan.

##### SUB-TASK 1.3 - DRAFT PUBLIC PARTICIPATION

Requirement: A public participation plan shall be prepared per WAC 173-340-600(8). The plan will be submitted to Ecology independently of Sub-task 1.1 and 1.2.

#### TASK 2 - FINAL RI/FS WORKPLAN

Requirement: Submit a final RI/FS workplan to Ecology for review and approval. The final RI/FS workplan shall address Ecology's comments on the draft RI/FS workplan.

Schedule: Submit the final RI/FS workplan within three (3) weeks after Ecology provides comments on the draft workplan.

### TASK 3 - RI/FS

Requirement: Carry out the specific tasks of the RI/FS as designated in the approved final RI/FS workplan.

Schedule: The specific tasks of the RI/FS shall be completed in accordance with the schedule in the approved final RI/FS workplan.

### TASK 4 - DRAFT RI/FS REPORT

Requirement: Compile and interpret data from all investigations and sampling. Submit the report to Ecology for review and comment.

Schedule: The draft RI/FS shall be submitted in accordance with the schedule in the approved final RI/FS workplan.

### TASK 5 - FINAL RI/FS REPORT

Requirement: Submit a final RI/FS report to Ecology for review and approval. The final RI/FS report shall address Ecology's comments on the draft report.

Schedule: This task shall be executed within four (4) weeks after Ecology provides comments on the draft RI/FS report.

EXHIBIT C

REFERENCES

Sweet, Edwards & Associates, Inc., 1987. Preliminary Site Characterization and Interim Remediation Feasibility Study. Wasser & Winters/Port of Tacoma. Report No. S8801.01.

Tetra Tech, 1985. Commencement Bay Nearshore/Tideflats Remedial Investigation. Prepared for Washington State Department of Ecology and US EPA by Tetra Tech. Report no. TC 3752, vol. 2.

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U.S. Environmental Protection Agency, 1987. Site inspection report for Commencement Bay Nearshore/Tideflats, Tacoma, Washington. Prepared for the US EPA by Ecology and Environment, Inc., under US EPA contract no. 68-01-7347. Report no. TDD F10-8612-12. 2 vol.

U.S. Environmental Protection Agency, 1989. Commencement Bay Nearshore/Tideflats Record of Decision.

Washington State Department of Ecology, 1985. Completion report on WQIS project 1 for the Commencement Bay Nearshore/Tideflats Remedial Investigation: assessment of log sort yards as metals sources to Commencement Bay waterways, November 1983 - June 1984. Internal memorandum to from Dale Norton and Art Johnson to Jim Krull, February 27, 1985, no. 05-10-01, 52 p.

## EXHIBIT C

### REFERENCES

- Sweet, Edwards & Associates, Inc., 1987. Preliminary Site Characterization and Interim Remediation Feasibility Study. Wasser & Winters/Port of Tacoma. Report No. S8801.01.
- Tetra Tech, 1985. Commencement Bay Nearshore/Tideflats Remedial Investigation. Prepared for Washington State Department of Ecology and US EPA by Tetra Tech. Report no. TC 3752, vol. 2.
- 
- S. Environmental Protection Agency, 1987. Site inspection report for Commencement Bay Nearshore/Tideflats, Tacoma, Washington. Prepared for the US EPA by Ecology and Environment, Inc., under US EPA contract no. 68-01-7347. Report no. TDD F10-8612-12. 2 vol.
- Environmental Protection Agency, 1989. Commencement Bay Nearshore/Tideflats Record of Decision.
- Washington State Department of Ecology, 1985. Completion report on WQIS project 1 for the Commencement Bay Nearshore/Tideflats Remedial Investigation: assessment of log sort yards as metals sources to Commencement Bay waterways, November 1983 - June 1984. Internal memorandum to from Dale Norton and Art Johnson to Jim Krull, February 27, 1985, no. 05-10-01, 52 p.



DATE: Apr 17, 1991

PAGE: 6 of 6

CANCELS: NEW

SEE ALSO: NONE

TO: Negotiation Review Team Coordinator

FROM: GARIN SCHRIEVE

SUBJECT: Final Document

DATE: 1/28/93

SITE NAME: WASSER-WINTERS SITE MANAGER: GARIN SCHRIEVE

OFFICE LOC: SWRO SITE PIC: J1K37 PROJECT NO. 9059  
J1M54 (Cost Rec. Coord. Provides)

Type of Document: (2)

Agreed Order	(2) <input checked="" type="checkbox"/>	Ch. 90.48 RCW Order	[ ]
Cleanup Action Plan	[ ]	Ch. 70.105 RCW Order	[ ]
Emergency Order	[ ]	Record of Decision (ROD)	[ ]
Enforcement Order	[ ]	State Memorandum of	
Consent Decree	[ ]	Agreement (SMOA)	[ ]
Fed. Fac. Agreement	[ ]	Other	[ ]

EFFECTIVE DATE OF DOCUMENT: 3/25/87, 10/7/91

ASSISTANT ATTORNEY GENERAL D. Mossier (now M.S. Wilson)

IS PLP ADDRESS SHOWN IN DOCUMENT: YES NO - ASARLO'S ADDRESS NOT  
(If NO, put address here: ASARLO)

Are past costs included? YES NO  
(If YES, for what time period? \_\_\_\_\_)

Billing restrictions? YES NO  
(If YES, describe: ?)

If more than one PLP, how should invoice amount be apportioned?

PLP _____	____%	PLP _____	____%
PLP _____	____%	PLP _____	____%
PLP _____	____%	PLP _____	____%
PLP _____	____%	PLP _____	____%

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