

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

PORT OF BELLINGHAM

AGREED ORDER

No. 6834

TO: Port of Bellingham
P.O. Box 1677
Bellingham, WA 98225

TABLE OF CONTENTS

I.	INTRODUCTION.....	2
II.	JURISDICTION.....	2
III.	PARTIES BOUND.....	2
IV.	DEFINITIONS.....	2
V.	FINDINGS OF FACT.....	3
VI.	ECOLOGY DETERMINATIONS.....	5
VII.	WORK TO BE PERFORMED.....	6
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.....	8
	E. Performance.....	9
	F. Access.....	9
	G. Sampling, Data Submittal, and Availability.....	10
	H. Public Participation.....	11
	I. Retention of Records.....	12
	J. Resolution of Disputes.....	12
	K. Extension of Schedule.....	14
	L. Amendment of Order.....	15
	M. Endangerment.....	15
	N. Reservation of Rights.....	16
	O. Transfer of Interest in Property.....	17
	P. Compliance with Applicable Laws.....	17
	Q. Indemnification.....	18
IX.	SATISFACTION OF ORDER.....	19
X.	ENFORCEMENT.....	19
	EXHIBIT A Site Diagram	
	EXHIBIT B Scope of Work and Schedule	

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the Port of Bellingham (the 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 perform a Remedial Investigation/Feasibility Study (RI/FS) for the Georgia-Pacific West Site. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

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

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. The Port agrees to undertake all actions required by the terms and conditions of 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 the former Georgia-Pacific West property and is located on the tidal flats of Bellingham Bay adjacent to the Whatcom Waterway in Bellingham, Washington, and is generally located between the Whatcom Waterway and Cornwall Avenue with Roeder Avenue and West Chestnut Street to the northeast and the Bellingham Shipping Terminal to the southwest. 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 Ecology and the Port.

C. Potentially Liable Persons (PLP): Refers to those parties named as potentially liable persons by Ecology, which includes the Port and Georgia-Pacific West, Inc., Georgia Pacific Corporation, and Georgia Pacific, L.L.C. (collectively G-P).

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 majority of the Site was operated as a pulp and paper making facility from its original development in 1925 through 2007. G-P purchased the then-operating pulp and tissue mill from Puget Sound Pulp and Timber Company in 1963.

B. The Site also includes a portion of the Bellingham Shipping Terminal. That portion of the Site includes both Port-owned upland properties, and adjacent state-owned aquatic lands that have been filled. The Port first entered into lease agreements with the State for the various state-owned parcels between the 1920s and 1962 for the purpose of conducting Port terminal operations. Since 1997, the Port has managed these state-owned lands under a Port Management Agreement (PMA) signed with DNR.

C. In 1965, G-P installed a chlor/alkali plant at the Site to produce chlorine and sodium hydroxide (caustic) using a mercury-cell process for use in bleaching and pulping operations. The location of the former chlor/alkali plant is depicted in the Site Diagram, Exhibit A. During 1976 G-P implemented the treatment and on-site containment of sediments from an on-site settling pond. The sediments were treated by chemical stabilization and remain contained on-site subject to the requirements of Ecology Order DE-77-336. G-P operated the chlor/alkali

plant at the Site from 1965 through 1999 when G-P ceased operating the chlor/alkali plant. Previous environmental investigations in and around the chlor/alkali plant area found mercury in groundwater, soils, and process materials in concentrations exceeding applicable MTCA cleanup standards. G-P completed an Independent RI/FS of the chlor/alkali facility in 1994. Following the 1994 RI/FS, G-P performed various remedial actions and associated performance monitoring within the chlor/alkali plant area.

D. By letter dated May 4, 1999, Ecology notified G-P of its status as a PLP under RCW 70.105D.040 for the chlor/alkali plant.

E. On July 6, 1999, G-P entered into AO No. DE 02-TC99 I035, which required G-P to undertake a number of decommissioning/demolition activities at the chlor/alkali plant following its closure by G-P, as well as to prepare a RI/FS work plan for the chlor/alkali plant area. Ecology issued a letter to G-P in 2005 indicating that the provisions of AO No. DE TC99 IO35 had been satisfied.

F. On October 1, 2002, G-P and Ecology entered into AO No. DE 02-TCPIS-4722 wherein G-P was required to complete a supplemental RI/FS for the chlor/alkali plant for purposes of updating the RI/FS prepared in 1994. As part of this work, Anchor Environmental, L.L.C. prepared a *Draft Soil Assessment-Data Report, Remedial Investigation/Feasibility Study Addendum, Georgia Pacific West, Inc.-Former Chlor-Alkali Facility, Bellingham, Washington*, dated October 2003.

G. In 2001, G-P closed the pulp mill located at the Site. The location of the G-P pulp mill area is indicated on the attached Site Diagram, Exhibit A.

H. In 2004, G-P contracted with Aspect Consulting to perform a Phase II Environmental Site Assessment of its Bellingham operations, including the former pulp mill area at the Site and the then-operating tissue plant. The results of that assessment showed soil contamination at the pulp and tissue mill areas in concentrations exceeding MTCA unrestricted soil cleanup levels for petroleum hydrocarbons, metals, semi volatile organic compounds (SVOCs), dioxins, furans, and polycyclic aromatic hydrocarbons (PAHs). The assessment also

indicated groundwater contamination in concentrations exceeding applicable MTCA cleanup levels for petroleum hydrocarbons, metals, certain VOCs, and PAHs.

I. In January of 2005, the Port purchased the majority of G-P's property located within Whatcom County, Washington, including property at the Site. Contemporaneously with the purchase of G-P's property, the Port entered into a series of interlocal agreements with the City of Bellingham for purposes of forming a partnership aimed at returning the Site to productive reuse for industrial or mixed use purposes.

J. Subsequent to the Port's purchase of the Site from G-P, Ecology named the Port as a PLP for the Site in a letter dated June 2, 2005.

K. After the Port's purchase of the Site, G-P continued to operate its tissue plant located thereon until December of 2007 when it ceased the last of its operations at the Site and initiated demolition of the tissue plant and associated structures.

L. During 2006 the Port conducted an independent interim action to remove petroleum contaminated soil from the chlor-alkali plant area, including the submittal of an independent remedial action completion report to Ecology. Also during 2006 the Port abandoned two wells and repaired five well boxes within the Site. G-P originally installed the wells. Both the installation and abandonment/repair work were done independently.

VI. ECOLOGY DETERMINATIONS

A. The Port is a current "owner or operator" as defined in RCW 70.105D.020(17) 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 dated April 18, 2005, 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 for the Site under RCW 70.105D.040 and notified the Port of this determination by letter dated June 2, 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 that 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 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. The Port shall perform an RI/FS for the Site in accordance with WAC 173-340-350 and pursuant to the Scope of Work and Schedule (Exhibit B), which details the actions to be taken and deliverables to be submitted pursuant to this Order.

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

C. 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 Order, Ecology may complete and issue the final deliverable as follows: Ecology will provide written notice to the Port that it has fifteen (15) days to demonstrate sufficient progress in preparation of the required deliverable(s) and will include a description of the alleged deficiency; If, in Ecology's estimation the Port fails to demonstrate sufficient progress within fifteen (15) days, Ecology may then complete and issue the final deliverable. Ecology need only provide an opportunity to cure once per 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

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 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). Ecology has accumulated \$6,810.62 in remedial action costs related to this facility as of March 31, 2009. Payment for this amount shall be submitted by the Port within thirty (30) days of the effective date of this Order. For all costs incurred subsequent to March 31, 2009, the Port shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

C. Implementation of Remedial Action

If Ecology determines that the Port has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to the Port, perform any or all portions of the remedial action that remain incomplete. Except in emergency situations, Ecology

shall endeavor, where practicable, to provide the PLPs this notice in writing, and a thirty day opportunity to cure. If Ecology performs all or portions of the 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.

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.

D. Designated Project Coordinators

The project coordinator for Ecology is:

Lucille T. McInerney, P.E.
Washington Department of Ecology
Northwest Regional Office
3190 160th Avenue S.E.
Bellevue, WA 98008
(425) 649-7272
Email: lpeb461@ecy.wa.gov

The project coordinator for the Port is:

Brian D. Gouran
Port of Bellingham
PO Box 1677
Bellingham, WA 98225
(360) 676-2500
E-mail: briang@portofbellingham.com

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 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.

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. Ecology employees and their representatives shall, however, follow any appropriate safety precautions attendant to site conditions that the Project Coordinators work out in advance.

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 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 the Port.

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

1. If agreed to by Ecology, develop appropriate mailing lists, 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. Department of Ecology
Bellingham Field Office
1440 10th Street, Suite 102
Bellingham, WA 98225
- b. Bellingham Public Library
210 Central Avenue
Bellingham, WA 98227
- c. Department of Ecology
Northwest Regional Office
3190 160th Ave SE
Bellevue, WA 98008-5452

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, 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.

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 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 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.

4. In the event of a dispute over payment of Ecology oversight costs invoiced under Section VIII.B (Remedial Action Costs), the Port shall pay the undisputed portion but shall not be required to pay the disputed portion until the dispute is resolved under the dispute resolution process. Interest shall not be charged on the disputed portion until the greater of ninety (90) days after receipt of the original invoice or thirty (30) days after the dispute is resolved.

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.

The Port expressly reserves its rights with regard to any future agency action not covered by the scope of this Order. Nothing herein shall be deemed a waiver of the Port's right to pursue any other responsible party for the costs incurred by the Port under this Order.

O. Transfer of Interest in Property

During the effective period of this Order, 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. At this time, no federal, state or local requirements have been identified as being applicable to actions required by this Order.

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. At this time, no state or local

permits or approvals have been identified as being applicable but procedurally exempt under this Section.

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 the extent permitted by law, 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.

IX. 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.

X. ENFORCEMENT

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

A. The Attorney General may bring an action to enforce this Order in a state or federal court.

B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

C. In the event the Port refuses, without sufficient cause, to comply with any term of this Order, the Port will be liable for:

1. 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

2. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

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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.

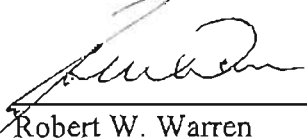
Effective date of this Order: August 25, 2009

PORT OF BELLINGHAM



Fred J. Seeger
Interim Executive Director
Telephone: (360) 676-2500

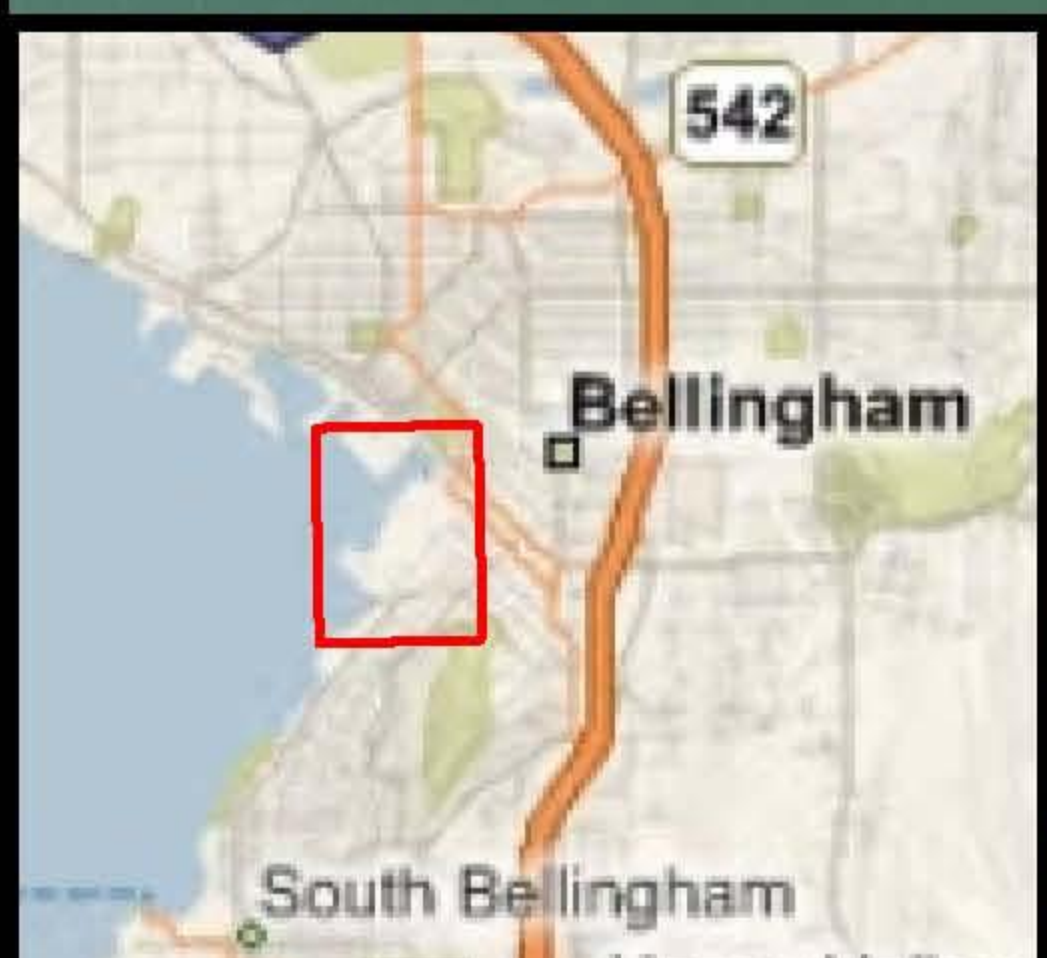
**STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY**



Robert W. Warren
Section Manager
Toxics Cleanup Program
Northwest Regional Office
Telephone: (425) 649-7054

EXHIBIT A

**GEORGIA PACIFIC WEST SITE
REMEDIAL INVESTIGATION/FEASIBILITY STUDY
SITE DIAGRAM**



Georgia-Pacific West Site

Bellingham, WA

EXHIBIT B

**GEORGIA PACIFIC WEST SITE
REMEDIAL INVESTIGATION/FEASIBILITY STUDY
SCOPE OF WORK and SCHEDULE**

PURPOSE

The purpose of this Remedial Investigation/Feasibility Study (RI/FS) Scope of Work (SOW) for the GP West Site (the Site) is to implement the Agreed Order (AO) entered into by the Department of Ecology (Ecology) and the Port of Bellingham (Port), to which this SOW is an Exhibit.

The RI/FS is intended to provide sufficient data, analysis, and evaluations to enable Ecology to select a cleanup action for the Site.

The RI/FS Scope of Work (SOW) is divided into four major tasks as follows:

- 1) Progress Reports
- 2) RI/FS Work Plan
- 3) Remedial Investigation
- 4) Feasibility Study

TASK 1 PROGRESS REPORTS

The Port shall submit progress reports quarterly unless a longer reporting period is approved by Ecology in writing. Progress reports shall be submitted to Ecology until satisfaction of the AO. Progress Reports shall be submitted to the Ecology project coordinator by the 10th of every third month following the effective date of the AO. If this day is a weekend or holiday, deliverables shall be submitted to Ecology on the next business day. At a minimum, progress reports shall contain the following information regarding the preceding reporting period:

- A description of the actions which have been taken to comply with the AO and SOW during the previous reporting period;
 - An estimate of the percentage of RI/FS work completed to date;
 - Summaries of sampling and testing reports and other data reports received by the Port;
 - Summaries of deviations from approved work plans;
 - Summaries of contacts with representatives of the local community, public interest groups, press, and federal, state or tribal government;
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- Summaries of problems or anticipated problems in meeting the schedule or objectives set forth in the SOW and Work Plan;
- Summaries of solutions developed and implemented or planned to address any actual or anticipated problems or delays;
- Changes in key personnel; and
- A description of work planned for the next reporting period.

TASK 2 RI/FS WORK PLAN

In order to plan and manage the RI/FS, the Port shall document project tasks and management strategies in a RI/FS Work Plan (Work Plan), which shall be developed and submitted to Ecology for review and approval in accordance with this SOW, including the schedule contained below, and in accordance with the SOW described in Tasks 3 and 4 below. The Work Plan shall not be implemented until approved by Ecology. Once approved by Ecology, the Port shall implement the Work Plan according to the schedule contained in this SOW — and according to any subsequent amendments to the Work Plan or schedule made under the AO.

The Work Plan shall specify and describe all tasks to be accomplished to complete an RI/FS that meets the requirements of WAC 173-340-350, in accordance with the AO and this SOW.

The Work Plan shall clearly describe the overall project management strategy for implementing and reporting on RI/FS activities. The responsibility and authority of all organizations and key personnel involved in conducting the RI/FS shall be outlined.

Elements of the Work Plan include, but are not limited to, the following:

- A project management strategy including a description of individual RI/FS subtasks;
 - A review of existing and available data to support the development of RI/FS tasks which may include, as appropriate, the following:
 - a) Physical features, including topography and bathymetry, structure locations, and utilities;
 - b) Natural physical processes;
-

- c) Soil, surface water and groundwater data, including contaminant concentrations and conventional parameters, depths and location of samples, which are necessary to determine the nature and extent of the contaminant(s), and comparison to MTCA;
 - d) Hydrogeologic data;
 - e) Current property ownership and zoning;
 - f) Current or planned land and shoreline uses and their location, which may affect investigation and cleanup activities; and
 - g) Historical, archeological, and cultural uses of the site including recent and historical photographs;
- Data gaps identified for completion of the RI/FS;
 - A draft outline of the final RI and FS Reports including the types of data evaluation, figures, and tables that shall be included;
 - A proposed schedule for completion of all subtasks not currently accounted for in the schedule; and
 - Project personnel and responsibilities.

The RI/FS Work Plan shall also include: a Sampling and Analysis Plan (SAP) prepared in accordance with WAC 173-340-350(7)(c)(iv); a Quality Assurance Project Plan (QAPP); and, a Health and Safety Plan (HASP). The HASP is subject to comment by Ecology, but not subject to Ecology approval. Details of these plans are provided below.

Sampling and Analysis Plan - The Port shall prepare a SAP for RI sampling and analysis activities in accordance with WAC 173-340-820. The purpose of the SAP is to provide an overview of the RI sampling program that shall obtain information needed to meet the data needs described in Task 3 of the SOW.

The SAP shall describe the sampling objectives and the rationale for the sampling approach. A detailed description of sampling tasks shall then be provided, including specifications for sample identifiers; the type, number, and location of samples to be collected; the analyses to be performed; descriptions of sampling equipment and collection methods to be used; description of sample documentation; sample containers, collection, preservation and handling. The SAP shall describe sample custody and handling procedures, decontamination procedures, and the handling of investigative-derived wastes.

Quality Assurance Project Plan. The Port shall prepare a QAPP for RI sampling and analysis activities. The QAPP shall identify and describe laboratory methods and the

QA/QC measures that shall be taken during the performance of all sampling and analysis tasks to ensure the fulfillment of data quality objectives. Data quality objectives shall reflect the criteria or threshold values used for remedial decisions. Laboratory methodology and QA/QC requirements shall be developed in accordance with Ecology guidance and shall include the following elements:

- A brief project description, referencing the Work Plan and/or SAP for details;
- Project management and QA responsibilities;
- Quality assurance objectives;
- Procedures for analysis of samples and reporting of results, including:
 - Detection or quantitation limits;
 - Analytical techniques and procedures;
 - Quality assurance and quality control procedures; and
 - Data reporting procedures and validation procedures.

The Port shall use an Ecology-accredited laboratory for the specific analyses to be performed under this AO. If an unaccredited lab is proposed to be used, the results of recent performance audits and systems audits shall be provided to Ecology prior to use of the lab.

Health and Safety Plan - The Port shall prepare a HASP for RI activities in accordance with WAC 173-340-810. The HASP must be consistent with the requirements of the Washington Industrial Safety and Health Act of 1973, Chapter 49.17 RCW and implementing regulations, including any updates or amendments. The HASP shall identify specific monitoring and management responsibilities and activities to ensure the protection of human health activities associated with the RI.

TASK 3 REMEDIAL INVESTIGATION (RI)

The Port shall conduct a remedial investigation that meets the requirements of WAC 173-340-350(7), according to the Work Plan as approved by Ecology and the schedule contained below. Key components of the RI for this Site that may be captured in the Work Plan are as follows:

- Nature and extent of contamination;
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- Contaminant fate and transport processes;
- Assessment of potential human health and ecological health concerns; and
- All the associated figures, tables, and photos.

TASK 4 FEASIBILITY STUDY (FS)

The Port shall use the information obtained in the RI to conduct a Feasibility Study that meets the requirements of WAC 173-340-350(8). The FS shall include:

- Determination of cleanup standards and applicable laws;
- Identification and screening of cleanup technologies;
- Basis for assembly of cleanup action alternatives;
- Description of cleanup alternatives;
- Comparative evaluation of cleanup alternatives; and
- Identification of a preferred cleanup alternative.
- All the associated figures, tables and photos.

DELIVERABLES

The Port shall prepare and submit all plans, reports, and studies listed below (items a through c) as required by the AO.

Specific deliverables described in this SOW include:

- a) RI/FS Work Plan – The Port shall submit for Ecology review and approval an RI/FS Work Plan, including a SAP, QAPP, and HASP, in accordance with the schedule below. The HASP shall be submitted but not approved by Ecology.
 - b) RI/FS Report – The Port shall summarize and compile the results of Task 4 into Volume 1 of an RI/FS Report. ~~Volume 1 will include all validated~~
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sampling and analysis data collected under this AO. All data collected under this AO shall also be submitted to Ecology in EIM format. The results of Task 5 will be submitted to Ecology in Volume 2 of an RI/FS Report. The RI/FS report shall follow the draft outline contained in the Work Plan under the AO.

For all documents:

- All deliverables shall be submitted to Ecology in electronic (Word and Adobe formats) and hard-copy formats;
- A draft shall be submitted to Ecology for review and approval in accordance with this SOW, including the schedule outlined below, and the Work Plan;
- If Ecology comments on a draft document, the Port shall revise the draft document by incorporating and/or otherwise addressing Ecology's comments. The Port shall resubmit an electronic redlined/strikeout revised draft to Ecology for review and approval; and
- For the Work Plan and RI Data Report, once Ecology approves a draft it shall be considered the final version.

For the RI/FS Report only:

- The Port shall submit the RI/FS Report in two volumes. Volume 1, the RI Report, shall be submitted for Ecology review and approval prior to commencing substantive work on Volume 2, the FS Report. Once Ecology approves a draft of each volume as the final version of the RI/FS Report, it shall be considered the final draft for public review purposes (the public review draft or draft final document); and
- Following public review of the draft final document, the Port shall prepare and submit a final document for Ecology approval, which addresses public comment as Ecology determines necessary;
- Upon Ecology approval, the final draft RI/FS Report submitted shall be the final document;
- Ecology, in its discretion, and with assistance with the Port pursuant to the terms of the AO, may prepare a Responsiveness Summary to public comments.

SCHEDULE

The schedule for all tasks described in this SOW is presented below. If, at any time during the RI/FS process, unanticipated conditions or changed circumstances are discovered which may result in a schedule delay, the Port shall bring such information to the attention of Ecology. Pursuant to Section VIII.K of the AO, Ecology shall determine whether a schedule extension is warranted.

Completion times are calendar days. Any deadline which falls on a holiday or weekend shall be extended to next business day.

<u>RI/FS Actions</u>	<u>Completion Time</u>
Draft RI/FS Work Plan,	60 days from effective date of the AO
Final RI/FS Work Plan incorporating Ecology's comments	60 days from receipt of Ecology's final comments on Draft RI/FS Work Plan
Draft RI/FS Report	
<ul style="list-style-type: none"> • Volume 1, draft RI Report 	450 days from Ecology approval of the Final RI/FS Work Plan
<ul style="list-style-type: none"> • Volume 2, draft FS Report 	150 days from Ecology approval of the draft RI Report.
Draft RI/FS Report for Public Review incorporating Ecology's comments	30 days from Ecology approval of the draft FS Report
Final RI/FS Report incorporating Ecology's comments	60 days from the close of public comment period or from receipt of Ecology's comments in the event Ecology determines that changes are necessary due to public comment.
