

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

PORT OF BELLINGHAM

FIRST AMENDMENT TO
AGREED ORDER No. 6834

I. INTRODUCTION

Agreed Order No. DE 6834 (2009 Order), entered into by the State of Washington, Department of Ecology (Ecology) and the Port of Bellingham (Port) in 2009, requires the Port to perform a Remedial Investigation/Feasibility Study (RI/FS) at the Georgia-Pacific West Site (Site) generally located on the tidal flats of Bellingham Bay adjacent to the Whatcom Waterway in Bellingham, Washington, 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.

This First Amendment to the 2009 Order (First Amendment) requires that the Port perform an interim action to remove mercury contaminated soils and mercury contaminated building materials from the Caustic Plume Subarea; and remove petroleum contaminated soils from the Bunker C Subarea. The First Amendment also contemplates additional interim actions and sets out a process for approval of interim actions proposed by the Port.

II. JURISDICTION

This amendment to the 2009 Order is issued by Ecology pursuant to RCW 70.105D.050(1).

III. AMENDMENT

This amendment does not attempt to recite all the provisions of the 2009 Order. Provisions of the 2009 Order not specifically addressed in this amendment remain in full force and effect.

The 2009 Order is hereby amended as follows:

1. Section VI (Ecology Determinations) of the 2009 Order is amended to add the following determination in addition to the determinations already set forth:

E. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study or design of a cleanup action. The contaminated soil and building materials serve as sources of contaminants that continue to, or have the potential to migrate to groundwater and /or air (via soil vapor) and pose an ongoing threat to human health or the environment. Such circumstances warrant interim action consistent with WAC 173-340-430. Additional interim actions are contemplated for this Site and may be proposed by the Port in the future. Ecology will determine if any additional interim actions are warranted.

2. Section VII (Work to Be Performed) of the 2009 Order is hereby amended to add the following requirements in addition to those requirements already set forth:

D. Scope of Work and Schedule for Interim Action: The Port shall perform an interim action to remove mercury contaminated soils and mercury contaminated building materials from the Caustic Plume Subarea; and remove petroleum contaminated soils from the Bunker C Subarea, by implementing the attached Work Plan, Exhibit C. The interim action will be implemented according to the schedule contained in Exhibit C.

E. The Port may propose that additional interim actions be taken. Should Ecology determine a particular interim action proposed by the Port may be warranted, the Port will prepare and submit a work plan that includes a proposed scope of work and schedule (Work Plan). Interim action work plans are subject to public review and comment. Upon approval by Ecology following public review, the Work Plan becomes an integral and enforceable part of this Order, and the Port is required to perform the interim action according to the work plan and schedule contained therein.

3. In Section VIII.D (Terms and Conditions of Order, Designated Project Coordinators) the designation for Ecology's project coordinator is replaced as follows:

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4. Section VIII.P (Compliance with Applicable Laws) of the 2009 Order is replaced in its entirety by the following language:

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 the actions related to the RI/FS work required by this Order. The permits or specific federal, state or local requirements that the agency has determined are applicable to the specific interim action required by this Order and that are known at the time of entry of this Order have been identified in the Work Plan, Exhibit C. The permits or specific federal, state or local requirements applicable to any future interim action that Ecology may approve will be identified in the work plan for that interim action, which will be subject to public comment. Ecology's approval of any such work plan following public comment reflects Ecology's determination as to the permits or specific federal, state or local requirements that apply.

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 to the RI/FS work required by this Order. As to the specific interim action required by this Order, the exempt permits or approvals and the applicable substantive requirements of those permits or approvals, as they are known at the time of entry of this Order, have been identified in the Work Plan, Exhibit C. As to any future interim action that Ecology may approve, any exempt permits or approvals and the applicable substantive requirements of those permits or approvals will be identified in the work plan for that interim action, which will be subject to public comment. Ecology's approval of any such work plan following public comment reflects Ecology's determination on the substantive requirements that apply.

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 determine 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 they 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.

6. Exhibit C attached to this First Amendment shall hereby become Exhibit C to the 2009 Order. As such, it is an integral and enforceable part of the 2009 Order.

IV. SIGNATURE AUTHORITY

The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this First Amendment and to execute and legally bind such party to the same.

V. EFFECTIVE DATE

This First Amendment shall be effective upon execution by the Port and Ecology.

Effective date of this Order: _____

PORT OF BELLINGHAM

**STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY**

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