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**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

Bay Zinc Company, Inc.
301 West Charron
Moxee, WA 98936

NO. DE 02HWTRCR-4661

AGREED ORDER

AGREED ORDER

ATTORNEY GENERAL OF
WASHINGTON
Ecology Division
PO Box 40117
Olympia, WA 98504-0117
FAX: (360) 586-6760

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ATTACHMENTS

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I. JURISDICTION

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

II. DEFINITIONS

Unless otherwise specified, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms used in this Order. Additional definitions are as follows:

1. Agreed Order or Order means this Order issued under RCW 70.105D.050 and WAC 173-340-530. The term includes the text of this Order, all Attachments to this Order, and all Ecology-approved submittals required pursuant to this Order. Order Attachments and Ecology approved submittals are incorporated into this Order by this reference and are enforceable parts of this Order as if fully set forth herein.

2. Area of Concern ("AOC") means any area of the Facility where a release of dangerous constituents (including dangerous waste and hazardous substances) has occurred, is occurring, is suspected to have occurred, or threatens to occur.

3. Cleanup Action Plan ("CAP") means the document issued by Ecology under WAC 173-340-360 and WAC 173-340-380 which selects Facility specific corrective measures and specifies cleanup standards (cleanup levels, points of compliance and other requirements for the corrective measures.)

4. Cleanup Standards means the standards promulgated under RCW 70.105D.030(2)(e) and include: (1) hazardous substance concentrations (cleanup levels) that protect human health and the environment; (2) the location at the Facility where those cleanup levels must be attained (points of compliance); and (3) additional regulatory requirements that apply to a cleanup because of the type of action and/or the location of the Facility.

5. Corrective Action means any activities including investigations, studies, characterizations and corrective measures, including actions taken pursuant to Chapter

1 70.105D RCW and Chapter 173-340 WAC, undertaken in whole or in part to fulfill the
2 requirements of WAC 173-303-646.

3 6. Corrective Measure means any measure or action to control, prevent, or
4 mitigate releases and/or potential releases of dangerous constituents (including dangerous
5 waste and hazardous substances) reviewed and approved by Ecology for the Facility and set
6 forth in a facility specific CAP prepared in compliance with the requirements of Chapter 173-
7 340 WAC, including WAC 173-340-360. Corrective measures may include interim actions as
8 defined by Chapter 173-340 WAC. Interim actions will not necessarily be set forth in a facility
9 specific CAP.

10 7. Dangerous Constituent means any constituent identified in WAC 173-303-9905
11 or 40 CFR Part 264 Appendix IX, any constituent which caused a waste to be listed or
12 designated as dangerous under the provisions of Chapter 173-303 WAC, any constituent
13 defined as a hazardous substance at RCW 70.105D.020(7).

14 8. Dangerous Waste means any solid waste designated in WAC 173-303-070
15 through 173-303-100 as dangerous or extremely hazardous or mixed waste. Dangerous wastes
16 are considered hazardous substances under RCW 70.105D.020(7).

17 9. Dangerous Waste Constituent means any constituent listed in WAC 173-303-
18 9905 and any other constituent that has caused a waste to be a dangerous waste under Chapter
19 173-303 WAC.

20 10. Dangerous Waste Management Unit ("DWMU") is a contiguous area of land on
21 or in which dangerous waste is placed, or the largest area in which there is a significant
22 likelihood of mixing dangerous waste constituents in the same area, as defined in WAC 173-
23 303-040.

24 11. Facility means the plant site operated by Bay Zinc located at 301 West Charron
25 Road, Moxee, Washington, 98936 which is depicted in Attachment A and all property,
26 regardless of control, affected by releases or threatened releases of hazardous substances,

1 including dangerous wastes and dangerous constituents, at and from the plant site.

2 12. Feasibility Study ("FS") means the investigation and evaluation of potential
3 corrective measures performed in accordance with the FS requirements of WAC 173-340-350,
4 which includes the substantive requirements for a RCRA Corrective Measures Study, and
5 undertaken in whole or in part to fulfill the corrective action requirements of WAC 173-303-
6 646.

7 13. Permit or Permitting Requirement, unless otherwise specified, means the
8 requirements of Chapter 173-303 WAC for applying for, obtaining, maintaining, modifying,
9 and terminating dangerous waste management facility permits.

10 14. RCRA Facility Assessment ("RFA") means the Environmental Protection
11 Agency (EPA) conducted investigation of releases and potential releases at the Facility and the
12 information contained in the report entitled "Final RCRA Facility Assessment Report",
13 prepared by Booz Allen & Hamilton, dated November 20, 2000 ("RFA Report").

14 15. Release means any intentional or unintentional spilling, leaking, pouring,
15 emitting, emptying, discharging, injecting, pumping, escaping, leaching, dumping, or disposing
16 of dangerous waste or dangerous constituents into the environment. It also includes the
17 abandonment or discarding of barrels, containers, and other receptacles containing dangerous
18 waste or dangerous constituents and includes the definition of release in RCW
19 70.105D.020(20).

20 16. Remedial Investigation ("RI") means a facility wide investigation and
21 characterization performed in accordance with the requirements of Chapter 173-340 WAC,
22 which includes the substantive requirements for a RCRA facility investigation, undertaken in
23 whole or in part to fulfill the corrective action requirements of WC 173-303-646.

24 17. Solid Waste Management Unit ("SWMU") means any discernible location at a
25 dangerous waste management facility where solid wastes have been placed at any time,
26 irrespective of whether the location was intended for the management of solid or dangerous

1 waste. Such locations include any area at a dangerous waste management facility at which
2 solid wastes, including spills, have been routinely and systematically released and include
3 regulated units as defined by Chapter 173-303 WAC.

4 III. FINDINGS OF FACT

5 Ecology makes the following Findings of Fact.

6 1. Bay Zinc is a permitted Treatment, Storage, and Disposal ("TSD") facility that
7 has stored or handled the following hazardous wastes: steel mill flue dust (K061), incinerator
8 ash from the combustion of tires (D006 and D008), and filter cake that is characteristically
9 hazardous for lead and cadmium (D006 and D008). Pickle liquor (spent sulfuric acid, K062)
10 was also stored and used at the site.

11 2. Bay Zinc is and has been the operator of the Facility since 1972. Bay Zinc
12 purchased the present site from American Excelsior Company in 1971. American Excelsior
13 Company produced shredded cottonwood for apple and other fruit packaging material at the
14 Moxee Plant. Bay Zinc made plant modifications and began production of zinc soil
15 amendments in the fall of 1972.

16 3. Bay Zinc operated the Facility as a dangerous waste management facility on or
17 after November 19, 1980, the date which subjects facilities to RCRA permitting requirements,
18 including interim status requirements pursuant to Section 3005 of RCRA and implementing
19 regulations thereunder, and including authorized state regulations promulgated in Chapter 173-
20 303 WAC.

21 4. In April 1987, Bay Zinc submitted to EPA and to Ecology a Part B RCRA
22 permit application. In the application, Bay Zinc identified itself as storing the following
23 dangerous wastes at the Facility: steel mill flue dust (K061), incinerator ash from the
24 combustion of tires and filter cake that is characteristically hazardous for lead and cadmium
25 (D006 and D008) in a waste pile, tanks and containers (railroad cars).

26 5. On or about November 4, 1988, Bay Zinc was issued a final Joint Permit for the

1 Storage of Hazardous Wastes by EPA and Ecology.

2 6. On or about November 20, 2000, EPA issued a Final RCRA Facility
3 Assessment (RFA) Report for the Facility prepared by Booz Allen & Hamilton, Inc. The
4 purpose of an RFA is to identify those areas at the Facility where releases of hazardous
5 substances, as defined in RCW 70.105D.020(7), may have occurred or may be occurring.

6 7. Pursuant to the RFA Report and other information, Ecology has identified the
7 following SWMUs and Areas of Concern ("AOC") at the Facility: SWMUs – Rail spur area,
8 container storage area D, rail unloading area/waste loading chute, storage tanks A and B,
9 former waste pile, generator accumulation area, former pickle liquor tank, maintenance shop,
10 accumulation area. AOCs – railroad gate, along east fence, bone yard, near edge of access
11 road, back lot fill area, runoff at north edge of asphalt, western fence boundary, western runoff
12 area, runoff area near liquid fertilizer storage and loading/unloading area.

13 8. Releases and/or potential releases of hazardous substances including, but not
14 limited to lead, zinc, dioxin, and cadmium from SWMUs and AOCs at the Facility and in
15 immediately adjacent soils areas are documented in the RFA Report and by the results of
16 sampling undertaken by Linebach Funkhouser Inc. in February, March and April 2002 on
17 behalf of Teck Cominco American Incorporated, a prospective purchaser of equipment from
18 Bay Zinc.

19 9. Hazardous substances have been and may be released from the Facility into the
20 environment including near surface soils and soils immediately adjacent to the Facility.

21 IV. ECOLOGY DETERMINATIONS

22 1. Bay Zinc is a person within the meaning of RCW 70.105D.020(14).

23 2. Bay Zinc is the operator of a dangerous waste management facility that is
24 operating under RCRA permit No WAD027530526.

25 3. Certain waste and constituents found at the Facility are dangerous wastes and/or
26 dangerous constituents as defined by Chapter 173-303 WAC and Section II of this Order.

1 receive the material. Replacement fill for excavated areas will come from borrow areas to be
2 established on uncontaminated property.

3 3. A field professional will document the work performed by the soil excavation
4 contractor. The field professional will see that material is properly staged and manifested, and
5 will monitor health and safety procedures to assure compliance with a Health and Safety Plan
6 to be developed for the project. Confirmatory sampling for cadmium, lead and zinc will be
7 conducted throughout each of the excavated areas to document that the soil cleanup levels
8 specified in Section 6.0 of the CAP for those metals have been achieved. Confirmatory
9 sampling for dioxin will also be conducted in SWMU-1 (Rail Spur Area) where steel mill dust
10 (K061) was stored to document that the soil cleanup level for dioxin specified in Section 6.0 of
11 the CAP have been achieved.

12 4. Groundwater. A groundwater remediation system will be installed to treat,
13 properly dispose, and prevent migration of impacted groundwater. The groundwater recovery
14 system will be operated until the criteria for cleanup specified in Section 6.0 of the CAP have
15 been met for four (4) consecutive quarters. If, subsequent to shutdown of the recovery system,
16 groundwater concentrations of the substances listed in Table 1 in Section 6.0 of the CAP
17 remain below the cleanup levels for four (4) consecutive quarters and show no significant
18 increasing trends, groundwater remediation will be considered complete.

19 5. Bay Zinc shall comply with the Implementation Schedule as set forth in Section
20 10.0 of the CAP.

21 6. In accordance with WAC 173-340-840(5), environmental sampling data shall be
22 submitted in a format approved by Ecology.

23 7. Once approved or modified and approved in writing by Ecology, submittals are
24 incorporated by reference and become enforceable parts of this Order as if fully set forth
25 herein.

26 8. Bay Zinc shall notify Ecology's project manager in writing of any newly-

1 identified SWMUs, newly-discovered releases from known SWMUs, and newly-discovered
2 areas of concern at the Facility no later than thirty (30) days after discovery, and shall
3 investigate and report on these areas as directed by Ecology's project manager.

4 **VI. TERMS AND CONDITIONS OF ORDER**

5 1. Public Notice: WAC 173-340-600(11)(c) requires a thirty (30) day public
6 comment period before this Agreed Order becomes final. Ecology shall be responsible for
7 providing such public notice and reserves the right to modify or withdraw any provisions of
8 this Order should public comment disclose facts or considerations which indicate to Ecology
9 that the Order is inadequate or improper in any respect.

10 2. Remedial and Investigative Costs: Bay Zinc agrees to pay for costs incurred by
11 Ecology after the Effective Date of this Order. These costs shall include work performed by
12 Ecology or Ecology's contractors for investigations, remedial actions, oversight and
13 administration. Ecology costs shall include costs of direct activities and support costs of direct
14 activities as defined in WAC 173-340-550(2). Bay Zinc agrees to pay the required amount
15 within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a
16 summary of costs incurred, an identification of involved staff, and the amount of time spent by
17 involved staff members on the project. A general description of work performed will be
18 provided upon request. Itemized statements will be prepared quarterly. Failure to pay
19 Ecology's costs within thirty (30) days of receipt of the itemized statement of costs will result
20 in interest charges.

21 In order to assure these payments get to the proper staff as soon as possible, the address
22 for mailing via the post office is:

23 Washington State Department of Ecology
24 Cashiering Section
25 P.O. Box 5128
26 Lacey, WA 98509-5128

Alternatively, a check may be sent by a messenger/overnight delivery service to the

1 following address:

2 Washington State Department of Ecology
3 Cashiering Section
4 300 Desmond Drive
Lacey, WA 98503

5 Bay Zinc shall indicate on the check that it is for cost recovery on the Bay Zinc Facility.

6 3. Financial Assurance:

7 (a) Bay Zinc shall establish and maintain financial assurance for the ground water
8 remediation system operation, maintenance, and monitoring requirements that apply to work
9 performed following the completion of soil removal activities at the Facility pursuant to in
10 Section V of this Order. In the absence of detailed regulations, Federal Register/Vol. 51, No.
11 206/Friday, October 24, 1986/Proposed rules and Federal Register/Vol. 55, No. 145/Friday,
12 July 27, 1990/proposed Rules shall be used as guidance. Acceptable mechanisms include trust
13 funds, surety bonds guaranteeing performance, letters of credit, insurance, the financial test,
14 and corporate guarantee. Bay Zinc shall provide Ecology's project manager with
15 documentation of this financial assurance within one hundred twenty (120) days of the
16 completion of soil removal activities at the Facility. Bay Zinc shall adjust the financial
17 assurance coverage for changes in cost estimates and/or for inflation within thirty (30) days
18 after each anniversary of the date that the preceding costs were first prepared and shall provide
19 Ecology's project manager with documentation of the updated financial assurance. Financial
20 assurances may be discontinued if the groundwater monitoring tests show that groundwater
21 cleanup standards have been attained for four (4) consecutive quarters following shutdown of
22 the groundwater treatment system.

23 (b) Bay Zinc shall notify Ecology's project manager by certified mail of the
24 commencement of a voluntary or involuntary bankruptcy proceeding under Title 11, United
25 States Code, naming Bay Zinc, within ten (10) days after commencement of the proceeding. A
26 guarantor of a corporate guarantee must make such a notification if it is named as debtor as
required under the terms of the corporate guarantee.

1 (c) If Bay Zinc has established financial assurance for ground water remediation
2 system operation, maintenance, and monitoring with an acceptable mechanism, mentioned
3 above, it will be deemed to be without the required financial assurance or liability coverage in
4 the following instances:

- 5 (1) in the event of bankruptcy of the trustee or issuing institution;
6 (2) the authority of the trustee institution to act as trustee has been
7 suspended or revoked; or
8 (3) the authority of the institution issuing the surety bond, letter of credit or
9 insurance policy has been suspended or revoked.

10 (d) Bay Zinc must establish other financial assurance within sixty (60) days of
11 bankruptcy, or suspension/revocation of authority.

12 4. Designated Project Managers:

13 The project manager for Ecology is:

14 Name: Greg Caron, Site Manager
15 Address: 15 West Yakima Ave., Suite 200
Yakima WA 98902
16 Telephone: (509) 454-7893
17 FAX: (509) 575-2809
E-mail: grca461@ecy.wa.gov

18 The project manager for Bay Zinc is:

19 Name: Roy Funkhouser
20 Address: Linebach-Funkhouser, Inc.
4059 459 Shelbyville Road
Louisville, KY 40207
21 Telephone: (502) 895-5009
22 FAX: (502) 895-4005

23 The project manager(s) shall be responsible for overseeing the implementation of this
24 Order. To the maximum extent possible, communications between Ecology and Bay Zinc, and
25 all documents, including reports, approvals, and other correspondence concerning the activities
26 performed pursuant to the terms and conditions of this Order, shall be directed through the
project manager(s). Should Ecology or Bay Zinc change project manager(s), written

1 notification shall be provided to the other party at least ten (10) calendar days prior to the
2 change if possible. In the case of a change in project manager(s) by Bay Zinc, said change
3 shall not be effective until approved by Ecology and shall be deemed to be approved if
4 Ecology has not responded within ten (10) days of receipt of the written notice.

5 5. Performance. All work performed by Bay Zinc pursuant to this Order shall be
6 under the direction and supervision, as necessary, of a professional engineer or hydrogeologist,
7 or similar expert, with appropriate training, experience and expertise in hazardous waste
8 facility investigation and cleanup. Bay Zinc shall notify Ecology in writing as to the identity
9 of such engineer(s) or hydrogeologist(s), and of any contractors and subcontractors to be used,
10 in carrying out the terms of this Order, in advance of their involvement at the Facility and their
11 involvement is subject to the prior approval by Ecology. Approval shall be deemed to be
12 granted by Ecology if it has not responded within ten (10) days of receipt of the written notice.
13 Bay Zinc shall provide a copy of this Order to all agents, contractors and subcontractors
14 retained to perform work required by this Order and shall ensure that all work undertaken by
15 such agents, contractors and subcontractors will be in compliance with this Order. Except
16 where necessary to abate an emergency situation, Bay Zinc shall not perform any remedial
17 actions at the facility other than those required by this Order unless Ecology concurs, in
18 writing, with such additional remedial actions. WAC 173-340-400(6)(b)(i) requires that
19 "construction" performed on/at the Facility shall be under the supervision of a professional
20 engineer registered in Washington. Bay Zinc shall provide seven (7) days notice to Ecology's
21 project manager prior to conducting work activities that Ecology identifies on-site.

22 6. Access: Ecology or any Ecology authorized representative shall have the
23 authority to enter and freely move about the Facility at all reasonable times for the purposes of,
24 among other things, inspecting records, operation logs and contracts related to the work being
25 performed pursuant to this Order; reviewing the progress in carrying out the terms of this
26 Order; conducting such tests or collecting samples as Ecology or the project manager may

1 deem necessary; using a camera, sound recording, or other documentary type equipment to
2 record work done pursuant to this Order; and verifying the data submitted to Ecology by Bay
3 Zinc. By signing this Agreed Order, Bay Zinc agrees that this Order constitutes reasonable
4 notice of access, and agrees to allow access to the Facility at all reasonable times for purposes
5 of overseeing work performed under this Order. Ecology shall allow split or replicate samples
6 to be taken by Bay Zinc during an inspection unless doing so interferes with Ecology's
7 sampling. Bay Zinc shall allow split or replicate samples to be taken by Ecology and shall
8 provide seven (7) days notice before any sampling activity.

9 7. Public Participation: The parties shall follow the approved Public Participation
10 Plan attached as Attachment C to this Order.

11 8. Retention of Records: Bay Zinc shall preserve in a readily retrievable fashion,
12 during the pendency of this Order and for ten (10) years from the date of issuance by Ecology
13 of written notification that all requirements of this Order have been satisfactorily completed,
14 reports, documents, and underlying data in its possession relevant to this Order. Should any
15 portion of the work performed hereunder be undertaken through contractors or agents of Bay
16 Zinc, then Bay Zinc agrees to include in their contract with such contractors or agents a record
17 retention requirement meeting the terms of this paragraph.

18 9. Dispute Resolution: Bay Zinc may request Ecology to resolve disputes which
19 may arise during the implementation of this Order. Such requests shall be in writing and
20 directed to the signatory, or his/her successor(s), to this Order. Ecology resolution of the
21 dispute shall be binding and final. Bay Zinc is not relieved of any requirement of this Order
22 during the pendency of the dispute and remains responsible for timely compliance with the
23 terms of the Order unless otherwise provided by Ecology in writing.

24 10. Reservation of Rights/No Settlement: This Agreed Order is not a settlement
25 under Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a
26 covenant not to sue or a compromise of any Ecology rights or authority. Ecology will not,

1 however, bring an action against Bay Zinc to recover remedial action costs paid to and
2 received by Ecology under this Agreed Order. In addition, Ecology will not take additional
3 enforcement actions against Bay Zinc to require those remedial actions required by this Agreed
4 Order, provided Bay Zinc complies with this Order. Ecology reserves all rights, however, to
5 issue additional orders or take any action authorized by law in the event or upon the discovery
6 of a release or threatened release of hazardous substances not addressed by this Order, upon
7 discovery of any factors not known at the time of issuance of this Order in order to abate an
8 emergency, or to require additional remedial actions at this Facility should it deem such actions
9 necessary. Ecology also reserves all rights regarding the injury to, destruction of, or losses of
10 natural resources resulting from the releases or threatened releases of hazardous substances
11 from the Facility. In the event Ecology determines that conditions at the Facility are creating
12 or have the potential to create a threat to the health or welfare of the people at the Facility or in
13 the surrounding area or to the environment, Ecology may order Bay Zinc to stop further
14 implementation of this Order for such period of time as needed to abate the threat.

15 11. Transference of Interests in Property: Prior to any voluntary or involuntary
16 transfer or relinquishment of any interest (e.g. leasehold) in any portion of the Facility. Bay
17 Zinc shall provide for continued implementation of all requirements of this Order and
18 implementation of any remedial actions found to be necessary as a result of this Order. Prior to
19 transfer of any interest Bay Zinc may have in the Facility or any portions thereof, Bay Zinc
20 shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or
21 other successor in such interest. At least sixty (60) days prior to finalization of any transfer,
22 Bay Zinc shall notify Ecology of the contemplated transfer.

23 12. Compliance with Applicable Laws:

24 (a) All actions carried out by Bay Zinc pursuant to this Order shall be done in
25 accordance with all applicable federal, state, and local requirements, including requirements to
26 obtain necessary permits, except as provided in paragraph 12(b) of this subsection.

1 (b) Pursuant to RCW 70.105D.090(1), the substantive requirements of chapters
2 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing
3 local government permits or approvals for the remedial action under this Order that are known
4 to be applicable at the time of issuance of the Order are binding and enforceable requirements
5 of the Order. Bay Zinc has a continuing obligation to determine whether additional permits or
6 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
7 action under this Order. In the event Bay Zinc determines that additional permits or approvals
8 addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under
9 this Order, it shall promptly notify Ecology of this determination. Ecology shall determine
10 whether Ecology or Bay Zinc shall be responsible to contact the appropriate state and/or local
11 agencies. If Ecology so requires, Bay Zinc shall promptly consult with the appropriate state
12 and/or local agencies and provide Ecology with written documentation from those agencies of
13 the substantive requirements those agencies believe are applicable to the remedial action.
14 Ecology shall make the final determination on the additional substantive requirements that
15 must be met by Bay Zinc and on how Bay Zinc must meet those requirements. Ecology shall
16 inform Bay Zinc in writing of these requirements. Once established by Ecology, the additional
17 requirements shall be enforceable requirements of this Order. Bay Zinc shall not begin or
18 continue the remedial action potentially subject to the additional requirements until Ecology
19 makes its final determination. Ecology shall ensure that notice and opportunity for comment is
20 provided to the public and appropriate agencies prior to establishing the substantive
21 requirements under this section.

22 (c) Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
23 exemption from complying with the procedural requirements of the laws referenced in RCW
24 70.105D.090(1) would result in the loss of approval from a federal agency which is necessary
25 for the State to administer any federal law, the exemption shall not apply and Bay Zinc shall
26 comply with both the procedural and substantive requirements of the laws referenced in RCW

1 70.105D.090(1), including any requirements to obtain permits.

2 (d) Some requirements herein are based on the applicable requirements of Chapter
3 70.105 RCW and Chapter 173-303 WAC.

4 VII. STIPULATED PENALTIES

5 1. For each day Bay Zinc fails to comply with any time schedules contained within
6 Section V of this Agreed Order, or any other time schedules approved or modified in writing
7 by Ecology, Bay Zinc stipulates and agrees that Ecology may, at its discretion, assess a
8 stipulated penalty in an amount equal to \$100.00/day for the first through the fifteenth day of
9 violation and \$250.00/day thereafter. Should a stipulated penalty be assessed under this Part,
10 the penalty shall accrue from the date on which the work was to have been performed, or the
11 submittal was to have been made, and shall cease to accrue on the date when Bay Zinc
12 performs the required work or delivers the required submittal to Ecology. If imposed, all
13 stipulated penalties shall be payable within thirty (30) days of assessment to the Department of
14 Ecology, Cashiering Section, P.O. Box 5128, Lacey, WA 98503-0210. Stipulated penalties
15 may not be appealed to the Pollution Control Hearings Board. Any disputes arising over
16 Ecology's issuance of a stipulated penalty shall be addressed only under Section VI(9) of this
17 Order.

18 2. Bay Zinc shall not be liable for payment under this Section if it has submitted to
19 Ecology a timely request for an extension of schedules established in Section V of this Agreed
20 Order, and Ecology has not denied the request.

21 3. The stipulated penalties provisions of this Order do not preclude Ecology from
22 pursuing any other remedies or sanctions that may be available to Ecology based on Bay
23 Zinc's failure to comply with provisions of applicable law, except that issuance of stipulated
24 penalties pursuant to this section shall preclude Ecology from issuing civil penalties under
25 Chapter 70.105 RCW, or from requesting a court to impose civil penalties under Chapter
26 70.105D RCW, based upon the same facts underlying issuance of the stipulated penalty.

1 facsimile, the parties shall subsequently exchange by mail original counterpart versions.

2
3 **Bay Zinc Company, Inc.**

**State of Washington
Department of Ecology**

4
5 _____
6 By: Richard Camp, President
7 Dated: _____

8 _____
9 By: Brian R. Dick, Section Manager
10 Dated: _____

11 **HELLER EHRMAN WHITE & McAULIFFE**

**CHRISTINE O. GREGOIRE
ATTORNEY GENERAL**

12 _____
13 Matthew Cohen, WSBA #11232
14 Attorneys for Bay Zinc
15 Dated: _____


16 _____
17 Colleen G. Warren, WSBA #16506
18 Attorneys for Department of Ecology
19 Dated: _____

20 **Note: The original, signed documents are on file at:**
21 Washington Department of Ecology
22 central regional office
23 15 W. Yakima Ave, #200
24 Yakima, WA 98902-3452


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facsimile, the parties shall subsequently exchange by mail original counterpart versions.


Bay Zinc Company, Inc.


By: Richard Camp, President
Dated: Aug 30 2002

**State of Washington
Department of Ecology**


By: Brian R. Dick, Section Manager
Dated: 8/30/02

HELLER EHRMAN WHITE & McAULIFFE


Matthew Cohen, WSBA #11232
Attorneys for Bay Zinc
Dated: August 28, 2002

**CHRISTINE O. GREGOIRE
ATTORNEY GENERAL**

Colleen G. Warren, WSBA #16506
Attorneys for Department of Ecology
Dated: _____