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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

WA State Department
of Ecology (SWRO)

In the Matter of Remedial Action by:

AGREED ORDER

Portac, Inc. and Port of Tacoma

No. DE 11237

TO: Portac, Inc.
P.O. Box 3471
Redmond, Washington 98073-3471
Attn: Mr. Kenji Yamada, Secretary

Rob Healy
Senior Manager, Environmental Programs
Port of Tacoma
1 Sitecum Plaza
Tacoma, Washington 98421-3000

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology), Portac, Inc. and Port of Tacoma 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 Portac, Inc. and Port of Tacoma to complete a Remedial Investigation (RI) and prepare a Feasibility Study (FS). 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. Portac, Inc. and Port of Tacoma agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Portac, Inc. and Port of Tacoma's responsibility under this Order. Portac, Inc. and Port of Tacoma 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 RCW 70.105D and WAC 173-340 shall control the meanings of the terms in this Order.

A. Site: The Site is generally located at 4215 SR 509 E. Frontage Rd., Tacoma, WA 98421-3998. 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(8).

B. Parties: Refers to the State of Washington, Department of Ecology, Portac, Inc., and Port of Tacoma.

C. Potentially Liable Person (PLP): Refers to Portac, Inc. and Port of Tacoma.

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 PLPs:

A. The Site consists of a 30-acre paved former log yard, and an adjacent former sawmill area adjoining Wapato Creek in the Commencement Bay tide flats area. At the former log yard, slag from the former Asarco smelter was used as ballast to form road beds. An investigation of the former log yard conducted by the State of Washington under authority of RCW 90.48 in the early 1980s showed that bark/slag surficial fill materials were releasing chemicals that were migrating into surface waters. The principal contaminants migrating from ballast materials were heavy metals, including: Arsenic, Copper, Lead, and Zinc. Analysis of soils and ballast materials indicated the presence, at that time, of these contaminants at concentrations that would exceed current MTCA cleanup levels. Portac, Inc. and/or its predecessor(s) in interest, operated the former log yard and sawmill at the Site during the time of the release. The Port of Tacoma owned the Site during the time of the release, and has maintained ownership.

B. Pursuant to a 1988 Order on Consent under RCW 90.48, the PLPs agreed to pave the former log yard to abate metals contamination of surface water runoff to Wapato Creek and Blair Waterway.

C. Although the primary purpose for paving the former log yard was to mitigate surface water metals contamination, the action was also expected to protect against groundwater

contamination by preventing surface water infiltration and associated mobilization of metals. Site groundwater is hydraulically connected with, and flows into, Wapato Creek. Wapato Creek in turn flows into the Blair Waterway of Commencement Bay in Puget Sound.

D. In addition to paving the former log yard, the PLPs also agreed to conduct groundwater monitoring twice a year for three years after paving to verify that metals concentrations in the groundwater did not worsen as a result of paving. A report prepared by Hart-Crowser for the Port of Tacoma in June 1992 entitled, "Final Report, Groundwater Quality Monitoring Program, Portac Log Sort Yard Remediation, Tacoma, Washington" indicated levels of arsenic in groundwater did not increase as a result of paving. However, groundwater concentrations would exceed current MTCA cleanup levels. Thus, the 1992 groundwater monitoring data showed that hazardous substances had been released to groundwater at concentrations in excess of current MTCA groundwater cleanup levels.

E. A restrictive (environmental) covenant is not currently in place to ensure the maintenance of the pavement cap at the Site. In addition, groundwater monitoring under the RCW 90.48 Order on Consent did not confirm that current MTCA cleanup levels were met at a conditional point of compliance, as would be required under current MTCA rules. Current MTCA rules require confirmational monitoring and institutional controls.

F. In 2009, Portac, Inc. entered into Ecology's Voluntary Cleanup Program (VCP) to address the release of toxic substances (pentachlorophenol into the soil and groundwater) within the former sawmill area. A number of Ecology's concerns regarding the former sawmill were addressed as a part of this VCP process; however, the Whitman Environmental Sciences (WES) report entitled "Log Yard Ramp Demolition" of January 16, 2009 indicates that contaminated slag and soils were detected in the area of the ramp connecting the sawmill area to the log yard area. The contaminated slag and soils encountered during excavation were properly excavated and disposed of, but some slag remained. The WES Groundwater Monitoring reports also indicated the presence of pentachlorophenol above current cleanup standards in one well. As a result of this

information, Ecology now considers the Site to encompass the former log yard, former saw mill, and any adjacent areas that may be affected by chemicals of concern related to those two areas.

VI. ECOLOGY DETERMINATIONS

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by the PLPs.

A. Each PLP is an “owner or operator” as defined in RCW 70.105D.020(22) of a “facility” as defined in RCW 70.105D.020(8).

B. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(32) and (13), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to Portac, Inc. dated June 27, 2013, pursuant to RCW 70.105D.040, .020(26), 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 Portac, Inc. is a PLP under RCW 70.105D.040 and notified Portac, Inc. of this determination by letter dated September 12, 2013.

D. Based upon credible evidence, Ecology issued a PLP status letter to Port of Tacoma dated June 27, 2013, pursuant to RCW 70.105D.040, .020(26), 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 Port of Tacoma is a PLP under RCW 70.105D.040 and notified Port of Tacoma of this determination by letter dated September 12, 2013.

E. Pursuant to RCW 70.105D.030(1) and .050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest. Specifically, groundwater evaluation is warranted to determine whether capping of the

slag source material is a sufficiently protective remedy to satisfy current MTCA cleanup levels at appropriate points of compliance.

F. 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 plan. Any Party may propose an interim action under this Order. If all the Parties are in agreement concerning the interim action, the Parties will follow the process in Section VII.E. No interim action will become part of this Order if any of the Parties disagree to such proposed interim action. Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70.105D, or to undertake the interim action itself.

VII. WORK TO BE PERFORMED

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

A. The Scope of Work required by this Agreed Order is further detailed and set forth as Exhibit B, attached below. The deliverables of the Scope of Work consist of the following:

1. **Data Gaps Memorandum**
2. **Draft Remedial Investigation (RI) Work Plan**
3. **Final RI Work Plan**
4. **Draft RI Report**
5. **Final RI Report**
6. **Draft Feasibility Study (FS) Technical Memorandum**
7. **Final FS Technical Memorandum**
8. **Draft RI/FS**
9. **Final RI/FS**
10. **Environmental Information Management (EIM) Data Submittal**

Ecology approval of all deliverables is required to be achieved by the PLPs.

B. The Schedule for Ecology receipt of the Scope of Work deliverables is set forth in Exhibit C to this Order.

C. For all field sampling to occur under this agreed order, the PLPs are required to develop a sampling and analysis plan, for Ecology's review and approval, and a health and safety plan, for Ecology's review and comment, per WAC 173-340-350(7)(c)(iv).

D. All plans or other deliverables submitted by the PLPs for Ecology's review and approval under the Scope of Work and Schedule (Exhibits B and C) shall, upon Ecology's approval, become integral and enforceable parts of this Order.

E. If all the Parties agree on an interim action under Section VI.F, the PLPs shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and

schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). The PLPs shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and the PLPs are required to conduct the interim action in accordance with the approved Interim Action Work Plan.

F. If Ecology determines that the PLPs have failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to Portac, Inc. and Port of Tacoma, perform any or all portions of the remedial action or at Ecology's discretion allow the PLPs opportunity to correct. The PLPs shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

G. Except where necessary to abate an emergency situation, the PLPs 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.

VIII. TERMS AND CONDITIONS

A. Remedial Action Costs

The PLPs 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 RCW 70.105D, 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 \$35,624.61 in remedial action costs related to this Site as of September 30, 2015. Payment for this amount shall be submitted within thirty (30) days of the effective date of this Order. For all costs incurred subsequent to September 30, 2015, the PLPs 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.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70.105D.055, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

B. Designated Project Coordinators

The project coordinator for Ecology is:

Andrew Smith, P.E., LHG
Ecology Southwest Regional Office
300 Desmond Dr.
Lacey, WA 98503
360-407-6316

The project coordinator for the Port of Tacoma is:

Rob Healy
Senior Manager, Environmental Programs
Port of Tacoma
1 Sicum Plaza
Tacoma, Washington 98421-3000
253-428-8643

The project coordinator for Portac, Inc. is:

Kenji Yamada
Secretary
P.O. Box 3471
Redmond, WA 98073-3471
206-359-8662

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 the Parties, 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 Parties at least ten (10) calendar days prior to the change.

C. Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct supervision of an engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43 and 18.220.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered by 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 by 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 RCW 18.43 and 18.220.

The PLPs 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.

D. Access

The Port of Tacoma currently owns, controls, and has all access rights to the Site. The Port of Tacoma grants Ecology or any Ecology authorized representative access to enter and freely move about all property at the Site at all reasonable times for the purposes of, among other things:

inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the PLPs' 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 PLPs. Portac, Inc. and Port of Tacoma shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by Portac, Inc. and/or Port of Tacoma 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 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.

E. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the PLPs 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 PLPs shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the PLPs pursuant to implementation of this Order. The PLPs shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the PLPs and/or their respective 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.D (Access),

Ecology shall notify the PLPs 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 WAC 173-50 for the specific analyses to be conducted, unless otherwise approved by Ecology.

F. Public Participation

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 this 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.

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

1. If agreed to by Ecology, develop appropriate mailing lists and 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 PLPs 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 PLPs that do not receive prior Ecology approval, the PLPs shall clearly indicate to the 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 presenters.

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. Tacoma Main Library
1102 Tacoma Avenue South
Tacoma, WA 98402
(253) 591-5666
- b. Citizens for a Healthy Bay
535 Dock Street, Suite 213
Tacoma, WA 98402
(253) 383-2429
- c. Ecology's Southwest Regional Office
300 Desmond Dr.
Lacey, WA 98503
(360) 407-6300

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Site shall be maintained in the repository at Ecology's Southwest Regional Office in Lacey, Washington.

G. 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, each PLP shall preserve all records, reports, documents, and underlying data in each of 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 PLPs shall make all records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right the PLPs may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the

attorney-client privilege. If either PLP withholds any requested records based on an assertion of privilege, that PLP shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

H. Resolution of Disputes

1. In the event that one or both PLPs elects to invoke dispute resolution, the procedure set forth below must be utilized.

a. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), the PLP(s) have fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute ("Informal Dispute Notice").

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The Parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision ("Informal Dispute Decision") stating: the nature of the dispute; the Portac, Inc. and/or Port of Tacoma's position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

c. The PLP(s) may then request regional management review of the dispute. This request ("Formal Dispute Notice") must be submitted in writing to the Southwest Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

d. The Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute ("Decision on Dispute") within thirty (30) calendar

days of receipt of the Formal Dispute Notice. The Decision on Dispute 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 case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section VII.F (Work to be Performed) or initiating enforcement under Section X (Enforcement).

I. 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 PLPs 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 PLPs 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 PLPs;

- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII.K (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 Portac, Inc. and Port of Tacoma.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the PLPs 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.J (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.K (Endangerment).

J. 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.L (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 all the Parties. The PLPs 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.H (Resolution of Disputes).

K. Endangerment

In the event Ecology determines that any activity being performed at the Site under this Order 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 PLPs to cease such activities for such period of time as it deems necessary to abate the danger. The PLPs shall immediately comply with such direction.

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

If Ecology concurs with or orders a work stoppage pursuant to this section, the PLPs' 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.I (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.

L. Reservation of Rights

This Order is not a settlement under RCW 70.105D. 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 PLPs 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 PLPs regarding remedial actions required by this Order, provided the PLPs comply with this Order.

Ecology nevertheless reserves its rights under RCW 70.105D, including the right to issue new Orders requiring additional or different remedial actions at the Site should it deem such actions necessary to protect human health and the environment. 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.

By entering into this Order, neither PLP admits to any liability for the Site. Although the PLPs are committing to conduct the work required by this Order under the terms of this Order, each PLP expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties or the other PLP and the right to assert any defenses to liability in the event of enforcement.

M. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the Port of Tacoma 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 of Tacoma's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the Port of Tacoma 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 of Tacoma shall notify Ecology of said transfer. Upon transfer of any interest, Portac, Inc. and Port of Tacoma shall notify all transferees of the

restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

N. Compliance with Applicable Laws

1. All actions carried out by the PLPs 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 required by this Order.

2. Pursuant to RCW 70.105D.090(1), the PLPs are exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, the PLPs 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 PLPs have 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 any of the Parties 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 Parties of its determination. Ecology shall determine whether Ecology or the PLPs shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the PLPs 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 PLPs and on how the PLPs must meet those requirements. Ecology shall inform the PLPs in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The PLPs 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 PLPs 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.

O. Indemnification

Each PLP agrees to indemnify and save and hold the State of Washington-Department of Ecology, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of negligent acts or omissions of such PLP, its officers, employees, agents, or contractors in entering into and implementing this Order. The Port of Tacoma will not be responsible to indemnify, save and hold harmless the State of Washington-Department of Ecology from any and all such claims or causes of action to the extent arising from or on account of negligent acts or omissions of Portac, Inc. Portac, Inc. will not be responsible to indemnify, save and hold harmless the State of Washington-Department of Ecology from any and all such claims or causes of action to the extent arising from or on account of negligent acts or omissions of the Port of Tacoma. The PLPs also shall not indemnify the State of Washington-Department of Ecology 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-Department of Ecology, 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 PLPs' receipt of written notification from Ecology that the PLPs have completed the remedial activity required by this Order, as amended by any modifications, and that the PLPs have 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. A liable party who refuses, without sufficient cause, to comply with any term of this Order 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.

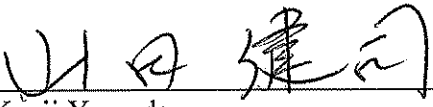
2. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board.

This Order may be reviewed only as provided under RCW 70.105D.060.

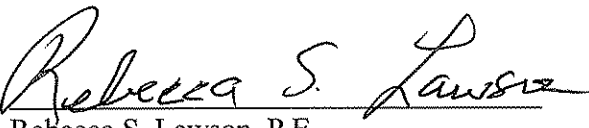
Effective date of this Order: April 12, 2016

Portac, Inc.



Kenji Yamada
P.O. Box 3471
Redmond, WA 98073-3471
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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



Rebecca S. Lawson, P.E.
Section Manager
Toxics Cleanup Program
Southwest Regional Office
Telephone: 360-407-6316

Port of Tacoma

John Wolfe
Chief Executive Officer
(253) 592-6710

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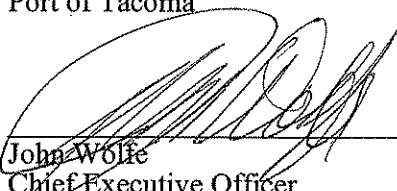
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1-29-16

Exhibit A – Site Diagram



EXHIBIT A
SITE DIAGRAM

Exhibit B - Scope of Work

This statement of work describes the work to be performed and the deliverables to be submitted to Ecology to satisfy the conditions of Agreed Order No. DE-11237 for completion of a Remedial Investigation and Feasibility Study (RI/FS) at the former Portac, Inc. site in Tacoma.

- **Data Gaps Memorandum**

- Submit **Data Gaps Memorandum** to Ecology within 30 days after effective date of the Agreed Order. The **Data Gaps Memorandum** will include the following information to inform the development of the **Draft RI Work Plan**:
 - Updates to existing base map
 - Summary of site setting, including land use and geologic and hydrogeologic setting
 - Summary of previous investigation and remediation activities
 - Summary and evaluation of existing soil, groundwater and sediment data relative to current MTCA and SMS cleanup standards and other applicable state and federal laws
 - Conditions assessment of existing groundwater monitoring wells
 - Discussion of additional data needs for completion of an RI/FS consistent with the requirements WAC 173-340-350
 - Recommended investigation tasks to satisfy identified RI/FS data needs
- Ecology comments on the **Data Gaps Memorandum** will be used in development of the **Draft RI Work Plan** (i.e., the **Data Gaps Memorandum** will not be revised).

- **Draft RI Work Plan**

- Submit a **Draft RI Work Plan** within 60 days after receipt of final Ecology comments on the **Data Gaps Memorandum**. The **Draft RI Work Plan** shall include the following information:

- Updated analysis of existing information and RI/FS data needs summarized in the Data Gaps Memorandum, as well as, addressing Ecology comments on the **Data Gaps Memorandum**
 - A **Sampling and Analysis Plan and Quality Assurance Project Plan** meeting the requirements of WAC 173-340- 820 shall be attached to the **Draft RI Work Plan**
 - A **Health and Safety Plan** meeting the requirements of WAC 173-340- 810 shall be prepared and submitted to Ecology for review.
- **Final RI Work Plan**
 - Submit a **Final RI Work Plan** within 45 calendar days after receipt of final Ecology comments on **Draft RI Work Plan**
- **Field Investigation Activities**
 - Complete all **Field Investigation Activities** consistent with the scope and schedule as contained in the **Final RI Work Plan**, unless Ecology approves an alternate schedule.
 - **Preliminary Data** shall be transmitted to Ecology in batches, within 60 days of receipt of each batch of validated data from closely-spaced **Field Investigation Activities**.
 - Batches of **Preliminary Data** shall be submitted at least once per quarter during completion of **Field Investigation Activities**.
 - Transmittals of **Preliminary Data** shall include, at a minimum, laboratory reports and chain of custody forms.
- **Draft RI Report**

- Submit a Draft RI Report within 90 calendar days after receipt of final validated data from all **Field Investigation Activities**
 - The **Draft RI Report** shall be prepared consistent with the requirements of WAC 173-340-350 and shall describe the nature and extent of site-associated contamination.
 - The **Draft RI Report** shall include copies of all relevant analytical data and other information used in its preparation.
 - Ecology comments on the **Draft RI Report** will be used in development of the **RI/FS**. The RI Report will also be finalized and submitted with the draft RI/FS.
- **Draft FS Technical Memorandum**
 - Submit a **Draft FS Technical Memorandum** within 90 calendar days after receipt of final validated data from all Field Investigation Activities (i.e., concurrent with the **Draft RI Report**). The **Draft FS Technical Memorandum** shall contain the following information:
 - Preliminary Cleanup Standards including potentially applicable Cleanup Levels and Points of Compliance
 - Screening of potentially applicable remedial technologies
 - Development of 3 or more remedial alternatives to be carried forward into the **RI/FS** for evaluation against MTCA requirements
 - Ecology comments on the **Draft FS Technical Memorandum** will be used in development of the **RI/FS**. The **Draft FS Technical Memorandum** will also be finalized and submitted with the draft RI/FS).
- **Draft RI/FS**
 - Submit a **Draft RI/FS** within 90 calendar days after receipt of final Ecology comments on **Draft RI Report** and **Draft FS Technical Memorandum** (90

calendar day period begins after receipt of the later of final Ecology comments on **Draft RI Report or Draft FS Technical Memorandum**).

- Comments received from Ecology on the **Draft RI Report and Draft FS Technical Memorandum** shall be addressed in the **Draft RI/FS**.
 - The **Draft RI/FS** will comply with WAC 173-340-350.
 - The **Draft RI/FS** will include a comparative evaluation of remedial alternatives consistent with the requirements of WAC 173-340-360(3)(e).
- **Final RI/FS**
 - Submit a **Final RI/FS** within 60 days after receipt of final Ecology comments on **Draft RI/FS**.
 - **Environmental Information Management (EIM) Data Submittal**
 - At the time the **Final RI/FS** is submitted to Ecology, all analytical data collected during completion of this Agreed Order and used to prepare the RI/FS shall be submitted to Ecology electronically consistent with Ecology's EIM data submittal requirements.

Exhibit C - Schedule

1. **Data Gaps Memorandum:** Within 30 days of the Effective Date of the Agreed Order.
2. **Draft RI Work Plan:** Within 60 days of receipt of Ecology's comments on the Data Gaps Memorandum.
3. **Final RI Work Plan:** Within 45 days of receipt of final Ecology comments on the Draft RI Work Plan.
4. **Field Investigation Activities:** To be completed consistent with the schedule defined in the Final RI Work Plan unless Ecology approves an alternate schedule. Preliminary data to be transmitted in batches to Ecology within 60 days of receipt of validated data, at a minimum once per quarter.
5. **Draft RI Report:** Within 90 days of receipt of final validated data from Field Investigation Activities.
6. **Draft FS Technical Memorandum:** Within 90 days of receipt of final validated data from Field Investigation Activities (in parallel with the Draft RI Report).
7. **Final RI Report:** Within 90 days of receipt of final Ecology comments on the Draft RI Report.
8. **Final FS Technical Memorandum:** Within 90 days of receipt of final Ecology comments on the Draft FS Technical Memorandum.
9. **Draft RI/FS:** Within 90 days of receipt of final Ecology comments on both the Draft RI Report and draft FS Technical Memorandum.
10. **Final RI/FS:** Within 60 days of receipt of Ecology's final comments on the Draft RI/FS.
11. **EIM Data Submittal:** Due when the Final RI/FS is submitted to Ecology.