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STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

PORT OF TACOMA, a municipal
corporation,

Defendant.

NO. _____

CONSENT DECREE

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1 I. INTRODUCTION

2 A. The mutual objective of the State of Washington, Department of Ecology
3 (Ecology) and Port of Tacoma (the "Port") under this Decree is to provide for remedial action
4 at a facility where there has been a release or threatened release of hazardous substances. This
5 Decree supersedes the previous consent decree for the Site, Pierce County Cause No. 90-2-
6 06209-6, and requires Defendant to implement the Cleanup Action Plan attached hereto as
7 Exhibit B.

8 B. Ecology has determined that these actions are necessary to protect human health
9 and the environment.

10 C. The Complaint in this action is being filed simultaneously with this Decree. An
11 Answer has not been filed, and there has not been a trial on any issue of fact or law in this case.
12 However, the Parties wish to resolve the issues raised by Ecology's Complaint. In addition,
13 the Parties agree that settlement of these matters without litigation is reasonable and in the
14 public interest, and that entry of this Decree is the most appropriate means of resolving these
15 matters.

16 D. By signing this Decree, the Parties agree to its entry and agree to be bound by
17 its terms.

18 E. By entering into this Decree, the Parties do not intend to discharge non-settling
19 parties from any liability they may have with respect to matters alleged in the Complaint. The
20 Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for
21 sums expended under this Decree.

22 F. This Decree shall not be construed as proof of liability or responsibility for any
23 releases of hazardous substances or cost for remedial action nor an admission of any facts;
24 provided, however, that the Port shall not challenge the authority of the Attorney General and
25 Ecology to enforce this Decree.
26

1 G. The Court is fully advised of the reasons for entry of this Decree, and good
2 cause having been shown:

3 Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

4 **II. JURISDICTION**

5 A. This Court has jurisdiction over the subject matter and over the Parties pursuant
6 to the Model Toxics Control Act (MTCA), RCW 70.105D.

7 B. Authority is conferred upon the Washington State Attorney General by
8 RCW 70.105D.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if,
9 after public notice and any required hearing, Ecology finds the proposed settlement would lead
10 to a more expeditious cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that
11 such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

12 C. Ecology has determined that a release or threatened release of hazardous
13 substances has occurred at the Site that is the subject of this Decree.

14 D. Ecology has given notice to the Port of Ecology's determination that the Port is
15 a PLP for the Site, as required by RCW 70.105D.020(26) and WAC 173-340-500.

16 E. The actions to be taken pursuant to this Decree are necessary to protect public
17 health and the environment.

18 F. This Decree has been subject to public notice and comment.

19 G. Ecology finds that this Decree will lead to a more expeditious cleanup of
20 hazardous substances and provide for remedial action at the Site in compliance with the
21 cleanup standards established under RCW 70.105D.030(2)(e) and WAC 173-340. The Port
22 has agreed to undertake the actions specified in this Decree and consents to the entry of this
23 Decree under MTCA.

24 **III. PARTIES BOUND**

25 This Decree shall apply to and be binding upon the Parties to this Decree, their
26 successors and assigns. The undersigned representative of each party hereby certifies that he

1 or she is fully authorized to enter into this Decree and to execute and legally bind such party to
2 comply with this Decree. The Port agrees to undertake all actions required by the terms and
3 conditions of this Decree. No change in ownership or corporate status shall alter the Port's
4 responsibility under this Decree. The Port shall provide a copy of this Decree to all agents,
5 contractors, and subcontractors retained to perform work required by this Decree, and shall
6 ensure that all work undertaken by such agents, contractors, and subcontractors complies with
7 this Decree.

8 IV. DEFINITIONS

9 Unless otherwise specified herein, all definitions in RCW 70.105D.020 and
10 WAC 173-340-200 shall control the meanings of the terms in this Decree.

11 A. Site: The Site is referred to as Port of Tacoma Kaiser site and is generally
12 located at 3400 Taylor Way, Tacoma, Washington. The Site is more particularly described in
13 the Site Diagram (Exhibit A). The Site constitutes a facility under RCW 70.105D.020(8).

14 B. Wet Scrubber Sludge Management Area: Refers to the area of the Site where
15 Kaiser historically disposed of sludge from air emissions equipment and which was remediated
16 pursuant to the previous consent decree for the Site, Pierce County Cause No. 90-2-06209-6.

17 C. Wet Scrubber Sludge Management Area Consent Decree: Refers to the previous
18 consent decree for the Site, Pierce County Cause No. 90-2-06209-6.

19 D. Parties: Refers to the State of Washington, Department of Ecology and the Port
20 of Tacoma.

21 E. Port: Refers to the Port of Tacoma.

22 F. Consent Decree or Decree: Refers to this Consent Decree and each of the
23 exhibits to this Decree. All exhibits are integral and enforceable parts of this Consent Decree.
24 The terms "Consent Decree" or "Decree" shall include all exhibits to this Consent Decree.

25 G. Closure: Refers to the requirements placed on all treatment, storage and
26 disposal facilities to ensure that such facilities are closed in an acceptable manner, and, once

1 taken out of service, that the proper cleanup and/or decontamination is provided for dangerous
2 waste management units and any area affected by releases from such units.

3 H. Corrective Action: Refers to any activities including investigations, studies,
4 characterizations, and corrective measures, including actions taken pursuant to RCW 70.105D
5 and WAC 173-340, undertaken in whole or in part to fulfill the requirements of
6 WAC 173-303-64620.

7 I. Corrective Measure: Refers to any measure or action to control, prevent, or
8 mitigate release(s) and/or potential release(s) of dangerous constituents (including dangerous
9 waste and hazardous substances) reviewed and approved by Ecology for the Facility and set
10 forth in a Facility-specific CAP prepared in compliance with the requirements of
11 WAC 173-340, including WAC 173-340-360. Corrective measures may include interim
12 actions as defined by WAC 173-340. Interim actions will not necessarily be set forth in a
13 Facility-specific Cleanup Action Plan (CAP).

14 J. Dangerous Constituent or Dangerous Waste Constituent: Refers to any
15 constituent identified in WAC 173-303-9905 or 40 C.F.R. part 264, appendix IX; any
16 constituent that caused a waste to be listed or designated as dangerous under the provisions of
17 WAC 173-303; and any constituent defined as a hazardous substance under
18 RCW 70.105D.020(13).

19 K. Dangerous Waste: Refers to any solid waste designated in WAC 173-303-070
20 through -100 as dangerous or extremely hazardous or mixed waste. Dangerous wastes are
21 considered hazardous substances under RCW 70.105D.020(13).

22 L. Dangerous Waste Management Facility: Used interchangeably in this
23 document with the term "Facility."

24 M. Dangerous Waste Management Unit (DWMU): Refers to a contiguous area of
25 land on or in which dangerous waste is placed, or the largest area in which there is a significant
26

1 likelihood of mixing dangerous waste constituents in the same area, as defined in
2 WAC 173-303-040.

3 N. Facility: Refers simultaneously to (i) the area depicted in Exhibit A and
4 consistent with the definition in RCW 70.105D.020(8) and (ii) the Spent Pot Lining Area
5 DWMU controlled by the Port; all property contiguous to the DWMU also controlled by the
6 Port; and all property, regardless of control, affected by release(s) or threatened release(s) of
7 hazardous substances, including dangerous wastes and dangerous constituents, at and from
8 these areas. "Facility" and "Site" shall have the same meaning for purposes of this Decree.

9 O. Cleanup Action Plan (CAP): Refers to the document issued by Ecology under
10 WAC 173-340-360 which selects Facility-specific corrective measures and specifies cleanup
11 standards (cleanup levels, points of compliance, and other requirements for the corrective
12 measures). Attached as Exhibit B. The CAP and any attachments to the CAP are integral and
13 enforceable parts of this Decree.

14 P. Regulated Unit: Refers to any new or existing surface impoundment, landfill,
15 land treatment area or waste pile that received any dangerous waste regulated by 40 C.F.R.
16 Part 261 after July 26, 1982.

17 Q. Remedial Action: Refers to remedial action as that term is defined under
18 WAC 173-340 and shall also include Corrective Action, Corrective Measures and Post-Closure
19 Care as defined in WAC 173-303.

20 R. RCRA: Refers to the Resource Conservation and Recovery Act,
21 42 U.S.C. §§ 6901-6992k.

22 S. Solid Waste Management Unit (SWMU): Refers to any discernible location at
23 the Dangerous Waste Management Facility where solid wastes have been placed at any time,
24 irrespective of whether the location was intended for the management of solid or dangerous
25 waste. Such locations include any area at the Dangerous Waste Management Facility at which
26

1 | solid wastes, including spills, have been routinely and systematically released, and include
2 | regulated units as defined by WAC 173-303.

3 | **V. FINDINGS OF FACTS**

4 | Ecology makes the following findings of fact without any express or implied
5 | admissions of such facts by the Port.

6 | A. The Site encompasses approximately 96 acres of the Blair-Hylebos Peninsula in
7 | Tacoma, Washington. See Exhibit A. The Hylebos Waterway is located northeast and the
8 | Blair Waterway is located to the southwest of the Site. From 1941 to 1947, the Department of
9 | Defense built and operated an aluminum smelter at the Site. In 1947, Kaiser Aluminum &
10 | Chemical Corporation (Kaiser) purchased the Site and operated the aluminum production
11 | facility until 2001. In 2002, Kaiser closed the plant and, in 2003, the Port purchased the
12 | smelter property from Kaiser for redevelopment. Between 2003 and 2010, the Port demolished
13 | the smelter complex, shipped thousands of tons of waste to approved disposal or treatment
14 | facilities, and placed a 2- to 6-foot-thick layer of structural fill on approximately 80 of the 96
15 | acres.
16 |
17 |

18 | B. Prior to 1974 Kaiser controlled air emissions from the plant with a wet scrubber.
19 | Particulate emissions captured by the scrubber were consolidated into a sludge, and disposed of
20 | in an area west of the plant (the Wet Scrubber Sludge Management Area) depicted on
21 | Exhibit A. Between 1950 and 1974 Kaiser disposed of approximately 82,000 cubic yards of
22 | wet scrubber sludge on the Site.
23 |

24 | 1. The wet scrubber sludge disposed of on the Site contained carcinogenic
25 | polynuclear aromatic hydrocarbon (cPAH) compounds. Chemical analyses performed
26 |

1 by Ecology in 1989 determined that the wet scrubber sludge would designate as
2 dangerous waste under former (then applicable) WAC 173-303-103(2)(b)(ii).

3 2. From 1983-1987, Ecology and Kaiser conducted extensive studies on
4 the Site, similar to site hazard assessment and remedial investigation studies under
5 MTCA. The studies showed that the wet scrubber sludge had not impacted, and was
6 not likely to impact, groundwater quality in either the shallow or the deeper aquifer
7 systems.
8

9 3. In 1990 Kaiser and Ecology entered into the Wet Scrubber Sludge Area
10 Consent Decree and cleanup action plan requiring Kaiser to consolidate the wet
11 scrubber sludge in the area depicted in Exhibit A and perform monitoring. Remedial
12 construction on the wet scrubber sludge area was completed in 1992. Groundwater
13 monitoring, covering 21 years after completion of the Wet Scrubber Sludge Area
14 cleanup action implementation, showed no detections of cPAHs.
15

16 C. During Kaiser's operations on the Site, portions of the site known as the Spent
17 Pot Lining (SPL) area and Building 65 became subject to Resource Conservation and
18 Recovery Act (RCRA) permit requirements applicable to owners or operators of facilities that
19 treat, store or dispose of hazardous waste. With the enactment of RCRA § 3005(e),
20 42 U.S.C. § 6925(e), facilities such as the Kaiser facility, which were in existence as of
21 November 1980, were to be treated as though they had been issued a permit until final
22 administrative action was taken on their permit applications. This statutory grant of a permit is
23 referred to as "interim status." The Environmental Protection Agency's (EPA's) interim status
24 regulations are found in Part 270, Subpart G, and Part 265. EPA originally provided RCRA
25 regulatory oversight for the Site. Ecology eventually assumed oversight responsibilities
26

1 through its authorized RCRA program, administered through WAC 173-303 (Dangerous
2 Waste Regulations), on January 31, 1986. Kaiser submitted a RCRA Part A Permit
3 Application on October 31, 1980, for the "Closed Waste Pile Area" (the SPL area), and upon
4 purchase of the Site the Port submitted a revised Part A Permit Application for the SPL area
5 (WAD 001882984) to Ecology on February 10, 2003, reflecting the transfer in ownership of
6 the Site from Kaiser to the Port. Ecology never issued an operating permit for the facility.
7 However, the Site nonetheless constitutes an interim status hazardous waste treatment, storage
8 and disposal facility under 42 U.S.C. § 6925(e), Section 3005(e) of RCRA, that ceased
9 operating without obtaining an operating permit.

10 D. The SPL area was used from 1942 to 1985 to rebuild reduction cell cathodes
11 and store spent pot lining, and occasionally stored potroom duct dust (particulates removed
12 from pot room air control system duct work) and other materials such as anode fragments,
13 gutter cleanout wastes, refractory brick and aluminum pads. Between 1942 and 1967, the SPL
14 and the other materials were stored on the unpaved ground surface. In 1967 the SPL
15 "management unit," including concrete pad, runoff sump, storage tanks, and associated piping
16 was constructed within the SPL area, and operated until 1985. (Thus, the SPL area constitutes
17 a RCRA "Regulated Unit" because it received hazardous waste after July 26, 1982.) In 1985
18 Kaiser ceased operations at the SPL management unit and moved the reduction cell rebuilding
19 activity indoors to former Kaiser Aluminum building no. 65 (Building 65). The concrete pad,
20 storage tanks, leachate treatment tank, and ancillary pumps and piping were decommissioned
21 by Kaiser in late 2002. Cyanide and cPAHs associated with the SPL were detected in soil, and
22 cyanide was detected in groundwater in this area.

23 E. The Wet Scrubber Sludge Area, described above, and a number of additional
24 areas at the Site constitute Solid Waste Management Units (SWMUs) under RCRA and the
25 Dangerous Waste Regulations, WAC 173-303. The SWMUs lying outside the Wet Scrubber
26 Sludge Area underwent a series of investigations over the years that documented

1 contamination of soil or groundwater above MTCA cleanup levels (CULs) and underwent
2 Remedial Action, including the following:

3 1. Rod Mill Area Former Landfill: The Rod Mill Area Former Landfill is
4 located within an area used by Kaiser in the early 1980's as a source of soil borrow.
5 The resulting "pit" was then used by Kaiser for the disposal of various plant-related
6 wastes. Investigations in 2003 and 2004 indicated the presence of petroleum
7 hydrocarbons, semi volatile organic compounds, PCBs and metals in soil.

8 2. Rectifier Yard Area: In 1984 PCBs were identified in soil within the
9 Rectifier Yard Area at concentrations above the MTCA cleanup levels (CULs) for
10 industrial properties. Investigations in 2003 and 2004 identified petroleum
11 hydrocarbons (transformer oil) above MTCA industrial CULs, but did not identify
12 exceedances of MTCA industrial CULs for PCBs. A supplemental investigation in
13 2008 found no exceedances of MTCA industrial CULs for petroleum hydrocarbons or
14 PCBs.

15 3. Former Log Yard Area: The Log Yard Area was located along the north
16 margins of the property and contained a log sorting operation for a brief period of time
17 in the early 1980's. Arsenic impacts to site soil and groundwater, most likely from
18 Asarco slag used as ballast rock, are present in site soil and groundwater, but are
19 relatively minor. In 2007 the Port placed several feet of clean fill throughout the area,
20 effectively isolating the log yard wastes.

21 4. Rod Mill Demister Oil Area: Surficial soil staining was historically
22 observed adjacent to roof downspouts on the northwest side of the former Rod Mill
23 building, as a result of oil released from a roof mounted demister. Concentrations of
24 cPAHs in shallow stained soil exceeded CULs; however, investigations revealed that
25 deeper soil was not impacted and the oil had not reached groundwater. About 850 tons
26

1 of soil was removed from the area in 2008; confirmation samples demonstrated that
2 remaining soil met CULs for cPAHs and diesel and oil-range petroleum hydrocarbons.

3 5. Rod Mill Area Stormwater Ditch, South and East Sides: Data from
4 investigations in 2003 and 2008 indicated cPAHs were present in soil at concentrations
5 above the CULs within this ditch. About 180 tons of soil was removed from this
6 location in 2008; confirmation samples demonstrated that remaining soil met CULs for
7 cPAHs.

8 F. On May 23, 2011, the Port and Ecology entered into Agreed Order DE-5698
9 requiring the Port to conduct a Remedial Investigation and Feasibility Study (RI/FS) and
10 prepare a draft Cleanup Action Plan (CAP) for the portions of the Site outside the Wet
11 Scrubber Sludge Area, and allowing the Port to perform Interim Actions where appropriate.

12 G. The RI/FS was completed in 2012, and found that no further remedial action
13 was required for the Rectifier Yard Area, Former Log Yard Area, Rod Mill Demister Oil Area,
14 and the Rod Mill Area Stormwater Ditch, South and East Sides. The RI/FS found that the SPL
15 Area and Rod Mill Area Former Landfill required additional remedial action.

16 H. In 2013 the Port performed Interim Actions at the SPL Area and the Rod Mill
17 Area Former Landfill. In the SPL Area, process wastes present in the upper 0.5 to 4.5 feet of
18 soil were removed. Approximately 38,800 tons of contaminated material was excavated and
19 sent to off-site disposal. In the Rod Mill Area Former Landfill, waste material extending to
20 depths of up to 9.5 feet below ground surface was removed. Approximately 14,000 tons of
21 material was excavated from a 0.9 acre area and sent for off-site disposal. Performance
22 monitoring confirmed that soils remaining at the SPL Area and Rod Mill Area Former Landfill
23 were below MTCA Method C cleanup levels at the conclusion of the Interim Actions.

24 I. As owner of the interim status hazardous waste treatment, storage and disposal
25 facility, the Port is subject to the requirements of the WAC 173-303-400 (Interim status facility
26 standards), which Ecology has adopted under authority of the Hazardous Waste Management

1 Act, RCW 70.105, and which are consistent with RCRA. Under that rule, owners and
2 operators of Regulated Units must receive post-closure permits, unless the owner or operator
3 demonstrates closure by removal and decontamination, as provided under
4 40 C.F.R. § 270.1(c), 270.1(c)(5) and (6) (“clean closure”). In order to achieve “clean
5 closure,” WAC 173-303-610(2)(b)(i) requires remediation to numeric hazardous constituent
6 cleanup levels calculated based on unrestricted use exposure assumptions. Building 65 was
7 clean closed in accordance with the requirements of WAC 173-303 during demolition of the
8 smelter under closure plans approved by Ecology in 2011 that were the subject of public
9 comment. In contrast, because the soils in the SPL area have been cleaned to MTCA Method
10 C industrial standards, WAC 173-340-706, but not to the MTCA Method B unrestricted land
11 use standards, the closure of the SPL area regulated unit does not constitute “clean closure”
12 under 40 C.F.R. § 265.111.

13 J. Because the Spent Pot Lining area regulated unit is being closed by removal,
14 but without meeting the “clean closure” standards of 40 C.F.R. § 265.111, a post-closure
15 permit is required for the facility by WAC 173-303-800(2) and 40 C.F.R. § 270.1(c). Ecology
16 has agreed that this Decree shall serve as an enforceable document in lieu of a post-closure
17 permit as authorized by WAC 173-303-800(12); 40 C.F.R. § 270.1(c)(7); and
18 40 C.F.R. § 265.121, adopted by reference in WAC 173-303-400(3)(a).

19 K. The Port has submitted information about the facility to Ecology as required by
20 40 C.F.R. § 265.121(a)(1), as adopted by reference in the state Dangerous Waste Rules at
21 WAC 173-303-400(3)(a). The public notice and comment that Ecology provided for this
22 Decree satisfied the requirements of 40 C.F.R. § 265.121(b)(1)(ii). The Decree will ensure that
23 the Defendants meet the facility-wide corrective action requirements of
24 40 C.F.R. § 265.121(a)(2), WAC 173-303-64620(1), (2), and (4), WAC 173-303-64630(1)
25 and (2), and WAC 173-303-800(2). The Decree will also ensure that the Defendants meet the
26 groundwater protection requirements of 40 C.F.R. § 265.121(a)(3) and WAC 173-303-645; the

1 requirement for public notice and comment at the time of a proposed decision that remedial
2 action is complete in accordance to 40 C.F.R. § 265.121(b)(1)(iii); and the requirement for
3 financial responsibility in accordance with 40 C.F.R. § 265 Subpart H.

4 L. The SPL area Regulated Unit is located among the other SWMUs, as described
5 above. Releases of hazardous substances occurred at the Site, and both the Spent Pot Lining
6 area and one or more of the other SWMUs contributed to the releases. Therefore, as
7 authorized by WAC 173-303-645(1)(f); and 40 C.F.R. § 265.110(d), incorporated by reference
8 at WAC 173-303-400(3), the Defendants will meet the Dangerous Waste Rule requirements
9 for groundwater protection and post-closure care by implementing the MTCA cleanup action
10 imposed by this Decree. These requirements are at least as protective of human health and the
11 environment as the otherwise applicable Dangerous Waste Regulations and applicable federal
12 rules (40 CFR Part 264, Subpart F; 40 CFR Part 265, Subpart G) adopted pursuant to RCRA
13 and will satisfy the closure performance standards of § 265.111(a) and (b). As authorized by
14 40 C.F.R. § 265.140(d), incorporated by reference at WAC 173-303-400(3), the Defendants
15 will meet requirements for financial assurance by following the requirements in Section XXI
16 (Financial Assurances) of this Decree.

17 VI. WORK TO BE PERFORMED

18 This Decree contains a program designed to protect human health and the environment
19 from the known release, or threatened release, of hazardous substances or contaminants at, on,
20 or from the Site. The actions required by this Decree meet the requirements of WAC 173-340
21 and meet or exceed all substantive requirements of the Resource Conservation and Recovery
22 Act (RCRA), the state Hazardous Waste Management Act, and the Dangerous Waste
23 Regulations.

24 A. The Port shall implement the Cleanup Action Plan (CAP) attached to this
25 Decree (Exhibit B) including, but not limited to groundwater monitoring to confirm that
26 groundwater cleanup levels are met at conditional points of compliance for the SPL Area and

1 the Former Log Yard Area. No further groundwater monitoring is required for the Wet
2 Scrubber Sludge Area, however other requirements from the cleanup action plan attached to
3 the Wet Scrubber Sludge Management Area Consent Decree, in Pierce County
4 Cause No. 90-2-06209-6, remain applicable as described in Exhibit B.

5 B. Except in cases of emergency or where required by law, the Port agrees not to
6 perform any remedial action except as provided by this Decree to address the contamination
7 that is the subject of this decree. In the event of an emergency, or where actions are taken as
8 required by law, the Port must notify Ecology in writing of the event and remedial action(s)
9 planned or taken as soon as practical, but no later than within 24 hours of the discovery of the
10 event. All work conducted by the Port under this Decree shall be done in accordance with
11 WAC 173-340 unless otherwise provided herein.

12 C. All plans or other deliverables submitted by the Port for Ecology's review and
13 approval under the Scope of Work and Schedule (Exhibit C) shall, upon Ecology's approval,
14 become integral and enforceable parts of this Decree.

15 VII. DESIGNATED PROJECT COORDINATORS

16 The project coordinator for Ecology is:

17 Marv Coleman
18 Toxics Cleanup Program, Southwest Regional Office
19 PO Box 47775 Olympia, WA 98504
(360) 407-6259

20 The project coordinator for the Port is:

21 Scott Hooton
22 Port of Tacoma, Environmental Programs
23 PO Box 1837
Tacoma, WA 98401
(253) 383-9428

24 Each project coordinator shall be responsible for overseeing the implementation of this
25 Decree. Ecology's project coordinator will be Ecology's designated representative for the Site.
26 To the maximum extent possible, communications between Ecology and the Port and all

1 documents, including reports, approvals, and other correspondence concerning the activities
2 performed pursuant to the terms and conditions of this Decree shall be directed through the
3 project coordinators. The project coordinators may designate, in writing, working level staff
4 contacts for all or portions of the implementation of the work to be performed required by this
5 Decree.

6 Any party may change its respective project coordinator. Written notification shall be
7 given to the other party at least ten (10) calendar days prior to the change.

8 **VIII. PERFORMANCE**

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

13 All engineering work performed pursuant to this Decree shall be under the direct
14 supervision of a professional engineer registered by the State of Washington, except as
15 otherwise provided for by RCW 18.43.130.

16 All construction work performed pursuant to this Decree shall be under the direct
17 supervision of a professional engineer or a qualified technician under the direct supervision of
18 a professional engineer. The professional engineer must be registered by the State of
19 Washington, except as otherwise provided for by RCW 18.43.130.

20 Any documents submitted containing geologic, hydrologic, or engineering work shall
21 be under the seal of an appropriately licensed professional as required by RCW 18.43
22 and 18.220.

23 The Port shall notify Ecology in writing of the identity of any engineer(s) and
24 geologist(s), contractor(s) and subcontractor(s), and others to be used in carrying out the terms
25 of this Decree, in advance of their involvement at the Site.

26

1 | **IX. ACCESS**

2 | Ecology or any Ecology authorized representative shall have access to enter and freely
3 | move about all property at the Site that the Port either owns, controls, or has access rights to at
4 | all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and
5 | contracts related to the work being performed pursuant to this Decree; reviewing the Port's
6 | progress in carrying out the terms of this Decree; conducting such tests or collecting such
7 | samples as Ecology may deem necessary; using a camera, sound recording, or other
8 | documentary type equipment to record work done pursuant to this Decree; and verifying the
9 | data submitted to Ecology by the Port. Ecology or any Ecology authorized representative shall
10 | give reasonable notice before entering any Site property owned or controlled by the Port unless
11 | an emergency prevents such notice. All Parties who access the Site pursuant to this section
12 | shall comply with any applicable health and safety plan(s). Ecology employees and their
13 | representatives shall not be required to sign any liability release or waiver as a condition of Site
14 | property access.

15 | **X. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY**

16 | With respect to the implementation of this Decree, the Port shall make the results of all
17 | sampling, laboratory reports, and/or test results generated by it or on its behalf available to
18 | Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology
19 | in both printed and electronic formats in accordance with Section XI (Progress Reports),
20 | Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any
21 | subsequent procedures specified by Ecology for data submittal.

22 | If requested by Ecology, the Port shall allow Ecology and/or its authorized
23 | representative to take split or duplicate samples of any samples collected by the Port pursuant
24 | to the implementation of this Decree. The Port shall notify Ecology seven (7) days in advance
25 | of any sample collection or work activity at the Site. Ecology shall, upon request, allow the
26 | Port and/or its authorized representative to take split or duplicate samples of any samples

1 collected by Ecology pursuant to the implementation of this Decree, provided that doing so
2 does not unreasonably interfere with Ecology's sampling. Without limitation on Ecology's
3 rights under Section IX (Access), Ecology shall notify the Port prior to any sample collection
4 activity unless an emergency prevents such notice.

5 In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be
6 conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be
7 conducted, unless otherwise approved by Ecology.

8 **XI. PROGRESS REPORTS**

9 The Port shall submit to Ecology written annual Progress Reports that describe the
10 actions taken during the previous year to implement the requirements of this Decree. The
11 Progress Reports shall include the following:

- 12 A. A list of on-site activities that have taken place during the year;
- 13 B. Detailed description of any deviations from required tasks not otherwise
14 documented in project plans or amendment requests;
- 15 C. Description of all deviations from the Scope of Work and Schedule (Exhibit C)
16 during the current year and any planned deviations in the upcoming year;
- 17 D. For any deviations in schedule, a plan for recovering lost time and maintaining
18 compliance with the schedule;
- 19 E. A summary of all environmental data received by the Port during the past year;
- 20 F. At Ecology's request, the Port will provide Ecology with a copy of all raw data
21 including laboratory analyses and an identification of the source of the sample; and
- 22 G. A list of deliverables for the upcoming year if different from the schedule.

23 All Progress Reports shall be submitted by the tenth (10th) day of the month in which
24 they are due after the effective date of this Decree. Unless otherwise specified, Progress
25 Reports and any other documents submitted pursuant to this Decree shall be sent by certified
26 mail, return receipt requested, to Ecology's project coordinator.

1 **XII. RETENTION OF RECORDS**

2 During the pendency of this Decree, and for ten (10) years from the date this Decree is
3 no longer in effect as provided in Section XXVIII (Duration of Decree), the Port shall preserve
4 all records, reports, documents, and underlying data in its possession relevant to the
5 implementation of this Decree and shall insert a similar record retention requirement into all
6 contracts with project contractors and subcontractors. Upon request of Ecology, the Port shall
7 make all records available to Ecology and allow access for review within a reasonable time.

8 Nothing in this Decree is intended by the Port to waive any right it may have under
9 applicable law to limit disclosure of documents protected by the attorney work-product
10 privilege and/or the attorney-client privilege. If the Port withholds any requested records based
11 on an assertion of privilege, the Port shall provide Ecology with a privilege log specifying the
12 records withheld and the applicable privilege. No Site-related data collected pursuant to this
13 Decree shall be considered privileged.

14 **XIII. TRANSFER OF INTEREST IN PROPERTY**

15 No voluntary conveyance or relinquishment of title, easement, leasehold, or other
16 interest in any portion of the Site shall be consummated by the Port without provision for
17 continued operation and maintenance of any containment system, treatment system, and/or
18 monitoring system installed or implemented pursuant to this Decree.

19 Prior to the Port's transfer of any interest in all or any portion of the Site, and during
20 the effective period of this Decree, the Port shall provide a copy of this Decree to any
21 prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at
22 least thirty (30) days prior to any transfer, the Port shall notify Ecology of said transfer. Upon
23 transfer of any interest, the Port shall notify all transferees of the restrictions on the activities
24 and uses of the property under this Decree and incorporate any such use restrictions into the
25 transfer documents.

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XIV. RESOLUTION OF DISPUTES

A. In the event that the Port elects to invoke dispute resolution, the Port must utilize the procedure set forth below.

1. Upon the triggering event (receipt of Ecology’s project coordinator’s written decision or an itemized billing statement), the Port has fourteen (14) calendar days within which to notify Ecology’s project coordinator in writing of its dispute (“Informal Dispute Notice”).

2. 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 Port’s position with regards to the dispute; Ecology’s position with regards to the dispute; and the extent of resolution reached by informal discussion.

3. The Port 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.

4. 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.

1 5. If the Port finds Ecology's Regional Section Manager's decision
2 unacceptable, the Port may then request final management review of the decision. This
3 request ("Final Review Request") shall be submitted in writing to the Toxics Cleanup
4 Program Manager within seven (7) calendar days of the Port's receipt of the Decision
5 on Dispute. The Final Review Request shall include a written statement of dispute
6 setting forth: the nature of the dispute; the disputing Party's position with respect to the
7 dispute; and the information relied upon to support its position.

8 6. Ecology's Toxics Cleanup Program Manager shall conduct a review of
9 the dispute and shall issue a written decision regarding the dispute ("Final Decision on
10 Dispute") within thirty (30) calendar days of receipt of the Final Review Request. The
11 Toxics Cleanup Program Manager's decision shall be Ecology's final decision on the
12 disputed matter.

13 B. If Ecology's Final Decision on Dispute is unacceptable to the Port, the Port has
14 the right to submit the dispute to the Court for resolution. The Parties agree that one judge
15 should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising
16 under this Decree. In the event the Port presents an issue to the Court for review, the Court
17 shall review the action or decision of Ecology in accordance with the applicable standard of
18 review for such actions.

19 C. The Parties agree to only utilize the dispute resolution process in good faith and
20 agree to expedite, to the extent possible, the dispute resolution process whenever it is used.
21 Where either party utilizes the dispute resolution process in bad faith or for purposes of delay,
22 the other party may seek sanctions.

23 D. Implementation of these dispute resolution procedures shall not provide a basis
24 for delay of any activities required in this Decree, unless Ecology agrees in writing to a
25 schedule extension or the Court so orders.
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1 E. In case of a dispute, failure to either proceed with the work required by this
2 Decree or timely invoke dispute resolution may result in Ecology's determination that
3 insufficient progress is being made in preparation of a deliverable, and may result in Ecology
4 undertaking the work under Section XXV (Implementation of Remedial Action).

5 **XV. AMENDMENT OF DECREE**

6 The project coordinators may agree to minor changes to the work to be performed
7 without formally amending this Decree. Minor changes will be documented in writing by
8 Ecology.

9 Substantial changes to the work to be performed, including changes requiring public
10 notice under 40 C.F.R. § 265.121(b)(1), as incorporated by reference at WAC 173-303-400(3),
11 shall require formal amendment of this Decree. This Decree may only be formally amended
12 by a written stipulation among the Parties that is entered by the Court, or by order of the Court.
13 Such amendment shall become effective upon entry by the Court. Agreement to amend the
14 Decree shall not be unreasonably withheld by any party.

15 The Port shall submit a written request for amendment to Ecology for approval.
16 Ecology shall indicate its approval or disapproval in writing and in a timely manner after the
17 written request for amendment is received. If the amendment to the Decree is a substantial
18 change, Ecology will provide public notice and opportunity for comment. Reasons for the
19 disapproval of a proposed amendment to the Decree shall be stated in writing. If Ecology does
20 not agree to a proposed amendment, the disagreement may be addressed through the dispute
21 resolution procedures described in Section XIV (Resolution of Disputes).

22 **XVI. EXTENSION OF SCHEDULE**

23 A. An extension of schedule shall be granted only when a request for an extension
24 is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the
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1 deadline for which the extension is requested, and good cause exists for granting the extension.

2 All extensions shall be requested in writing. The request shall specify:

- 3 1. The deadline that is sought to be extended;
- 4 2. The length of the extension sought;
- 5 3. The reason(s) for the extension; and
- 6 4. Any related deadline or schedule that would be affected if the extension
7 were granted.

8 B. The burden shall be on the Port to demonstrate to the satisfaction of Ecology
9 that the request for such extension has been submitted in a timely fashion and that good cause
10 exists for granting the extension. Good cause may include, but may not be limited to:

- 11 1. Circumstances beyond the reasonable control and despite the due
12 diligence of the Port including delays caused by unrelated third parties or Ecology, such
13 as (but not limited to) delays by Ecology in reviewing, approving, or modifying
14 documents submitted by the Port;
- 15 2. Acts of God, including fire, flood, blizzard, extreme temperatures,
16 storm, or other unavoidable casualty; or
- 17 3. Endangerment as described in Section XVII (Endangerment).

18 However, neither increased costs of performance of the terms of this Decree nor
19 changed economic circumstances shall be considered circumstances beyond the reasonable
20 control of the Port.

21 C. Ecology shall act upon any written request for extension in a timely fashion.
22 Ecology shall give the Port written notification of any extensions granted pursuant to this
23 Decree. A requested extension shall not be effective until approved by Ecology or, if required,
24 by the Court. Unless the extension is a substantial change, it shall not be necessary to amend
25 this Decree pursuant to Section XV (Amendment of Decree) when a schedule extension is
26 granted.

1 D. An extension shall only be granted for such period of time as Ecology
2 determines is reasonable under the circumstances. Ecology may grant schedule extensions
3 exceeding ninety (90) days only as a result of:

4 1. Delays in the issuance of a necessary permit which was applied for in a
5 timely manner;

6 2. Other circumstances deemed exceptional or extraordinary by
7 Ecology; or

8 3. Endangerment as described in Section XVII (Endangerment).

9 **XVII. ENDANGERMENT**

10 In the event Ecology determines that any activity being performed at the Site under this
11 Decree is creating or has the potential to create a danger to human health or the environment,
12 Ecology may direct the Port to cease such activities for such period of time as it deems
13 necessary to abate the danger. The Port shall immediately comply with such direction.

14 In the event the Port determines that any activity being performed at the Site under this
15 Decree is creating or has the potential to create a danger to human health or the environment,
16 the Port may cease such activities. The Port shall notify Ecology's project coordinator as soon
17 as possible, but no later than twenty-four (24) hours after making such determination or
18 ceasing such activities. Upon Ecology's direction, the Port shall provide Ecology with
19 documentation of the basis for the determination or cessation of such activities. If Ecology
20 disagrees with the Port's cessation of activities, it may direct the Port to resume such activities.

21 If Ecology concurs with or orders a work stoppage pursuant to this section, the Port's
22 obligations with respect to the ceased activities shall be suspended until Ecology determines
23 the danger is abated, and the time for performance of such activities, as well as the time for any
24 other work dependent upon such activities, shall be extended, in accordance with Section XVI
25 (Extension of Schedule), for such period of time as Ecology determines is reasonable under the
26 circumstances.

1 Nothing in this Decree shall limit the authority of Ecology, its employees, agents, or
2 contractors to take or require appropriate action in the event of an emergency.

3 **XVIII. COVENANT NOT TO SUE**

4 A. Covenant Not to Sue: In consideration of the Port's compliance with the terms
5 and conditions of this Decree, Ecology covenants not to institute legal or administrative actions
6 against the Port regarding the release or threatened release of hazardous substances covered by
7 this Decree.

8 This Decree covers only the Site specifically identified in the Site Diagram (Exhibit A)
9 and those hazardous substances that Ecology knows are located at the Site as of the date of
10 entry of this Decree. This Decree does not cover any other hazardous substance or area.
11 Ecology retains all of its authority relative to any substance or area not covered by this Decree.

12 This Covenant Not to Sue shall have no applicability whatsoever to:

- 13 1. Criminal liability;
- 14 2. Liability for damages to natural resources; and
- 15 3. Any Ecology action, including cost recovery, against PLPs not a party to
16 this Decree.

17 If factors not known at the time of entry of this Decree are discovered and present a
18 previously unknown threat to human health or the environment, the Court shall amend this
19 Covenant Not to Sue.

20 B. Reopeners: Ecology specifically reserves the right to institute legal or
21 administrative action against the Port to require it to perform additional Remedial Action at the
22 Site and to pursue appropriate cost recovery, pursuant to RCW 70.105D.050 under the
23 following circumstances:

- 24 1. Upon the Port's failure to meet the requirements of this Decree;
- 25 2. Failure of the remedial action to meet the cleanup standards identified in
26 the Cleanup Action Plan (CAP) (Exhibit B);

1 Covenant shall restrict future activities and uses of the Site as agreed to by Ecology and the
2 Port. The Port shall provide Ecology with the original recorded Environmental (Restrictive)
3 Covenant within thirty (30) days of the recording date.

4 **XXI. FINANCIAL ASSURANCES**

5 A. Pursuant to WAC 173-340-440, financial assurance for the remedial action
6 under this Decree is required and shall also comply with WAC 173-303-64620. Following the
7 requirements in this section meets the alternative requirements for financial assurance in
8 40 C.F.R. § 265.110(d). Ecology's Financial Assurance Officer shall notify the Port when the
9 Port's actions and submissions meet the requirements of WAC 173-303-64620. The
10 determination of Ecology's Financial Assurance Officer is considered a triggering event
11 subject to Section XIV (Resolution of Disputes).

12 B. Ecology's Financial Assurance Officer is:

13 Kimberly Goetz
14 Washington State Department of Ecology
15 P.O. Box 47600
16 Olympia, WA 98504-7600
17 Phone: (360) 407-6754
18 Fax: (360) 407-6715
19 Email: kgoe461@ecy.wa.gov

20 **XXII. INDEMNIFICATION**

21 The Port agrees to indemnify and save and hold the State of Washington, its employees,
22 and agents harmless from any and all claims or causes of action (1) for death or injuries to
23 persons, or (2) for loss or damage to property to the extent arising from or on account of acts or
24 omissions of the Port, its officers, employees, agents, or contractors in entering into and
25 implementing this Decree. However, the Port shall not indemnify the State of Washington nor
26 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 Decree.

1 **XXIII. COMPLIANCE WITH APPLICABLE LAWS**

2 A. All actions carried out by the Port pursuant to this Decree shall be done in
3 accordance with all applicable federal, state, and local requirements, including requirements to
4 obtain necessary permits, except as provided in RCW 70.105D.090. The permits or other
5 federal, state, or local requirements that the agency has determined are applicable and that are
6 known at the time of entry of this Decree have been identified in the CAP (Exhibit B).

7 B. Pursuant to RCW 70.105D.090(1), the Port is exempt from the procedural
8 requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring
9 or authorizing local government permits or approvals. However, the Port shall comply with
10 the substantive requirements of such permits or approvals. The exempt permits or approvals
11 and the applicable substantive requirements of those permits or approvals, as they are known at
12 the time of entry of this Decree, have been identified in the CAP (Exhibit B).

13 The Port has a continuing obligation to determine whether additional permits or
14 approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial
15 action under this Decree. In the event either Ecology or the Port determines that additional
16 permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the
17 remedial action under this Decree, it shall promptly notify the other party of this determination.
18 Ecology shall determine whether Ecology or the Port shall be responsible to contact the
19 appropriate state and/or local agencies. If Ecology so requires, the Port shall promptly consult
20 with the appropriate state and/or local agencies and provide Ecology with written
21 documentation from those agencies of the substantive requirements those agencies believe are
22 applicable to the remedial action. Ecology shall make the final determination on the additional
23 substantive requirements that must be met by the Port and on how the Port must meet those
24 requirements. Ecology shall inform the Port in writing of these requirements. Once
25 established by Ecology, the additional requirements shall be enforceable requirements of this
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1 Decree. The Port shall not begin or continue the Remedial Action potentially subject to the
2 additional requirements until Ecology makes its final determination.

3 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
4 exemption from complying with the procedural requirements of the laws referenced in
5 RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is
6 necessary for the state to administer any federal law, the exemption shall not apply and the Port
7 shall comply with both the procedural and substantive requirements of the laws referenced in
8 RCW 70.105D.090(1), including any requirements to obtain permits.

9 **XXIV. REMEDIAL ACTION COSTS**

10 The Port shall pay to Ecology costs incurred by Ecology pursuant to this Decree and
11 consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology
12 or its contractors for, or on, the Site under RCW 70.105D, including Remedial Action and
13 Decree preparation, negotiation, oversight, and administration. These costs shall include work
14 performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall
15 include costs of direct activities and support costs of direct activities as defined in
16 WAC 173-340-550(2). Ecology has accumulated \$189,506.15 in remedial action costs related
17 to this facility from 1993 through December 31, 2015 — all of which has been paid. For all
18 costs incurred subsequent to December 31, 2015, the Port shall pay the required amount within
19 thirty (30) days of receiving from Ecology an itemized statement of costs that includes a
20 summary of costs incurred, an identification of involved staff, and the amount of time spent by
21 involved staff members on the project. As of March 31, 2016, all costs owed to Ecology have
22 been paid and accounts are current. A general statement of work performed will be provided
23 upon request. Itemized statements shall be prepared quarterly. Pursuant to
24 WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the
25 itemized statement of costs will result in interest charges at the rate of twelve percent (12%)
26 per annum, compounded monthly.

1 In addition to other available relief, pursuant to RCW 70.105D.055, Ecology has
2 authority to recover unreimbursed remedial action costs by filing a lien against real property
3 subject to the remedial action.

4 **XXV. IMPLEMENTATION OF REMEDIAL ACTION**

5 If Ecology determines that the Port has failed to make sufficient progress or failed to
6 implement the Remedial Action, in whole or in part, Ecology may, after thirty (30) days'
7 notice to the Port and opportunity for dispute resolution, perform any or all portions of the
8 remedial action or at Ecology's discretion allow the Port opportunity to correct. In an
9 emergency, Ecology is not required to provide thirty (30) days' notice to the Port, or an
10 opportunity for dispute resolution. The Port shall reimburse Ecology for the costs of doing
11 such work in accordance with Section XXIV (Remedial Action Costs).

12 Except where necessary to abate an emergency situation, the Port shall not perform any
13 Remedial Action at the Site outside those Remedial Action required by this Decree, unless
14 Ecology concurs, in writing, with such additional Remedial Action pursuant to Section XV
15 (Amendment of Decree).

16 **XXVI. PERIODIC REVIEW**

17 As Remedial Action, including groundwater monitoring, continues at the Site, the
18 Parties agree to review the progress of remedial action at the Site, and to review the data
19 accumulated as a result of monitoring the Site as often as is necessary and appropriate under
20 the circumstances. As often as the period required by RCW 70.105D.030(8), as hereafter
21 amended, the Parties shall review the status of the Site and the need, if any, for further
22 Remedial Action at the Site. At least ninety (90) days prior to each periodic review, the Port
23 shall submit a report to Ecology that documents whether human health and the environment are
24 being protected based on the factors set forth in WAC 173-340-420(4). Under Section XVIII
25 (Covenant Not to Sue), Ecology reserves the right to require further Remedial Action at the
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1 Site under appropriate circumstances. This provision shall remain in effect for the duration of
2 this Decree.

3 **XXVII. PUBLIC PARTICIPATION**

4 A Public Participation Plan (Exhibit D) is required for this Site. Ecology shall review
5 any existing Public Participation Plan to determine its continued appropriateness and whether it
6 requires amendment, or if no plan exists, Ecology shall develop a Public Participation Plan
7 alone or in conjunction with the Port.

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

10 A. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts of
11 public notices and fact sheets at important stages of the cleanup action, such as the submission
12 of engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such
13 fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

14 B. Notify Ecology's project coordinator prior to the preparation of all press
15 releases and fact sheets, and before major meetings with the interested public and local
16 governments. Likewise, Ecology shall notify the Port prior to the issuance of all press releases
17 and fact sheets, and before major meetings with the interested public and local governments.
18 For all press releases, fact sheets, meetings, and other outreach efforts by the Port that do not
19 receive prior Ecology approval, the Port shall clearly indicate to its audience that the press
20 release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by
21 Ecology.

22 C. When requested by Ecology, participate in public presentations on the progress
23 of the Remedial Action at the Site. Participation may be through attendance at public meetings
24 to assist in answering questions, or as a presenter.

25 D. When requested by Ecology, arrange and/or continue information repositories at
26 the following locations:

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- 1. Citizens for a Healthy Bay
535 Dock Street, Ste. 213
Tacoma, WA 98402
- 2. Ecology's Southwest Regional Office
300 Desmond Dr. SE
Lacey, WA 98503
- 3. Tacoma Public Library – Main Branch
Northwest Room
1102 Tacoma Avenue South
Tacoma, WA 98402

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.

XXVIII. DURATION OF DECREE

The remedial program required pursuant to this Decree shall be maintained and continued until the Port has received written notification from Ecology that the requirements of this Decree have been satisfactorily completed. This Decree shall remain in effect until dismissed by the Court. When dismissed, Section XVIII (Covenant Not to Sue) and Section XIX (Contribution Protection) shall survive.

XXIX. CLAIMS AGAINST THE STATE

The Port hereby agrees that it will not seek to recover any costs accrued in implementing the remedial action required by this Decree from the State of Washington or any of its agencies; and further, that the Port will make no claim against the State Toxics Control Account or any local Toxics Control Account for any costs incurred in implementing this Decree. Except as provided above, however, the Port expressly reserves its right to seek to recover any costs incurred in implementing this Decree from any other PLP. This section does not limit or address funding that may be provided under WAC 173-322.

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XXX. EFFECTIVE DATE

This Decree is effective upon the date it is entered by the Court.

XXXI. WITHDRAWAL OF CONSENT

If the Court withholds or withdraws its consent to this Decree, it shall be null and void at the option of any party and the accompanying Complaint shall be dismissed without costs and without prejudice. In such an event, no party shall be bound by the requirements of this Decree.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

ROBERT W. FERGUSON
Attorney General

JAMES PENDOWSKI
Program Manager
Toxics Cleanup Program
(360) 407-7177

JONATHAN THOMPSON, WSBA # 26375
Assistant Attorney General
(360) 586-6740

Date: _____

Date: _____

PORT OF TACOMA

JOHN WOLFE
Chief Executive Officer
(253) 592-6710

Date: 7/21/16

ENTERED this _____ day of _____ 20____.

JUDGE
Pierce County Superior Court

