

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

AGREED ORDER

Simpson Timber Company

No. DE 14091

Regarding: Shelton Harbor Sediment Cleanup
Unit, within Oakland Bay and Shelton Harbor
Sediments Site

Cleanup Site ID 13007

TO: Betsy Stauffer, President

TABLE OF CONTENTS

I.	INTRODUCTION.....	2
II.	JURISDICTION.....	2
III.	PARTIES BOUND.....	2
IV.	DEFINITIONS.....	2
V.	FINDINGS OF FACT.....	3
VI.	ECOLOGY DETERMINATIONS.....	8
VII.	WORK TO BE PERFORMED.....	10
VIII.	TERMS AND CONDITIONS.....	15
	A. Remedial Action Costs.....	15
	B. Designated Project Coordinators.....	16
	C. Performance.....	17
	D. Access.....	17
	E. Sampling, Data Submittal, and Availability.....	18
	F. Public Participation.....	19
	G. Retention of Records.....	20
	H. Resolution of Disputes.....	20
	I. Extension of Schedule.....	22
	J. Amendment of Order.....	23
	K. Endangerment.....	24
	L. Reservation of Rights.....	24
	M. Transfer of Interest in Property.....	25
	N. Compliance with Applicable Laws.....	26
	O. Indemnification.....	27
IX.	SATISFACTION OF ORDER.....	27
X.	ENFORCEMENT.....	27

EXHIBIT A	Site Diagram
EXHIBIT B	Shelton Harbor Sediment Cleanup Unit
EXHIBIT C	Substantive Requirements for Hydraulic Project Approval

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Simpson Timber Company (Simpson) 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 Simpson to produce an Interim Action Work Plan and implement an Interim Action; and produce a Remedial Investigation, Feasibility Study, and Preliminary Draft Cleanup Action Plan for the Shelton Harbor Sediment Cleanup Unit of the Oakland Bay and Shelton Harbor Sediment Site. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

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

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. Simpson agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Simpson's responsibility under this Order. Simpson 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, WAC 173-340, and WAC 173-204-505 shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as the Oakland Bay and Shelton Harbor Sediments Site and is generally located at the southwestern edge of Puget Sound, in Mason County, Washington. 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 generally described in the Site Diagram (Exhibit A). The Site constitutes a facility under RCW 70.105D.020(8).

- B. Parties: Refers to Ecology and Simpson.
- C. Potentially Liable Person (PLP): Refers to Simpson.
- 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.

E. Shelton Harbor Sediment Cleanup Unit: Refers to the Shelton Harbor portion of the Site, designated by Ecology under the authority of WAC 173-204-500(4)(a) for the purpose of expediting cleanup. The Shelton Harbor Sediment Cleanup Unit (Shelton Harbor SCU) is defined as the area of Shelton Harbor westward of the Inner Harbor Line as shown in Exhibit B.

V. FINDINGS OF FACT

A. Ecology makes the following findings of fact, without any express or implied admissions of such facts by Simpson:

B. A wood-fired power plant was operated at the western edge of Shelton Harbor. It was originally constructed for the Henry McCleary Timber Company. Simpson Logging Company co-owned the power plant with Henry McCleary Timber Company and Reed Mill Company beginning in 1926. In 1935, the Rainier Pulp and Paper Company (now known as Rayonier, Inc.) entered into an agreement with Simpson Logging Company, the Reed Mill Company, and Henry McCleary Timber Company to use a smokestack at the power plant for exhaust from Rainier’s sulphite liquor evaporator. In 1938, Simpson Logging Company (now Simpson Timber Company) and Rayonier executed an agreement describing the joint ownership and operation of the power plant for generation of electricity and steam. In 1963, Rayonier sold its interest in the power plant to Simpson. Simpson built a new power plant in 1984 and subsequently decommissioned the original Power Plant. In 2008, Simpson sold the new power plant to Simpson

Lumber Company, LLC, which operated the facility until 2015. In 2015, Sierra Pacific Industries acquired and began operating the new power plant.

C. Wood scraps and bark from logs that had been transported and stored in the salty waters of Puget Sound were used as fuel. Prior to 1976, the power plant operated without emission controls. In March of 1976 baghouses were installed at the power plant to capture particulate emissions. High salt content in the fuel, combined with relatively low temperatures in the boiler, may have resulted in formation of dioxin and furan compounds (hereafter collectively referred to as ‘dioxins’) in the boiler ash (fly ash) and boiler bottom residues (clinker). The boiler ash was tested during Tier 4 of the U.S. Environmental Protection Agency National Dioxin Study in the early 1980s. The ash was found to contain elevated dioxins including 2,3,7,8 tetrachlorinated dibenzo dioxin (2,3,7,8 TCDD), which is considered to be the most toxic dioxin congener. Clinker was also found to contain elevated dioxins, but at lower concentrations than in the ash.

D. In the years prior to installation of the emission control baghouses, particulate matter was emitted, without treatment, through smokestacks. Once emitted from the stack, the particulate matter would have cooled and gradually settled or been carried by rain into the waters of Shelton Harbor and Oakland Bay.

E. Following Simpson’s installation of the baghouse system, approximately 3,000 pounds per day of ash was collected and required disposal. The ash consisted of approximately one-third unburned/charred wood and particulates, and approximately two-thirds salt. From 1976 until 1984, boiler ash from the baghouse system was mixed with plant wastewaters and the resulting slurry was discharged to the City of Shelton’s sewer system. Until 1979, the ash slurry would have been received at the City of Shelton’s Wastewater Treatment Plant that discharged to Oakland Bay at Pine Street. After 1979, the ash slurry would have been received at a new treatment plant at Eagle Point, near the junction of Shelton Harbor and Hammersley Inlet. The Pine Street treatment plant provided primary treatment of sewage, which consisted of removal of solids. An Ecology interoffice memo dated December 7, 1973 describes an efficiency study conducted at that

plant, which found that the plant removed only 32% of total suspended solids. A January 10, 1977 letter from the consulting firm of Kramer, Chin & Mayo to the City of Shelton stated that 32 to 93 percent of the solids entering the treatment plant were from the Simpson mill and constituted the majority of solids entering the plant. The January 10 letter further states that the treatment plant was overloaded, resulting in inadequate treatment efficiency. The Eagle Point plant constructed in 1979 included additional measures to treat bacterial load and to more effectively remove solids. A Brown and Caldwell report (Infiltration and Inflow Control Program – City of Shelton, 1988) stated that the plant's permit requirement to meet 85% removal of suspended solids was not consistently being met. Because the sewage treatment plants did not fully remove suspended solids, dioxins contained in the ash would have been discharged to Shelton Harbor and Oakland Bay with particulate matter passing through the treatment plants.

F. Clinker from the boilers has been placed on Simpson-owned property between Shelton Creek and a railroad track north of the main Simpson Mill complex. The location of the clinker deposit is shown on Exhibit B. The extent of the clinker deposit is not known. The US Navy maintains a right-of-way for railroad tracks on the property.

G. Simpson operations on the uplands of the mill facility and in Shelton Harbor caused sawdust, wood chips, bark, and other wood debris to accumulate in Shelton Harbor. These operations included: chip barge loading, in-water log raft storage, loading of logs from the log raft area to the railway using a water loading crane, operation of an over-water saw in the log pond at the northwest corner of the harbor, and discharges to Shelton Harbor of sawdust and other wood debris from upland sawmill operations through storm drain lines.

H. Simpson owns most of the aquatic lands in Shelton Harbor that have become contaminated.

I. Simpson used products containing pentachlorophenol and other chlorinated phenols to treat lumber at the site, and operated a wood preservative dip tank. Dioxins are

frequently found in association with chlorinated phenolic products because they are by-products generated during the manufacture of those products.

J. Other industries including pulp manufacturing, log handling, and research operations also contributed contaminants to Shelton Harbor, including saw dust, wood chips, bark, and other wood debris, as well as chlorine, chemicals from defoamers, and industrial wastes containing dioxins. In addition, sewer and stormwater discharges deposited contaminants in the harbor.

K. In 2008, Ecology characterized sediments in Oakland Bay and Shelton Harbor. The Oakland Bay Sediment Characterization Study, published in 2010, confirms the presence of hazardous substances released from Simpson and other operations, including hazardous substances released as a result of the decomposition of wood waste generated from Simpson's operations, that present a threat to human health and the environment:

- a. The study concluded that dioxins are present at levels that may present a threat to human health and the environment within the surface and subsurface sediments of Oakland Bay and Shelton Harbor. Dioxins are primarily of concern for their potential to accumulate in the food chain and to cause increased cancer risk to fish and shellfish consumers. The Washington Department of Health tested shellfish collected from Oakland Bay, and found low levels of dioxin. DOH's Health consultation document (July 3, 2010) stated that eating shellfish that contains dioxins is not expected to harm health for general population or subsistence shellfish consumers. In making its conclusion, DOH compared risk from consuming Oakland Bay shellfish to the range of cancer risk considered acceptable by EPA. EPA considers up to one additional case of cancer per ten thousand people to be the maximum allowable increased cancer risk, while under the State of Washington Model Toxics Control Act, the allowable risk is one additional cancer per one million people. The DOH-calculated cancer risks from shellfish

consumption for general population and for subsistence consumers were still above the cancer risk limit under MTCA of one-in-one-million. The DOH calculated risk for consumption of Manila Clams is 1.8 in one million for general population consumers, and 18 in one million for a subsistence consumer. DOH found that direct contact with sediments or incidental ingestion of sediments does not pose an unacceptable human health risk.

- b. Washington State Sediment Management Standards (SMS; Chapter 173-204 WAC) do not contain numeric criteria for dioxins. Under SMS, environmental dioxin concentrations are typically compared to background concentrations to determine if there may be potential health risk. Ecology and the U.S. Army Corps of Engineers Puget Sound Dredged Material Management Office consider the background concentration of dioxins in Puget Sound sediments to be 4 parts per trillion (pptr). Within the Shelton Harbor Cleanup Unit, dioxins were found at up to 175 pptr in surface sediments, and up to 902 pptr in subsurface sediments. The location at which dioxins were measured at 175 pptr in surface sediment is at the mouth of Shelton Creek, approximately 1500 feet downstream of the clinker deposit on the north side of Shelton Creek.

Wood waste in various forms was found in 80 percent of all locations tested throughout the characterization study area, which included Shelton Harbor, Oakland Bay, and Hammersley Inlet. Shelton Harbor contained the thickest deposits of wood. Wood wastes were found as bark in 65 percent of Shelton Harbor stations, wood chips in 45 percent of stations, wood fibers in 45 percent, and as sawdust in one Shelton Harbor Station. Areas of highest accumulation of wood waste in Shelton Harbor were the pond saw at the former planing mill, the railway log dump, and the former chip loading area.

Hazardous chemicals associated with degradation of wood products in marine waters were present at elevated levels. Six subsurface samples in inner Shelton Harbor contained over 50 milligrams per kilogram (mg/kg) of ammonia. Six surface sediment samples in southern Shelton Harbor contained over 1000 mg/kg of sulfides. Resin acids are hazardous substances associated with wood waste decomposition. The resin acids abietic acid, dehydroabietic acid, oleic acid, linoleic acid and retene were present throughout Shelton Harbor. While there are not numeric chemical criteria for resin acids, the concentrations found in Shelton Harbor were significantly higher than found in reference samples from uncontaminated areas of Puget Sound.

- c. Sediment toxicity tests conducted in the characterization study showed that sediments failed the Cleanup Screening Level standards from WAC 173-204, (Sediment Management Standards) for the larval bioassay, at nine locations within Shelton Harbor. Four locations in Shelton Harbor failed the Sediment Cleanup Objective standard for the polychaete bioassay.

VI. ECOLOGY DETERMINATIONS

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

A. Simpson is an “owner or operator” as defined in RCW 70.105D.020 (22) of a “facility” as defined in RCW 70.105D.020 (8) because it owns and conducted operations on aquatic lands within the Site.

B. Simpson “arranged for disposal” of hazardous substances at the Site within the meaning of RCW 70.105D.040(1)(c).

C. 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.

D. Based upon credible evidence, Ecology issued a PLP status letter to Simpson dated November 22, 2016, 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 Simpson is a PLP under RCW 70.105D.040 and notified Simpson of this determination by letter dated February 23, 2017.

E. Pursuant to RCW 70.105D.030(1) and .050(1), Ecology may require Simpson 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.

F. Under WAC 173-204-500(4)(a), Ecology may establish sediment cleanup units within a site for the purpose of expediting cleanup. Ecology has determined that establishment of the Shelton Harbor SCU of the Site is necessary to expedite cleanup. The Squaxin Island Tribe, South Puget Sound Salmon Enhancement Group, and Simpson are collaborating on a major habitat restoration project in northern Shelton Harbor, which will be funded with private, state, and federal money. The location of the habitat restoration project is shown on Exhibit B as “Northern Habitat Restoration Area.” The project concept is to create saltwater wetland habitat and enhanced riparian areas to the north of the existing railroad trestle that bisects Shelton Harbor. Ecology has determined that it is necessary to expedite cleanup in the SCU so that cleanup will be orchestrated with habitat development.

G. 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. Because of the impending habitat enhancement project described under Section VI. F., Ecology has determined that an interim action is warranted under WAC 173-340-430. Either party may propose additional interim actions under this Order. If the Parties are in agreement concerning the additional interim action, the Parties will follow the process in Section VII.L. If the Parties are not in agreement, Ecology reserves its authority to require additional interim action(s) under a separate order or other enforcement action under RCW 70.105D, or to undertake the interim action(s) itself, and Simpson reserves its defenses to such order or action.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that Simpson take the following remedial actions at the Site and that these actions be conducted in accordance with WAC 173-340 and WAC 173-204 unless otherwise specifically provided for herein:

A. Remedial Investigation/Feasibility Study (RI/FS) Work Plan: Simpson shall prepare and submit to Ecology a draft and final RI/FS Work Plan in accordance with WAC 173-204-350. The RI Work Plan shall include sufficient information for characterizing the Shelton Harbor SCU and evaluating cleanup alternatives in a manner that allows for selection of a remedy under MTCA and the Sediment Management Standards. At a minimum, the RI/FS Work Plan shall include:

- a. Investigations necessary to understand the nature, extent, and current sources of hazardous substances in sediment, including the release or potential release of hazardous substances as a result of the decomposition of wood waste throughout the SCU.
- b. Activities to evaluate the nature, extent, and potential risks to human health and the environment of the clinker deposit materials on the north side of Shelton Creek. Although the clinker deposit is outside the boundaries of the SCU, this work is

necessary to control potential sources of hazardous substances that may affect the SCU.

- c. Plans for any testing that may be needed to evaluate the feasibility, protectiveness, and permanence of potential cleanup alternatives that will be considered for the Shelton Harbor SCU (for example: leach tests, pilot tests, bench scale tests, sedimentation rate evaluations).
- d. A section including the elements of a Sampling and Analysis Plan per the requirements of WAC 173-204-600. This shall include quality assurance/quality control measures necessary to ensure environmental data is complete, representative, accurate, and comparable to regulatory standards.
- e. A schedule that includes projected calendar dates for completion of field work, laboratory analysis, and data validation; production of the RI Data Memorandum, and production of the RI/FS report.
- f. A Site Safety and Health Plan conforming to the requirements of WAC 173-204-550(4)(f).

The schedule and deliverables for the RI work plan shall be as set forth in Section VII.O.

B. RI/FS Work Plan implementation: Simpson shall implement the field and lab activities from the RI/FS Work Plan. The schedule for implementing the activities shall be as set forth in VII.O.

C. RI Data Memorandum: Simpson shall prepare and submit to Ecology a memorandum including brief text descriptions of methods and findings, tables and maps summarizing the RI data results, data validation review, boring logs, and electronic copies of laboratory data. The schedule and deliverables for the RI Data Memorandum shall be as set forth in VII.O. If Ecology has comments on the RI Data Memorandum, revisions to maps, tables, or other elements of the memorandum shall be incorporated by Simpson into the RI/FS Report.

D. Interim Action Work Plan: Simpson shall prepare and submit to Ecology a draft and final Interim Action Work Plan, including a scope of work and schedule, in accordance with WAC 173-340-430. The Interim Action Work Plan shall meet the requirements of WAC 173-340-430(7) and shall describe the interim action to be taken in northern Shelton Harbor. The interim actions to be considered will be compatible with the Squaxin Island Tribe/South Puget Sound Salmon Enhancement Group/Simpson habitat restoration plans for Shelton Harbor. The proposed interim action shall not foreclose reasonable alternatives for the ultimate cleanup action for the SCU as a whole, and shall meet the minimum requirements found in WAC 173-204-570. The schedule for the Interim Action Work Plan shall be as set forth in VII.O.

E. Interim Action Implementation: Simpson shall implement the activities described in the approved Interim Action Work Plan. The schedule for implementing the Interim Action Work Plan shall be as set forth in VII.O.

F. Electronic Data Submittal: In accordance with Section VIII.E (Sampling, Data Submittal, and Availability) of this Order, Simpson shall submit all data generated for the RI/FS to Ecology's EIM database. Simpson shall coordinate with the Ecology project coordinator before uploading data to the EIM database. The schedule for uploading data to the EIM database shall be as set forth in VII.O.

G. RI/FS Outline: Simpson shall prepare and submit to Ecology for review and approval an RI/FS outline. The RI/FS Outline will include a proposed table of contents for the RI/FS and a table of the specific alternatives that Simpson will evaluate in the FS. The schedule for the RI/FS outline shall be as set forth in VII.O.

H. Remedial Investigation/Feasibility Study (RI/FS) Report: Simpson shall prepare and submit to Ecology for review and approval an Agency Review Draft RI/FS Report. At a minimum, the Agency Review Draft RI/FS report will document the findings of the RI, incorporate relevant data from previous reports and studies, present the conceptual site model, propose cleanup standards, analyze remedial options, and present the elements of an RI/FS that meet the

requirements of WAC 173-204-550. The remedial options to be considered will be compatible with the Squaxin Island Tribe/South Puget Sound Salmon Enhancement Group/Simpson habitat restoration plans for Shelton Harbor. After making revisions based on Ecology's comments on the Agency Review Draft RI/FS report, Simpson shall submit a Public Review Draft RI/FS report. The schedule and deliverables for the RI/FS report shall be as set forth in VII.O.

I. Preliminary Draft Cleanup Action Plan (Preliminary DCAP): Simpson shall prepare and submit to Ecology for review and approval a Preliminary DCAP. Selection of cleanup actions shall comply with WAC 173-204-570, and the Preliminary DCAP shall be prepared consistent with the requirements and procedures specified in WAC 173-340-380. After making revisions based on Ecology's comments on the initial draft, Simpson shall submit a Revised Preliminary DCAP. The schedule and deliverables for the Preliminary DCAP report shall be as set forth in VII.O.

J. Progress Reports and Communications with Ecology: Simpson shall provide monthly written progress reports to Ecology that provide a synopsis of the previous month's activity, findings and observations from field investigations, status of reports or other deliverables, a summary of any laboratory data received during the reporting period, and expected activities for the upcoming month. Ecology and Simpson shall meet in person or over the telephone at major project junctures, or more frequently, to review expectations and requirements, proposed contents of reports, overall project schedule, new developments, or unexpected data that could result in the need for modifications to the work.

K. All plans or other deliverables submitted by Simpson for Ecology's review and approval shall, upon Ecology's approval, become integral and enforceable parts of this Order.

L. If the Parties agree on an additional interim action under Section VI.G, Simpson shall prepare and submit to Ecology an additional 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 additional Interim Action Work Plan in accordance with WAC

173-340-600(16). The PLP shall not conduct the additional interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the additional Interim Action Work Plan becomes an integral and enforceable part of this Order, and Simpson is required to conduct the additional interim action in accordance with the approved Interim Action Work Plan.

M. If Ecology determines that Simpson has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to Simpson, perform any or all portions of the remedial action or at Ecology’s discretion allow Simpson opportunity to correct. Simpson 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).

N. Except where necessary to abate an emergency situation, Simpson 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.

O. Summary of Schedule and Deliverables

Task	Item	Schedule
A	RI/FS Work Plan - Draft	Within 45 calendar days of the effective date of the Agreed Order
A	RI/FS Work Plan - Final	Within 45 calendar days from receiving Ecology comments on the draft RI work plan.
B	RI/FS Work Plan - Implementation	In accordance with the schedule in the approved RI/FS work plan.
C	RI Data Memorandum	In accordance with the schedule in the approved RI/FS work plan.
D	Interim Action Work Plan - Draft	In accordance with the schedule in the approved RI/FS work plan.
D	Interim Action Work Plan - Final	Within 45 calendar days from receiving Ecology comments on the draft Interim Action Work Plan.
E	Interim Action Work Plan - Implementation	In accordance with the schedule in the approved Interim Action Work Plan.
F	Electronic Data Submittal to EIM	Concurrent with RI Data Memorandum.

G	RI/FS Outline	Within 45 calendar days from receiving Ecology comments on the RI Data Memorandum.
H	RI/FS Report – Agency Review Draft	Within 90 calendar days from receiving Ecology comments on the RI/FS Outline.
H	RI/FS Report - Public Review Draft	Within 60 calendar days from receiving Ecology comments on the Agency Review Draft RI/FS Report.
I	Preliminary DCAP – Initial Draft	Within 45 calendar days from receiving Ecology approval of the Public Review Draft RI/FS Report.
I	Preliminary DCAP – Revised Draft	Within 45 calendar days from receiving Ecology comments on the Initial Draft Preliminary DCAP
J	Progress Reports	Within 15 days from the end of the month that is the subject of the report
J	Submit Field Observations/Screening results/summary of lab data	As available, with monthly progress reports.

VIII. TERMS AND CONDITIONS

A. Remedial Action Costs

Simpson 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 \$ 46,611.41 in remedial action costs related to this Site as of March 31, 2017. Payment for this amount shall be submitted within thirty (30) days of the effective date of this Order. For all costs incurred subsequent to March 31, 2017, Simpson 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:

Joyce Mercuri
Toxics Cleanup Program
Southwest Region
P. O. Box 47775
Olympia, WA 98504-7775

(360) 407-6260
Joyce.Mercuri@ecy.wa.gov

The project coordinator for Simpson is:

Dave McEntee
Vice President
Simpson Timber Company
535 E. Dock Street, Suite 205
Tacoma, WA 98402

(360) 495-2088
Dave.McEntee@simpson.com

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and Simpson, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

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

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.

Simpson 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

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Shelton Harbor SCU and clinker deposit that Simpson either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing Simpson's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or

other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by Simpson. Simpson shall make all reasonable efforts to secure access rights for those properties within the Shelton Harbor SCU and clinker deposit not owned or controlled by Simpson where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by Simpson 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 for portions of the Site owned by Simpson.

E. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, Simpson 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, Simpson shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by Simpson pursuant to implementation of this Order. Simpson shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow Simpson and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.D (Access), Ecology shall notify Simpson 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

A Public Participation Plan is required for this Site. Ecology shall review any existing Public Participation Plan to determine its continued appropriateness and whether it requires amendment, or if no plan exists, Ecology shall develop a Public Participation Plan alone or in conjunction with Simpson.

Ecology shall maintain the responsibility for public participation at the Site. However, Simpson 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 and remedial investigation/feasibility study 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 Simpson 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 Simpson that do not receive prior Ecology approval, Simpson shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Shelton Harbor SCU. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

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

- a. Shelton Timberland Library
710 W. Alder Street
Shelton, WA 98584
- b. Ecology's Southwest Regional Office
300 Desmond Drive SE
Lacey, WA 98503

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, Simpson shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, Simpson 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 Simpson may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege, the attorney-client privilege, or any other privilege recognized by Washington or federal law. If Simpson withholds any requested records based on an assertion of privilege, Simpson 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 Simpson elects to invoke dispute resolution Simpson must utilize the procedure set forth below.

a. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), Simpson has 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; Simpson'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. Simpson 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.M (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 Simpson 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 Simpson 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 Simpson;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII.L (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 Simpson.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give Simpson 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.K (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.L (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 both Ecology and Simpson. Simpson 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 Simpson to cease such activities for such period of time as it deems necessary to abate the danger. Simpson shall immediately comply with such direction.

In the event Simpson 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, Simpson may cease such activities. Simpson 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, Simpson shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Simpson's cessation of activities, it may direct Simpson to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, Simpson's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.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 Simpson to recover remedial action costs paid

to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against Simpson regarding remedial actions required by this Order, provided Simpson complies with this Order.

Ecology nevertheless reserves its rights under RCW 70.105D, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

By entering into this Order, Simpson does not admit to any liability for the Site. Although Simpson is committing to conducting the work required by this Order under the terms of this Order, Simpson expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, 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 Shelton Harbor SCU or in the clinker deposit shall be consummated by Simpson 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 Simpson's transfer of any interest in all or any portion of the Shelton Harbor SCU or the clinker deposit, and during the effective period of this Order, Simpson 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, Simpson shall notify Ecology of said transfer. Upon transfer of any interest, Simpson 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

All actions carried out by Simpson 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.

Pursuant to RCW 70.105D.090(1), Simpson is 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, Simpson shall comply with the substantive requirements of such permits or approvals. At this time, the state or local permit/approval that is known to be applicable is the Hydraulic Project Approval under RCW 77.55, which is a requirement for sediment sampling and construction that may affect sediments. The substantive requirements of the Hydraulic Project Approval that are applicable to the work to be performed under this Agreed Order are included in Exhibit C.

Simpson has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090 (1) would otherwise be required for the remedial action under this Order. In the event either Ecology or Simpson determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or Simpson shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Simpson 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 Simpson and on how Simpson must meet those requirements. Ecology shall inform Simpson in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Simpson shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

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 Simpson 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

Simpson agrees to indemnify and save and hold the State of Washington, 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 acts or omissions of Simpson, its officers, employees, agents, or contractors in entering into and implementing this Order. However, Simpson shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon Simpson's receipt of written notification from Ecology that Simpson has completed the remedial activity required by this Order, as amended by any modifications, and that Simpson has complied with all other provisions of this Agreed Order.

X. ENFORCEMENT

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

- A. The Attorney General may bring an action to enforce this Order in a state or federal court.
- B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

RECEIVED

Agreed Order No. DE 14091
Shelton Harbor Cleanup Unit
Oakland Bay and Shelton Harbor Sediment Site

MAY 09 2017

Page 28 of 28

WA State Department
of Ecology (SWRO)

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.

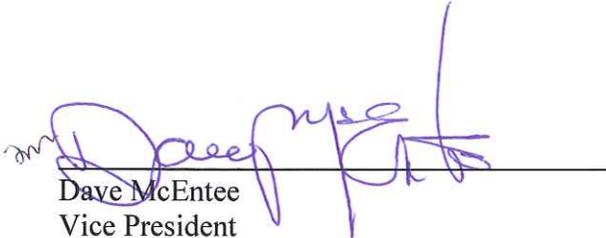
D. This Order is not appealable to the Washington Pollution Control Hearings Board.

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

Effective date of this Order: July 1, 2017

SIMPSON TIMBER COMPANY

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



Dave McEntee
Vice President
Simpson Timber Company
535 E. Dock Street, Suite 205
Tacoma, Washington 98402
(360) 495-2088



Rebecca Lawson, P.E., LHG
Section Manager Toxics Cleanup Program
Southwest Regional Office
(360) 407-6241

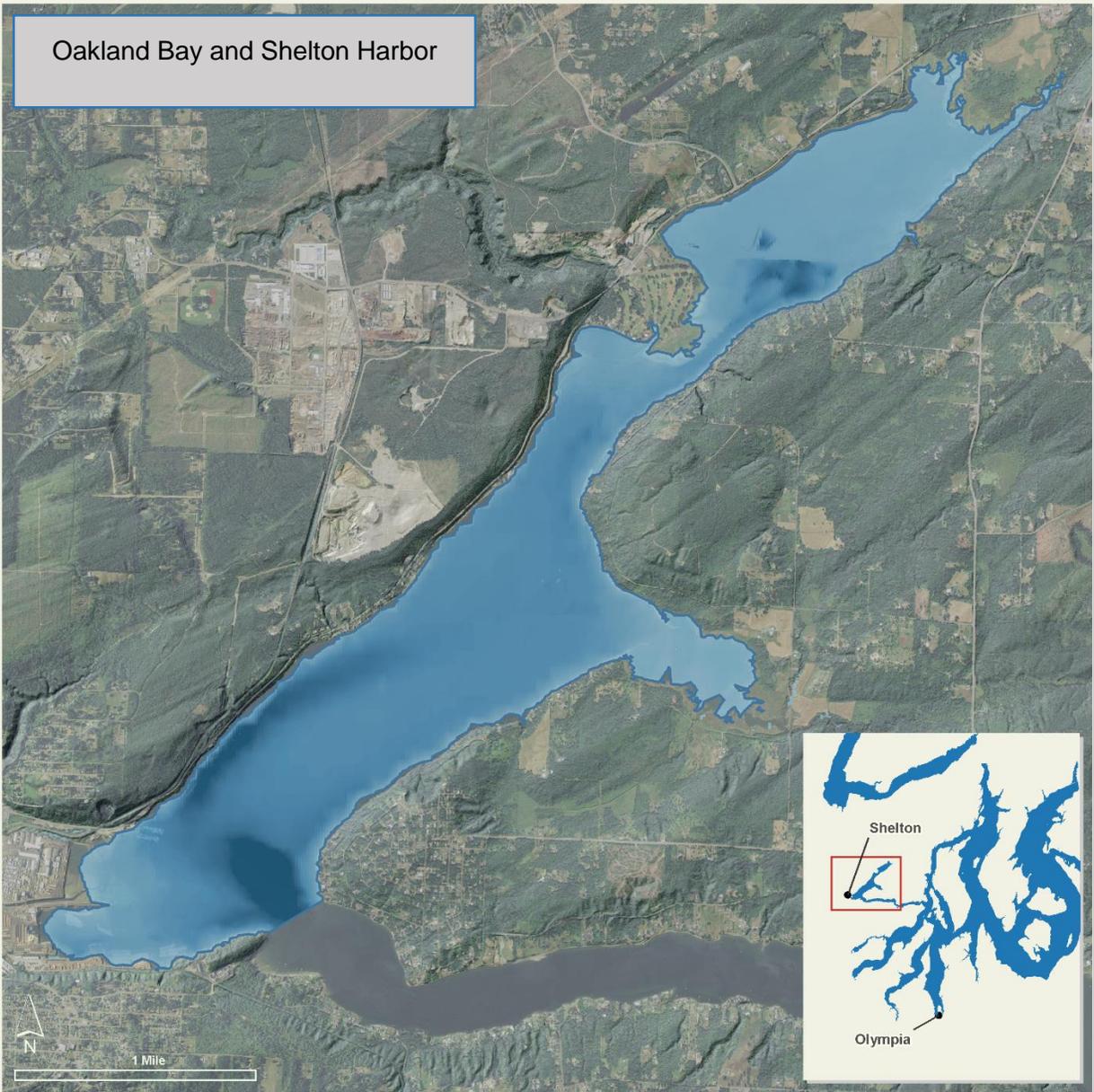


EXHIBIT A:
Oakland Bay and Shelton Harbor
Sediments Site

Agreed Order No. DE 14091
Oakland Bay and Shelton Harbor Sediment Site
Shelton Harbor Cleanup Unit



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LEGEND

- Northern Habitat Restoration Area
- Sediment Cleanup Unit Boundary
- Clinker Deposit



NOTE:
1. Aerial photo: NAIP, 2015.

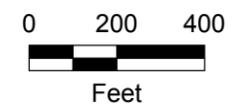


Exhibit B
Shelton Harbor
Sediment Cleanup Unit

EXHIBIT C
Substantive Requirements of Hydraulic Project Approval
For Sediment Sampling Activities
Agreed Order No. DE 14091

- Conduct borings in a manner to minimize turbidity and discharge of silt to the water column.
- Minimize disturbance of sediment while collecting cores, surface samples or using other equipment such as sediment profile imaging cameras.
- Take precautions to minimize sediment disturbance from prop wash and anchoring.
- Do not ground the boat or bring vehicles onto sediments.
- Sediments with visible evidence of chemical contamination (e.g., oily droplets, sheen, paint chips, sandblast grit) should not be returned to the water. Instead they should be retained on board the vessel for appropriate disposal onshore.
- Sediment sampling equipment shall be well-maintained and in good repair to prevent the loss of lubricants or other deleterious materials from entering the water.
- If at any time, as a result of project activities, fish are observed in distress, a fish kill occurs, or water quality problems are observed, immediate notification shall be made to the Habitat Program Manager at (360) 427-2179 or Margaret.Bigelow@DFW.wa.gov.