



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000

711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

February 16, 2012

Kristin Gaines  
Millennium Bulk Terminals LLC  
PO Box 2098  
4029 Industrial Way  
Longview, WA 98632

Mark A. Stiffler  
c/o Alcoa Inc.  
201 Isabella St.  
Pittsburgh, PA 15212-5858

Dear Ms. Gaines & Mr. Stiffler:

The Department of Ecology (Ecology) has reviewed the comments received on Agreed Order No. 8940 during the public comment period and determined that none of the comments warrant changes to the order.

Ecology is developing a Responsiveness Summary for the comments received and will post that document with the signed order on our website when completed. Copies of the Responsiveness Summary will also be sent to the information repositories identified in the Public Participation Plan and sent to those who provided comments on the proposed order.

Enclosed please find a copy of the signed order. The effective date of the order is February 16, 2012.

Please contact Paul Skyllingstad at (360) 407-6949 if you have questions.

Sincerely,

Garin Schrieve, P.E.  
Industrial Section Manager  
Waste 2 Resources Program

enclosure

cc: Ivy Anderson, AG

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

Northwest Alloys, Inc.  
and Millennium Bulk Terminals  
Longview, LLC

AGREED ORDER

No. DE 8940

TO: Mark A. Stiffler  
Northwest Alloys, Inc.  
201 Isabella St.  
Pittsburgh, PA 15212-5858

Kristin Gaines  
Millennium Bulk Terminals – Longview, LLC  
4029 Industrial Way  
Longview, WA 98632

**TABLE OF CONTENTS**

I.	INTRODUCTION.....	3
II.	JURISDICTION.....	3
III.	PARTIES BOUND .....	3
IV.	DEFINITIONS .....	3
V.	FINDINGS OF FACT .....	4
VI.	ECOLOGY DETERMINATIONS .....	8
VII.	WORK TO BE PERFORMED .....	9
VIII.	TERMS AND CONDITIONS OF ORDER.....	10
	A. Public Notice .....	10
	B. Remedial Action Costs .....	10
	C. Implementation of Remedial Action .....	11
	D. Designated Project Coordinators .....	11
	E. Performance.....	12
	F. Access .....	13
	G. Sampling, Data Submittal, and Availability .....	14
	H. Public Participation.....	14
	I. Retention of Records .....	16
	J. Resolution of Disputes.....	16
	K. Extension of Schedule .....	17
	L. Amendment of Order.....	18
	M. Endangerment .....	19
	N. Reservation of Rights .....	19
	O. Transfer of Interest in Property.....	20
	P. Compliance with Applicable Laws.....	21
	Q. Indemnification.....	22
IX.	SATISFACTION OF ORDER.....	22
X.	ENFORCEMENT .....	22

EXHIBIT A. Site Diagram  
EXHIBIT B. Former Reynolds Metals Reduction Plant Work Plan Addendum

EXHIBIT C.

(August 23, 2011) and Approval Letter from Ecology  
(August 29, 2011)  
Former Reynolds Metals Reduction Plant Work Plan Addendum  
#2 (December 20, 2011) and Approval Letter from Ecology  
(December 21, 2011)

## **I. INTRODUCTION**

The mutual objective of the State of Washington, Department of Ecology (Ecology), Northwest Alloys, Inc. (NWA) and Millennium Bulk Terminals—Longview, LLC (MBTL) under this Agreed Order (Order) is to provide for remedial action at a site where there has been a release or threatened release of hazardous substances. Specifically, this Agreed Order will require:

1. Complete implementation of Work Plan Addendum #1 and Work Plan Addendum #2.
2. Completion of Revised Draft Remedial Investigation/Feasibility Study Report.
3. Preparation of a Final Remedial Investigation/Feasibility Study Report.

This Agreed Order No. DE 8940 fully supersedes and replaces Agreed Order No. DE 4263.

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. The Parties agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the Parties responsibility under this Order. The Parties 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 Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as former Reynolds Metals Aluminum Smelter Site and is generally located at 4029 Industrial Way, Longview, Washington. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. The Site is more particularly described in the Site Diagram (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(5).

B. Parties: Refers to Ecology, NWA and MBTL.

C. Potentially Liable Person (PLP): Refers to NWA and MBTL.

D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. The terms “Agreed Order” or “Order” shall include all exhibits to this Order.

E. Work Plan Addendum #1: Refers to the Former Reynolds Metals Reduction Plant Work Plan Addendum #1 (August 23, 2011) approved by Ecology on August 29, 2011. Work Plan Addendum #1 is attached hereto as Exhibit B and is considered an integral and enforceable part of this Order.

F. Work Plan Addendum #2: Former Reynolds Metals Reduction Plant Work Plan Addendum #2 (December 20, 2011) approved by Ecology on December 21, 2011. Work Plan Addendum #2 is attached hereto as Exhibit C and is considered an integral and enforceable part of this Order.

#### V. FINDINGS OF FACT

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

A. Reynolds Metals Company (Reynolds) constructed an aluminum smelter facility in 1941 located on the Site. Reynolds produced aluminum and aluminum based products at the aluminum smelter facility for nearly 60 years. The aluminum smelter facility is located west of Longview, Washington and adjacent to the Columbia River in Cowlitz County, Washington.

The eastern portion of the Site was developed in 1941 by Reynolds as an aluminum reduction plant, with aluminum smelting and casting operations. The western portion of the Site was developed in 1967 for aluminum smelting operations. The aluminum smelter facility consisted of: two aluminum producing plants (known generally as the North Plant and South Plant), a carbon plant and carbon transfer area, a cable mill, a cryolite plant, waste water treatment plant and casting facility.

B. The smelting operations required a dry materials handling system for raw materials. Alumina ore was received by rail or ocean-going vessel. Other raw material such as petroleum coke, coal tar pitch, coal, cryolite, and aluminum fluoride were received by rail and truck. Liquid coal tar pitch was unloaded by rail and transferred into storage tanks, which had distribution lines to the greenmill. Coal tar pitch contains polycyclic aromatic hydrocarbons (PAHs). Information provided to Ecology indicates that historically coal tar pitch was incidentally placed upon the ground in the vicinity of the rail unloading area.

C. Two historical landfills are located on the Site: a floor sweeps landfill located on the southeast side of the property; and an industrial landfill located on the southwest side of the property. The floor sweeps landfill was used until the mid-1970s. It includes dry material swept from the potlines floor. This material includes alumina, bath, cryolite, and aluminum fluoride. The industrial landfill was used until the early 1980s. It includes primarily inert wastes including scrap coke, ore, cryolite, aluminum fluoride, bath, brick, concrete, and maintenance activity debris.

D. Reynolds operated a cryolite recovery plant from 1953 until May 1990. The cryolite recovery plant reclaimed electrolyte that was absorbed into the carbonaceous pot lining and fluoride compounds from the wet air emission system solids. The wet air emission control system was used to scrub fluoride and PAH emissions from the aluminum smelting process. Pot lining (or potliner) is comprised of carbonaceous materials and absorbs fluoride and cyanide during the aluminum smelting process. When potliner is no longer serviceable it is removed from the pot in which aluminum is produced and is known as "spent potliner". Prior to the late

1980s, spent potliner was stored outdoors on the southwestern side of the plant prior to recycling in the cryolite plant. All spent potliner was removed and a groundwater monitoring system was constructed in the former storage area by Reynolds under Ecology Order No. DE 83 293. The requirements of the Order were fulfilled in 1989.

E. Cryolite recovery is a caustic digestion process. Lime was processed on site to make caustic soda. "White mud" is a waste produced by this process. White mud is located in a soil-capped area on the northeast portion of the Site. White mud is primarily comprised of lime and contains fluoride.

F. The cryolite recovery process also generated solids which were named "black mud", which contain fluoride and cyanide. When the cryolite recovery plant was started in 1953, the black mud was disposed of on the soil surface near the cryolite plant and remains in place. Two black mud ponds were constructed in the early 1960s on the eastern side of the plant property. The black mud ponds were excavated at least once and the material moved to the southwestern side of the aluminum smelter facility near the industrial landfill. Placement of black mud into these areas ended in 1972. The black mud in the two old ponds and the black mud placed along the Columbia River dike near the industrial landfill remain in place and were covered with soil in 1988. In 1972, a 33-acre black mud impoundment, known as the Black Mud Pond (BMP) was constructed on the west side of the property and all black mud generated by the cryolite plant was disposed of in this location.

G. In or around May 2000, Alcoa Inc. (Alcoa) purchased Reynolds which is now a wholly owned subsidiary of Alcoa.

H. In or around February 2001, Reynolds sold most of the fixed assets and improvements at the Site, including aluminum making equipment and buildings, to Longview Aluminum, LLC (Longview Aluminum). Reynolds retained ownership of the cryolite recovery plant and the real estate, including the real estate beneath the aluminum making equipment and buildings. Operations at the aluminum smelter facility were discontinued around February 2001.

I. In or around March 2003, Longview Aluminum, LLC declared bankruptcy, and Development Service Inc. (DSI) was appointed trustee of the estate. In 2004, DSI auctioned Longview Aluminum's assets.

J. In or around December of 2004, Chinook Ventures LLC (Chinook) purchased the assets of Longview Aluminum including the buildings and aluminum producing facilities during bankruptcy proceedings. Reynolds retained title to the real estate. Chinook entered into a long-term ground lease with Reynolds effective November 30, 2004.

K. In September 2005, the assets retained by Reynolds at the Site, including the real estate and interests in the ground lease, were assigned to NWA, a subsidiary of Alcoa Inc.

L. In March 2007, Chinook submitted a work plan for a Remedial Investigation at the Site. Ecology approved the work plan in June 2007. On June 15, 2007, a Model Toxics Control Act Agreed Order No. DE 4263 (AO DE 4263) between Ecology, NWA and Chinook became effective. AO DE 4263 required NWA and Chinook Ventures to submit a sampling plan, Remedial Investigation Report (RI Report), and Feasibility Study (FS). NWA and Chinook submitted to Ecology for review and approval the RI Report on July 2, 2007 and a focused FS in September 2007. Ecology has not approved the 2007 RI Report or the 2007 FS.

M. In 2010 Ecology requested that NWA submit a work plan to conduct additional remedial activities to investigate potential releases of hazardous substances not identified in the 2007 RI Report. Ecology approved Work Plan Addendum #1 on August 29, 2011.

N. In or around January of 2011, MBTL purchased the assets of Chinook, including the buildings and former aluminum producing facilities. NWA retained title to the real estate.

O. MBTL is currently operating a bulk materials terminal at the facility that currently handles a variety of materials including alumina and coal.

P. Based on information currently known to Ecology, including reports prepared for Ecology by NWA, past operations on property that is part of the Site have resulted in releases of cyanide, fluoride and PAHs at levels that exceed the MTCA cleanup levels for Unrestricted Land



Use. Groundwater constituents that have exceeded MTCA cleanup levels or other applicable screening levels within the Site include fluoride, cyanide, sulfate and PAHs.

## VI. ECOLOGY DETERMINATIONS

A. NWA is an “owner or operator” as defined at RCW 70.105D.020(17) of a “facility” as defined in RCW 70.105D.020(5). NWA currently owns property that is part of the Site.

B. MBTL is an “owner or operator” as defined at RCW 70.105D.020(17) of a “facility” as defined in RCW 70.105D.020(5). MBTL currently owns buildings, structures, installations, and equipment that are part of the Site.

C. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(25) and RCW 70.105D.020(10), respectively, has occurred at the Site.

D. Based upon credible evidence, Ecology issued a PLP status letter to NWA dated November 13, 2006, pursuant to RCW 70.105D.040, 70.105D.020(21) 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 NWA is a PLP under RCW 70.105D.040 and notified NWA of this determination by letter dated August 17, 2011.

E. Based upon credible evidence, Ecology issued a PLP status letter to MBTL dated July 21, 2011 pursuant to RCW 70.105D.040, 70.105D.020(21) 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 MBTL is a PLP under RCW 70.105D.040 and notified MBTL of this determination by letter dated August 22, 2011.

F. Pursuant to RCW 70.105D.030(1) and RCW 70.105D.050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public

interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

## **VII. WORK TO BE PERFORMED**

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the PLPs take the following remedial actions at the Site and that these actions be conducted in accordance with the requirements of Chapter 173-340 WAC. The PLPs shall perform the following remedial actions at the Site:

A. The PLPs shall complete the investigation as detailed in Work Plan Addendum #1 and Work Plan Addendum #2. Work will be in accordance with the schedules established in Work Plan Addendum #1 and Work Plan Addendum #2, respectively.

B. The PLPs shall submit a Revised Draft Remedial Investigation/Feasibility Study Report (RI/FS Report) for the Site that meets the requirements of WAC 173-340-350 and WAC 173-204-560. The Revised Draft RI/FS Report shall be submitted to Ecology for review and comment by March 30, 2012.

C. The PLPs shall incorporate Ecology's comments on the Revised Draft RI/FS Report and submit a Draft Final RI/FS Report to Ecology within ninety (90) days after receipt of Ecology's written comments on the Revised Draft RI/FS Report. The Draft Final RI/FS Report will be completed in accordance with WAC 173-340-350 and -360. The Draft Final RI/FS Report will become the Final RI/FS Report following public comment and upon Ecology's approval.

D. In accordance with WAC 173-340-840(5) and Ecology Toxics Cleanup Program Policy 840 (Data Submittal Requirements), data generated for contaminated site investigations and cleanups shall be submitted in both a written and electronic format. For additional information regarding electronic format requirements, see the website <http://www.ecy.wa.gov/eim>. All laboratory analyses shall be performed by a State of Washington certified laboratory for each analytical method used.

E. Schedule of Deliverables:

<b>Deliverable</b>	<b>Schedule</b>
Completion of Work Plan Addendum #1 and Work Plan Addendum #2	According to the Schedules in Work Plan Addendum #1 and Work Plan Addendum #2
Revised Draft RI/FS Report	March 30, 2012
Draft Final RI/FS Report	Within ninety (90) days after Ecology's written comments on the Revised Draft RI/FS Report
Final RI/FS Report	Upon Ecology's approval following a public comment period for the Draft Final RI/FS Report

F. If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this Section, Ecology may complete and issue the final deliverable.

### **VIII. TERMS AND CONDITIONS OF ORDER**

**A. Public Notice**

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that this Order is inadequate or improper in any respect.

**B. Remedial Action Costs**

The PLPs shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, 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). For all costs incurred subsequent to the effective date of this Agreed Order, PLPs shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges which shall begin to accrue on the 91st day 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.

### **C. Implementation of Remedial Action**

If Ecology determines that the PLPs have failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to the PLPs, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of the PLPs' failure to comply with their obligations under this Order, the PLPs shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.B (Remedial Action Costs), provided that the PLPs are not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

Except where necessary to abate an emergency situation, the PLPs shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

### **D. Designated Project Coordinators**

The project coordinator for Ecology is:

Paul Skyllingstad  
Industrial Section  
Department of Ecology  
P.O. Box 47706  
Olympia, WA 98504-7706  
(360) 407-6949

The project coordinator for MBTL is:

Kristin Gaines  
Millennium Bulk Terminals LLC  
P.O. Box 2098  
4029 Industrial Way  
Longview, WA 98632  
(360) 425-2800

The project coordinator for Northwest Alloys is:

Mark A. Stiffler  
c/o Alcoa Inc.  
201 Isabella St.  
Pittsburgh, PA 15212-5858  
(412) 553-1658

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, MBTL and NWA, 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.

**E. Performance**

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

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered in 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 in 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 Chapter 18.220 RCW or RCW 18.43.130.

MBTL and NWA shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), and contractor(s) to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

**F. Access**

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that the PLPs either own, control, or have 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 the PLPs progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the PLPs. The PLPs shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the PLPs 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 the PLPs 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.

**G. Sampling, Data Submittal, and Availability**

With respect to the implementation of this Order, the PLPs shall make the results of all sampling, laboratory reports, and/or test results generated by them or on their behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, the PLPs shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the PLPs pursuant to implementation of this Order. The PLPs shall notify Ecology seven (7) days in advance of any sample collection or remedial work activity at the Site. Ecology shall, upon request, allow the PLPs and/or their 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. F (Access), Ecology shall notify the PLPs prior to any sample collection activity unless an emergency prevents such notice.

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

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

1. If agreed to by Ecology, develop appropriate mailing list, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans or 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 related to performance of remedial actions at the Site, and before major meetings with the interested public and local governments concerning remedial actions at the Site. Likewise, Ecology shall notify the PLPs prior to the issuance of all press releases and fact sheets related to performance of remedial actions at the Site, and before major meetings with the interested public and local governments concerning remedial actions at the Site. For all press releases, fact sheets, meetings, and other outreach efforts by the PLPs that do not receive prior Ecology approval, the PLPs shall clearly indicate to 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 Site. 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. Longview Public Library  
1600 Louisiana St.  
Longview, WA 98632
- b. Industrial Section  
Ecology Headquarters  
300 Desmond Drive SE  
Lacey, WA 98504

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 the Site shall be maintained in the repository located at Ecology's Industrial Section, Ecology Headquarters, Lacey, Washington.



**I. 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, the PLPs 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. Upon request of Ecology, the PLPs shall make all records available to Ecology and allow access for review within a reasonable time.

**J. Resolution of Disputes**

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII. B (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

a. If MBTL or NWA objects to Ecology's project coordinator's written decision or the itemized billing statement, they must notify Ecology's project coordinator in writing of their objection within fourteen (14) days of receipt of the written decision or itemized billing statement.

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

c. MBTL or NWA may then request management review of the decision. This request shall be submitted in writing to the Industrial Section Manager within seven (7) days of receipt of Ecology's project coordinator's written decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of the request for review. The Section Manager's decision 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.

**K. 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 MBTL and NWA 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 MBTL and NWA 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 MBTL and NWA;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII. M (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 MBTL and NWA.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give MBTL and NWA 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. L (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. M (Endangerment).

**L. 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. N (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 Ecology, MBTL, and NWA. MBTL and NWA 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. J (Resolution of Disputes).

**M. Endangerment**

In the event Ecology determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct MBTL and NWA to cease such activities for such period of time as it deems necessary to abate the danger. MBTL and NWA shall immediately comply with such direction.

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

If Ecology concurs with or orders a work stoppage pursuant to Section VIII. M (Endangerment), MBTL and NWA'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. K (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.

**N. Reservation of Rights**

This Order is not a settlement under Chapter 70.105D RCW. 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 MBTL and NWA to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against MBTL and NWA regarding remedial actions required by this Order, provided MBTL and NWA comply with this Order.

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, 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.

Except as otherwise provided herein, neither NWA nor MBTL waives any rights or defenses either may have to subsequent Ecology actions or directives not covered by the scope of this Order. In particular, but without limiting the foregoing, NWA and MBTL specifically reserve any right they may have to challenge any Ecology determination that either has failed, without sufficient cause, to comply with this Order.

**O. Transfer of Interest in Property**

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by MBTL or NWA without provision for continued implementation of all requirements of this Order and implementation of any remedial actions required by this Order.

Prior to MBTL and NWA's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, MBTL and NWA shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, within (30) days of any transfer, MBTL and NWA shall notify Ecology of said transfer. Upon transfer of any interest, MBTL and NWA shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

**P. Compliance with Applicable Laws**

1. All actions carried out by the PLPs pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090.

2. Pursuant to RCW 70.105D.090(1), the PLPs are exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58, and of any laws requiring or authorizing local government permits or approvals. However, the PLPs shall comply with the substantive requirements of such permits or approvals.

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

3. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for the State to administer any federal law, the exemption shall not apply and the PLPs

shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits.

**Q. Indemnification**

The PLPs agree to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property to the extent arising from or on account of acts or omissions of the PLPs, their officers, employees, agents, or contractors in entering into and implementing this Order. However, the PLPs 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 MBTL and NWA's receipt of written notification from Ecology that MBTL and NWA have completed the remedial activity required by this Order, as amended by any modifications, and that MBTL and NWA have complied with all other provisions of this Agreed Order.

**X. ENFORCEMENT**

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

- A. The Attorney General may bring an action to enforce this Order in a state or federal court.
- B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
- C. In the event a PLPs refuses, without sufficient cause, to comply with any term of this Order, the PLP will be liable for:
  - a. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply; and

b. 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: FEBRUARY 16, 2012

**NORTHWEST ALLOYS, INC.**



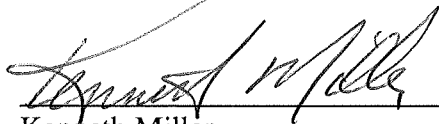
Mark A. Stiffler  
President  
Northwest Alloys, Inc.  
201 Isabella St.  
Pittsburgh, PA 15212-5858  
(412) 553-1658

**STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY**



Garin Schrieve, P.E.  
Industrial Section Manager  
Department of Ecology  
Waste 2 Resources Program  
300 Desmond Drive SE  
Lacey, WA 98503  
(360) 407-6868

**MILLENNIUM BULK TERMINALS – LONGVIEW, LLC**



Kenneth Miller  
Chief Executive Officer  
Millennium Bulk Terminals – Longview, LLC  
4029 Industrial Way  
Longview, WA 98632