



Port of Anacortes Dakota Creek
SIC # 41AX4
SITE # 2670
Sandra Caldwell, Proj. Coord.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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In the Matter of Remedial Action by:

PORT OF ANACORTES

No. DE-07ICPHQ-5080
AGREED ORDER for REMEDIAL
INVESTIGATION/FEASIBILITY STUDY,
DRAFT CLEANUP ACTION PLAN and
INTERIM ACTION – PORT OF ANACORTES
DAKOTA CREEK SITE

TO: Port of Anacortes
PO Box 297
Anacortes, WA 98221

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the Port of Anacortes (the Port) 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 the Port to perform a remedial investigation/feasibility study (RI/FS) to collect, develop, and evaluate sufficient information to develop a draft cleanup action plan (DCAP) for the Site; to perform an interim action to remove impacted sediments at the Site; and to produce a DCAP for the 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. The Port agrees to undertake all actions required by the terms and conditions of this Order. The Port 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 Port of Anacortes Dakota Creek and is generally located at 155 Q Avenue in Anacortes, Washington. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site and includes both the uplands and sediments. Based upon factors currently known to Ecology, the Site is more

particularly described in Exhibit A to this Order, which includes a detailed site diagram, location map, and legal description. The Site constitutes a Facility under RCW 70.105D.020(4).

B. Parties: Refers to the State of Washington, Department of Ecology and the Port of Anacortes.

C. Potentially Liable Person (PLP): Refers to the Port of Anacortes.

D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits to this Order.

V. FINDINGS OF FACT

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

A. The Site is generally located at 155 Q Avenue in Anacortes, Washington and includes associated uplands and sediments. The Site has been used for industrial and shipyard activities since approximately 1879. The Port acquired portions of the Site from the mid-1940s to the mid-1970s. Dakota Creek Industries, Inc., the current tenant, has leased the property from the Port since 1977 and uses the Site as a shipyard for the construction and repair of vessels. From approximately 1925 to 1969 several above-ground storage tanks (ASTs) were present on the upland portion of the Site and used for bulk fuel storage and distribution. The Site is currently an active shipyard, primarily used for the construction and repair of vessels. Existing site features include two (2) commercial piers (Pier 1 and Pier 2), a dry dock at the end of Pier 1, two (2) outfitting piers, a marine railway (no longer in use), and a synchrolift elevator system for vessel transfer and repair.

B. Historical uses at the Site including vessel moorage, bulk fuel and oil storage, and shipbuilding activities have resulted in soil, groundwater, and sediment contamination. Other potential sources of contamination at the Site include outfall discharges from the former Scott Paper Mill and City of Anacortes municipal sewer. An outfall from the former Scott Paper Mill existed within the DCI Basin from approximately 1952 to 1978.

C. In March 2002 and January 2003, the Port of Anacortes entered into the voluntary cleanup program (VCP) for the upland portion of the Site. Site investigations and remedial actions were conducted under VCP as discussed in paragraphs D, E, and F below. Because Ecology and the Port have negotiated this Agreed Order to integrate the upland and sediment portions of the Site, the Site was removed from VCP on September 5, 2007.

D. In 2001 and 2002, prior to entering VCP, the Port conducted what it described for internal administrative purposes as a remedial investigation/feasibility study, developed what it described for internal administrative purposes as a cleanup action plan and conducted remedial action for the upland portion of the Site. The remedial investigation revealed exceedences of total petroleum hydrocarbons (TPH-gasoline: 120 mg/kg to 2600 mg/kg; TPH-diesel: 120 mg/kg to 40,000 mg/kg) and carcinogenic polycyclic aromatic hydrocarbons (cPAHs: 0.67 mg/kg to 1.1 mg/kg) with respect to MTCA Method-A and/or Method-B soil cleanup levels of 100 mg/kg, 2000 mg/kg (Method A) and 0.22 mg/kg (Method B) respectively. Soil arsenic concentrations of 124 mg/kg to 270 mg/kg exceeded its preliminary cleanup level of 88 mg/kg at two locations. Attached as Exhibit C is the remedial investigation Table of Results, Figures showing the soil sampling locations and approximate extent of contamination.

Previous Upland Remedial Actions

E. In 2002, the Port initiated and performed an interim remedial action (the "soil interim action") while in Ecology's VCP to remedy petroleum and metals contamination on the upland portion of the Site. As part of the soil interim action, the Site was investigated to delineate the nature and extent of soil contamination. The investigation showed that soil in the vicinity of the former fuel storage tanks and near the marine railway exceeded MTCA Method A cleanup levels for arsenic and TPH compounds (predominantly gasoline and diesel). The 2002 soil interim action included the excavation, removal, and disposal of 3,900 cubic yards of contaminated soils. Confirmation soil samples were collected from the bottom and sidewalls of all excavations and verified that the remaining adjacent soils contained concentrations that were below MTCA cleanup levels (Exhibit D). As part of the VCP process, Ecology reviewed this

work and provided comments. Ecology's April 21, 2003, and May 22, 2002, comment letters are available in the Toxic Cleanup Program's files. Ecology did not issue any opinion letter for this Site while in the VCP process.

F. Prior to and following the soil interim action, four (4) groundwater monitoring wells were used to evaluate the groundwater quality in the area of the interim action at the Site. Four (4) quarterly groundwater quality monitoring events were completed. Because groundwater at the Site discharges directly into the Guemes Channel and is not currently used as a drinking water source, the Port compared concentrations to MTCA Method B, marine surface water criteria, and Washington State Metal Background concentrations. Groundwater samples were analyzed for metals, petroleum hydrocarbons, SVOCs, VOCs, pesticides, and herbicides. The analytes detected in 2002 that exceeded groundwater cleanup levels in one or more of the monitoring wells were arsenic, chromium, TPH-Diesel and TPH-Oil. Performance monitoring performed in 2006 showed that all constituents except arsenic had attenuated in groundwater at the Site to below preliminary cleanup levels. The monitoring further indicated that the elevated levels of arsenic may be migrating onto the Site from an unknown upgradient source (Exhibit E). Ecology may require additional investigation to confirm this data.

Previous Sediment Remedial Actions

G. In 1997 and 2002 the Port independently conducted sediment quality investigations into the chemical quality of surface sediments within the DCI basin and adjacent to Pier 1 (Otten Engineering 1997; Weston 2002). Sediment samples were analyzed for selected constituents or all constituents in the following analyte groups; metals, polycyclic aromatic hydrocarbons (PAHs), porewater tributyltin (TBT), polychlorinated biphenyls (PCBs), volatile organic compounds (VOCs), and pesticides. As part of the 1997 sediment investigation ten (10) surface sediment samples (0 to 10 cm) were collected within the DCI basin or just north of Pier 1 in Guemes Channel. Chemical concentrations were compared to Sediment Quality Standards (SQS). Chapter 173-204 WAC. Contaminant concentrations exceeded SQS criteria at two (2) locations. Those contaminants that exceeded SQS criteria included; metals (Cu and Zn), LPAHs,

and HPAHs. Surface sediment samples were collected from fifteen (15) locations within the DCI basin and near Pier 1 as part of the 2002 sediment investigation. Contaminant concentrations exceeded SQS standards at only one (1) location. Those contaminants that exceeded SQS criteria included; metals (As, Cu, Hg, and Zn), LPAHs, HPAHs, bis(2-ethylhexyl)phthalate, and dibenzofuran (Exhibit F).

H. In 2006 the Port conducted surface sediment sampling for dioxin/furans within the DCI basin, adjacent to Pier 1 and just north of Pier 1 in Guemes Channel (Floyd|Snider 2006). Samples were collected at nine locations. The samples revealed elevated concentrations of dioxin/furan compounds when compared to background levels. Attached as Exhibit H is 2006 Sediment Sampling Data report (Exhibit G).

VI. ECOLOGY DETERMINATIONS

A. The Port is an "owner or operator" as defined in RCW 70.105D.020(12), of a "facility" as defined in RCW 70.105D.020(4) because it is the current owner of the Site and because it owned the Site at the time of the above-described release.

B. Based upon all factors known to Ecology, a "release" or "threatened release" of "hazardous substance(s)" as defined in RCW 70.105D.020(20) and RCW 70.105D.020(7), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology notified the Port of its status as a PLP on November 2, 2004, pursuant to RCW 70.105D.040, -.020(16), and WAC 173-340-500. The Attorney General's office provided additional clarification regarding the Port's PLP status via a December 2, 2004, letter to the Port's counsel.

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

E. 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. The presence at the Site of contaminated sediments, and the additional cost that will be incurred if removal of the sediments is delayed, presents circumstances which warrant an interim action consistent with WAC 173-340-430. The interim action consists of the dredging and upland disposal of contaminated sediments in a portion of the DCI basin that will be delineated as part of the remedial investigation. More details regarding the interim action are discussed in Exhibit B, Section 4.0.

F. The previous upland and sediment remedial actions described in Section V are incorporated as part of this Order.

VII. WORK TO BE PERFORMED

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

A. The Port shall conduct the remedial actions described below and in accordance with the schedule presented in Exhibit B to this Order. Generally, the Port shall develop a draft cleanup action plan (DCAP) for the Site and, prior to developing the DCAP, perform a remedial investigation/feasibility study and interim action including, but not limited to, the follow tasks:

- Preparation of a draft Remedial Investigation/Feasibility Study and Interim Action Work Plan (Work Plan). The draft Work Plan will describe project management; data collection and analysis; planned interim actions; and remedial alternatives evaluation activities that will be completed. As part of the project background, existing environmental data on Site soil, groundwater, and sediments

will be compiled and evaluated for data gaps in support of selection of a remedial alternative for the Site. The draft Work Plan will also identify specific data collection procedures in a Sampling and Analysis Plan (SAP) and Quality Assurance Project Plan (QAPP) in compliance with WAC 173-340-820, should field data collection be deemed necessary. A Public Participation Plan and a site specific health and safety plan will also be included in the draft Work Plan meeting the requirements of WAC 173-340-600 and -810 respectively, describing the process for public involvement and worker safety during the project. The interim action section of the draft Work Plan may be amended prior to implementation of any remediation activities to present additional details on the work to be completed. The Port shall submit the draft Work Plan to Ecology for review and approval.

- Field data collection to fill data gaps identified in the Work Plan. Field sampling and analysis will be completed in general accordance with the SAP and QAPP. The SAP identifies the proposed number of soil borings, groundwater monitoring wells, and sediment sampling locations but does not limit the number of such locations, approximate depths and number of samples, and includes a quality assurance/quality control plan.
- Preparation of draft Remedial Investigation/Feasibility Study reports. The draft Remedial Investigation/Feasibility Study reports will present the conclusions of the remedial investigation activities including delineation of the nature and extent of groundwater, soil, and sediment contamination and conceptual site model based on the identified contamination migration pathways. The feasibility study will present and evaluate remedial alternatives to address the identified contamination at the Site. Based on the evaluation of alternatives (WAC 173-340-350(8)), the feasibility study will identify a preferred remedial alternative in compliance with WAC 173-340-360, for the Site and evaluate the

completeness of the interim action in accordance with WAC 173-340-430, relative to the preferred remedial alternative for completeness. The draft Remedial Investigation/Feasibility Study reports may be combined as a single document. The Port shall submit the draft Remedial Investigation/Feasibility Study report or reports to Ecology for review and approval.

- Completion of an interim remedial action. An interim action shall be completed to remove contaminated media from the DCI Basin prior to redevelopment activities.
- Upon Ecology approval of the final Remedial Investigation/Feasibility Study report, the Port shall prepare a DCAP in accordance with WAC 173-340-380 that provides a proposed remedial action to address the contamination present on the Site. The DCAP shall include a general description of the proposed remedial actions, cleanup standards developed from the Remedial Investigation/Feasibility Study and rationale regarding their selection, a schedule for implementation, description of any institutional controls proposed, and a summary of applicable local, state, and federal laws pertinent to the proposed cleanup actions. The aggregate of interim actions at the Site may constitute the final cleanup action if the interim actions achieve cleanup standards. If the interim actions do not achieve compliance with cleanup standards additional remedial actions will be identified and selected as part of the cleanup action.
- Evaluate opportunities to perform remedial actions in a fashion that coincidentally enhances habitat. Elements of the remedial action will be evaluated for restoration opportunities in consultation with Ecology as plans for cleanup are developed.

B. The Port shall perform the remedial actions required by this Order according to the schedule included in Exhibit B.

C. 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 Exhibit B, 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 Port 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 (retroactive to July 1, 2007) 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). The Port shall pay the required amount within ninety (90) 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.

Pursuant to RCW 70.105D.055, Ecology has authority to recover unreimbursed remedial action costs by filing a lien against real property subject to the remedial actions.

C. Implementation of Remedial Action

If Ecology determines that the Port has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to the Port, 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 Port's failure to comply with its obligations under this Order, the Port shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.B (Remedial Action Costs), provided that the Port is 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 Port 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:

Sandra Caldwell
Toxics Cleanup Program
PO Box 47600
Olympia, WA 98504-7600
(360) 407-7209
E-mail: saca461@ecy.wa.gov

The project coordinator for the Port is:

Connie Thoman
Port of Anacortes
PO Box 297
Anacortes, WA 98221
(360) 299-1818
E-mail: connie@portofanacortes.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 the Port, 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.

The Port 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.

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 Port 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 the Port'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 the Port. The Port shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the Port 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 Port 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 Port 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. Attached as Exhibit H is Ecology Policy 840, Data Submittal Requirements.

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

Ecology shall notify the Port 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 Port.

Ecology shall maintain the responsibility for public participation at the Site. However, the Port 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, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.
2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify the Port prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the Port that do not receive prior Ecology approval, the Port 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 RI/FS work 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. Anacortes Public Library
1220 10th Street
Anacortes, WA 98221
- b. Washington State Department of Ecology
Headquarters Office
300 Desmond Drive
Lacey, WA 98503

At a minimum, copies of all public notices, fact sheets, and press releases; all quality assured monitoring data; remedial action plans and reports, supplemental remedial planning documents, and all other similar documents relating to performance of the remedial action required by this Order shall be promptly placed in these repositories.

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 Port 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, the Port 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. Upon receipt of Ecology's project coordinator's written decision or the itemized billing statement, the Port has fourteen (14) days within which to notify Ecology's project coordinator in writing of its objection to the decision or itemized 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. The Port may then request regional management review of the decision. This request shall be submitted in writing to the Toxics Cleanup Land & Aquatic Lands Cleanup 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 Port's 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 the Port to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

a. Circumstances beyond the reasonable control and despite the due diligence of the Port including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by the Port;

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 the Port.

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

In the event the Port 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, the Port may cease such activities. The Port shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction the Port shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the Port's cessation of activities, it may direct the Port to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to Section VIII M (Endangerment), the Port'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 the Port to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the Port regarding remedial actions required by this Order, provided the Port complies 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.

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 the Port without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to the Port's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the Port shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, the Port shall notify Ecology of said transfer. Upon transfer of any interest, the Port 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 Port 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. The exempt permits or approvals and the applicable substantive requirements of those permits or approvals, as they are known at the time of entry of this Order, have been identified in Exhibit I.

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

The Port 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 the Port 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 the Port shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the Port 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 Port and on how the Port must meet those requirements. Ecology shall inform the Port in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The Port 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 Port 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 Port agrees, to the extent allowed by law, 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 Port, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the Port 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 the Port's receipt of written notification from Ecology that the Port has completed the remedial activity required by this Order, as amended by any modifications, and that the Port 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.

C. In the event the Port refuses, without sufficient cause, to comply with any term of this Order, the Port 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; and

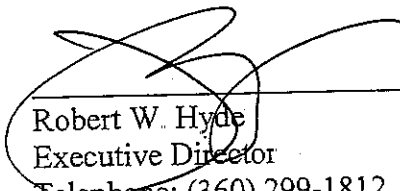
2. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

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

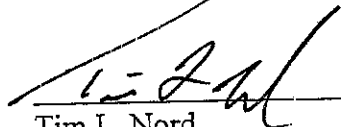
This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: December 12th 2007

PORT OF ANACORTES


Robert W. Hyde
Executive Director
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**STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY**


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