

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

**Port of Bellingham**

**AGREED ORDER for Interim Action,  
Remedial Investigation, Feasibility Study,  
and Draft Cleanup Action Plan – Blaine  
Marina, Inc. Site  
No. DE 9000**

TO: Port of Bellingham  
Attn: Mike Stoner, Director of Environmental Programs  
1801 Roeder Avenue  
Bellingham, WA 98227-1677

**TABLE OF CONTENTS**

I.	INTRODUCTION.....	2
II.	JURISDICTION.....	2
III.	PARTIES BOUND.....	2
IV.	DEFINITIONS.....	2
V.	FINDINGS OF FACT.....	3
VI.	ECOLOGY DETERMINATIONS.....	4
VII.	WORK TO BE PERFORMED.....	5
VIII.	TERMS AND CONDITIONS OF ORDER.....	8
	A. Public Notice.....	8
	B. Remedial Action Costs.....	8
	C. Implementation of Remedial Action.....	9
	D. Designated Project Coordinators.....	9
	E. Performance.....	10
	F. Access.....	10
	G. Sampling, Data Submittal, and Availability.....	11
	H. Public Participation.....	12
	I. Retention of Records.....	13
	J. Resolution of Disputes.....	13
	K. Extension of Schedule.....	14
	L. Amendment of Order.....	16
	M. Endangerment.....	16
	N. Reservation of Rights.....	17
	O. Transfer of Interest in Property.....	17
	P. Compliance with Applicable Laws.....	18
	Q. Indemnification.....	19
IX.	SATISFACTION OF ORDER.....	19
X.	ENFORCEMENT.....	19

  

EXHIBIT A.	Site Diagram
EXHIBIT B.	Scope of Work
EXHIBIT C.	Description of Proposed Interim Action
EXHIBIT D.	Public Participation Plan

## I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and The Port of Bellingham (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 conduct an interim action to repair a failing section of bulkhead, conduct a remedial investigation (RI), a feasibility study (FS), and to prepare a draft cleanup action plan (DCAP) for the Blaine Marina, Inc. site (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. No change in ownership or corporate status shall alter the Port's responsibility under 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 the Blaine Marina, Inc. Site and is generally located at 214 Sigurdson Avenue, Blaine, Whatcom County, Washington, in the western portion of Blaine Harbor industrial area. The Site is defined by the extent of contamination caused by the release of hazardous substances at the Site. As reported to Ecology, 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 the State of Washington, Department of Ecology and the Port
- C. Potentially Liable Person (PLP): Refers to the Port.
- 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. Reportedly, the Site is generally located at 214 Sigurdson Avenue, Blaine, Whatcom County, Washington (located in the western portion of Blaine Harbor industrial area). The Site location is depicted in the Site diagrams attached to this Order as Exhibit A. The Site is listed on the Department of Ecology's Hazardous Sites List as "Blaine Marina, Inc." with the Facility Site Identification Number 2888.

B. Reportedly, the Site upland was created prior to 1949 when aquatic lands were dredged to create a boat harbor and small boat marina. The dredged material was used to create an upland industrial area armored with timber bulkheads, although in some areas riprap was used instead of, or in conjunction with, the bulkheads. The marina was expanded several times since its original construction, but the footprint of the upland industrial area has remained largely unchanged.

C. The Port is the owner of the fee-owned land inboard (east) of the state inner harbor land. Filled aquatic land within the state harbor area is "state-owned aquatic land (SOAL)" managed by the Port under a 1997 Port Management Agreement ("PMA").

D. Reportedly, the bulkhead along the western Site boundary consists of timber piling, with timber lagging and riprap placed along the toe of the structure. A section of the bulkhead, including the piling and lagging, has partially failed and is at risk of failing further. The bulkhead supports the landward end of an overwater building that has moved outward away

from the shore due to the failing bulkhead. A large portion of the fill behind the bulkhead has been lost to erosion due to the failing bulkhead.

E. Reportedly, Blaine Marina, Inc. (the tenant) leased the Site property from the Port since the 1950s. In 1955, the tenant installed three aboveground storage tanks ("ASTs") to store gasoline and diesel fuel for dispensing at the fueling dock, and also for filling tanker trucks for delivery of home heating oil. The tank farm fueling facility has been operated continuously from 1955 to present. Fuel lines run from the ASTs through the damaged bulkhead and beneath the overwater building to the fueling station located on an existing pier where marine vessels are fueled.

F. Reportedly, one documented spill of 500 to 700 gallons of diesel fuel occurred on May 2, 1990. The spill was reportedly contained and removed by vector truck. Another spill reportedly occurred sometime prior to 1986, although no written records of the spill are available. Additionally, the tenant reported that a fuel line elbow leading to the fuel dock was leaking and needed to be replaced.

G. Environmental investigations conducted at the Site between 1990 and 2007 have documented the release of diesel-range and oil-range petroleum hydrocarbons and petroleum-associated compounds benzene, ethylbenzene, and xylene in soil and/or groundwater. Some of these releases exceed MTCA cleanup levels and pose a threat to human health and the environment.

H. Reportedly, product sheen was observed in soil and groundwater in the vicinity of the ASTs during previous investigations and passive product recovery has been conducted by Blaine Marina, Inc. since 1997 to remove product in the subsurface in the vicinity of the ASTs.

## VI. ECOLOGY DETERMINATIONS

A. The Port is an "owner or operator" as defined in RCW 70.105D.020(17) of a "facility" as defined in RCW 70.105D.020(5).

B. 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.

C. Based upon credible evidence, Ecology issued a PLP status letter to the Port dated December 27, 2011, pursuant to RCW 70.105D.040-020(16) and WAC 173-340-500. By letter dated January 3, 2012, the Port voluntarily waived its rights to notice and comment and accepted Ecology’s determination that the Port is a PLP under RCW 70.105D.040. On January 12, 2012 Ecology issued a determination letter to the Port that it is a PLP under RCW 70.105D.040.

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 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. Ecology has determined that a portion of the bulkhead that bounds the Site uplands adjacent to marine aquatic lands is at risk of failure and such failure may result in the release of contaminated Site soil and groundwater to marine surface water and sediment. Ecology has determined that an interim action is required because the failure of the bulkhead may cause the extent of contamination to become substantially worse and cost substantially more to address if contaminated soil and groundwater are released to the marine environment.

## **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, as more fully described the Scope of Work

to this Order as Exhibit B, and that these actions be conducted in accordance with Chapter 173-340 WAC unless otherwise specifically provided for herein:

A. Within thirty (30) days of the effective date of this order, the Port shall prepare an interim action work plan for Ecology's review and approval. Within fifteen (15) days of the receipt of Ecology's comments, the Port shall incorporate Ecology's comments and submit a revised interim action work plan for review. The revised interim action work plan will be considered final after Ecology's approval. Within ninety days (90) following completion of the interim action construction, the Port shall submit to Ecology a final interim action completion report. The proposed interim action consists of the installation of a new cantilevered sheet pile bulkhead behind the failing timber bulkhead section. A more detailed description of the proposed interim action is presented in Exhibit C.

B. Within sixty (60) days of the effective date of this order, the Port shall prepare an RI work plan for Ecology's review and approval. Within forty five (45) days of the receipt of Ecology's comments, the Port shall incorporate Ecology's comments and submit a revised RI work plan for review. The revised RI work plan will be considered final after Ecology's approval.

C. Within one hundred and eighty days (180) following Ecology's approval of the final RI work plan, the Port shall complete the RI field work.

D. Within sixty (60) days following validation of all RI data, the Port shall submit to Ecology a RI data summary technical memorandum.

E. Within one hundred and fifty days (150) days following the completion of the RI work, the Port shall prepare an RI draft report for Ecology's review and approval. Within sixty (60) days of the receipt of Ecology's comments, the Port shall incorporate Ecology's comments and submit a revised RI draft report for review. The revised RI draft report will be considered final after Ecology's approval and public comment.

F. Within sixty (60) days following Ecology's approval of the RI report, the Port shall prepare a FS draft report for Ecology's review and approval. Within forty five (45) days of the receipt of Ecology's comments, the Port shall incorporate Ecology's comments and submit a

revised FS report for review. The revised FS report will be considered final after Ecology's approval and public comment.

G. Within forty five (45) days of the completion of the public comment period, the Port shall incorporate any changes required based upon public comment and submit a final RI and FS report to Ecology.

H. Within sixty (60) days following Ecology's approval of the final RI and FS reports, the Port shall submit a DCAP to Ecology.

I. Upon approval by Ecology, the interim action work plan and RI work plan become integral and enforceable parts of this Order, and the Port is required to perform the interim action, RI and FS according to the work plans and schedules contained therein.

J. The Port shall submit monthly progress reports for work conducted under this Order, unless Ecology notifies the Port, in writing, that less frequent reporting is required for these reports. Progress reports shall contain information as described in Exhibit B to this Order. Progress reports shall be submitted in electronic format to Ecology until satisfaction of the Order in accordance with Section IX of this Order. Progress reports shall be submitted to the Ecology project coordinator.

K. 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 Section VII of this Order, Ecology may complete and issue the final deliverable, but must first give the Port (i) written notice of its determination of insufficient progress with a description of the alleged deficiency and (ii) fifteen (15) days after the notice to demonstrate that it has reasonably remedied the deficiency.

L. The Port may propose that interim actions in addition to that described in Paragraph A above be taken. 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. Ecology will determine whether an interim action is warranted. Should Ecology determine a particular interim action proposed by the Port may be warranted, the Port will prepare and submit a work plan that includes a proposed scope of work and schedule (Work Plan). Interim action work plans are subject to public review and comment. Upon approval by Ecology following public review, the Work Plan becomes an integral and enforceable part of this Order, and the Port is required to perform the interim action according to the work plan and schedule contained therein.

### **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 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:

Jing Liu  
Washington Department of Ecology  
Northwest Regional Office  
3190 160<sup>th</sup> Avenue S.E.  
Bellevue, WA 98008  
(425) 649-4310  
Email: [jliu461@ecy.wa.gov](mailto:jliu461@ecy.wa.gov)

The project coordinator for the Port is:

Mike Stoner, Director of Environmental Programs  
1801 Roeder Avenue  
Bellingham, WA 98227-1677  
(360) 715-7365  
Email: [Mikes@PortOfBellingham.com](mailto:Mikes@PortOfBellingham.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.

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. In this regard, Ecology shall prepare a public participation plan for inclusion as Exhibit D. 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 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. Department of Ecology  
Bellingham Field Office  
1440 10<sup>th</sup> Street, Ste 102  
Bellingham, WA 98225
- b. Bellingham Public Library  
210 Central Avenue  
Bellingham, WA 98227
- c. Department of Ecology  
Northwest Regional Office  
3190 160<sup>th</sup> Ave SE  
Bellevue, WA 98008-5452

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 Northwest Region Toxics 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.

The Port expressly reserves its rights with regard to any future agency action. Nothing herein shall be deemed a waiver of the Port's right to pursue any other responsible party for the costs incurred by the Port under 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 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.

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 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 permitted 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:

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: \_\_\_\_\_

**PORT OF BELLINGHAM**

  
\_\_\_\_\_  
Charles Sheldon

Executive Director  
Port of Bellingham  
Telephone (360) 676-2500

**STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY**

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Robert Warren

Section Manager  
Toxics Cleanup Program  
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