

1 AO-5/15/02

2 STATE OF WASHINGTON
3 DEPARTMENT OF ECOLOGY

4 In the Matter of Remedial Action by:)
5)
6 The Boeing Company)
7 Boeing Commercial Airplanes,)
8 Fabrication Division - Auburn Plant)
9 700 15th Street S.W)
10 Auburn, Washington 98002)
11 _____)

AGREED ORDER
No. 01HWTRNR-3345

12 TO: The Potentially Liable Person (PLP(s)):

13 The Boeing Company
14 C/o Mr. Kirk Thomson
15 Director of Environmental Affairs
16 P.O. Box 3707, MS 7A-XE
17 Seattle, WA 98124-2207
18

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1 I. JURISDICTION

2 This Order is issued pursuant to the authority of RCW 70.105D.050 (1) and WAC 173-303-646(3)(a).

3 II. DEFINITIONS

4 Unless otherwise specified, the definitions set forth in Chapter 70 105D RCW and Chapter 173-
5 340 WAC shall control the meanings of the terms used in this Order

6 Additional definitions are as follows:

7 1. Agreed Order or Order means this Order issued under RCW 70.105D.050(1) and WAC 173-
8 340-530. The term includes the text of this Order, all Attachments to this Order, and all Ecology-
9 approved submittals required pursuant to this Order. Order Attachments and Ecology approved
10 submittals are incorporated into this Order by this reference and are enforceable parts of this Order as if
11 fully set forth herein.

12 2. Area of Concern (AOC) means any area of the facility where a release or threatened release
13 of dangerous constituents (including dangerous waste and hazardous substances) has occurred, is
14 occurring, is suspected to have occurred, or threatens to occur

15 3. Boeing Commercial Airplanes, Fabrication Division - Auburn Plant ("the BCA - Auburn
16 Plant") means all contiguous property at 700 15th Street SW, Auburn, Washington, which is owned,
17 operated or under the control of The Boeing Company as of the issuance of this Agreed Order, except as
18 provided in Section VII.13 hereof regarding property transfers. The boundaries of the BCA - Auburn
19 Plant as of the date of this Agreed Order are depicted on Attachment 1 hereto.

20 4. Cleanup Action Plan (CAP) means the document issued by Ecology under WAC 173-340-
21 360 which selects facility specific corrective measures and specifies cleanup standards.

22 5. Cleanup Standards means the standards promulgated under RCW 70.105D.030 (2)(e) and
23 include (1) hazardous substance concentrations (cleanup levels) that protect human health and the

1 environment, (2) the location at the Facility where those cleanup levels must be attained (points of
2 compliance), and (3) additional regulatory requirements that apply to a cleanup because of the type of
3 action and/or the location of the Facility.

4 6 Corrective Action means any activities including investigations, studies, characterizations
5 and corrective measures, including actions taken pursuant to Chapter 70.105D RCW and Chapter 173-
6 340 WAC, undertaken in whole or in part to fulfill the requirements of WAC 173-303-646.

7 7 Corrective Measure means any measure or action to control, prevent, or mitigate releases
8 and/or potential releases of dangerous constituents (including dangerous waste and hazardous
9 substances) at or from the BCA - Auburn Plant, which action has been reviewed and approved by
10 Ecology for the facility and set forth in a facility specific Cleanup Action Plan (CAP) prepared in
11 compliance with the requirements of Chapter 173-340 WAC. Corrective measures may include interim
12 actions as defined by Chapter 173-340 WAC. Interim actions will not necessarily be set forth in a facility
13 specific CAP.

14 8. Dangerous Constituent means any constituent identified in WAC 173-303-9905 or 40 CFR
15 Part 264 Appendix IX, any constituent that caused a waste to be listed or designated as dangerous under
16 the provisions of Chapter 173-303 WAC, and any constituent defined as a hazardous substance by RCW
17 70.105D.020(7).

18 9. Dangerous Waste means any solid waste designated in WAC 173-303-070 through 173-303-
19 100 as dangerous or extremely hazardous or mixed waste. Dangerous wastes are considered hazardous
20 substances under RCW 70.105D 020 (7).

21 10. Dangerous Waste Constituent means any constituent listed in WAC 173-303-9905 and any
22 other constituent that has caused a waste to be a dangerous waste pursuant to Chapter 173-303 WAC.

23 11. Dangerous Waste Management Unit (DWMU) is a contiguous area on or in which dangerous
24 waste is placed or has otherwise come to be located, or the largest area in which there is a significant
25 likelihood of mixing dangerous waste constituents in the same area, as defined in WAC 173-303-040.

1 releases at or from the BCA - Auburn Plant and the information contained in the report entitled "*The*
2 *Boeing Company, Auburn Fabrication Division, Resource Conservation and Recovery Act Facility*
3 *Assessment, Final Report, June 19, 1998, Prepared by Tetra Tech EM Inc*" ("RFA Report"). The RFA
4 Report is incorporated into this Order by this reference as if fully set forth herein.

5 18. Release means any intentional or unintentional spilling, leaking, pouring, emitting, emptying,
6 discharging, injecting, pumping, escaping, leaching, dumping, or disposing of dangerous waste or
7 dangerous constituents into the environment. It also includes the abandonment of or the discarding of
8 barrels, containers, and other receptacles containing dangerous waste or dangerous constituents and
9 includes the definition of release in RCW 70.105D.020 (20).

10 19. Remedial Investigation (RI) means a facility wide investigation and characterization
11 performed in accordance with the requirements of Chapter 173-340 WAC and the remedial
12 investigation/feasibility study ("RI/FS") Scope of Work described in Section VI of this Order. The
13 Ecology approved RI will be deemed to be equivalent to a RCRA facility investigation, fulfilling the
14 corrective action requirements of WAC 173-303-646.

15 20. Solid Waste Management Unit (SWMU) means the definition of Solid Waste Management
16 Unit at WAC 173-303-040, including any discernible location at the BCA - Auburn Plant, where solid
17 wastes have been placed at any time, irrespective of whether the location was intended for the
18 management of solid or dangerous waste. These SWMUs include any area at the dangerous waste
19 management facility at which solid wastes, including spills, have been routinely and systematically
20 released and include regulated units as defined by Chapter 173-303 WAC.

21 21. Submittal shall include any work plan, report, status report, or any other written document
22 required to be submitted to Ecology pursuant to this Order.

23 III. OBJECTIVES

24 The remedial action objectives for this facility are:

1 1. Performance by the Boeing Company of a remedial investigation and feasibility study
2 (“RI/FS”) at the Facility, to be approved by Ecology and conducted in accordance with the requirements
3 of Chapter 70 105D RCW and Chapter 173-340 WAC. The purpose of the RI/FS is, in part, to satisfy the
4 corrective action requirements of WAC 173-303-646.

5 2. After completion and Ecology approval of the RI/FS, preparation by the Boeing
6 Company of a draft Cleanup Action Plan (CAP) to satisfy the requirements of WAC 173-340-400 and to
7 concurrently satisfy the corrective action requirements of WAC 173-303-646.

8 3. After Ecology review of the draft CAP, negotiation of a draft Consent Decree or Agreed
9 Order to implement the draft CAP.

10 4. Finalization of the CAP and the Consent Decree after public review and comment.
11 Pursuant to the Consent Decree or Agreed Order, the Boeing Company will design, construct, operate,
12 and monitor the selected cleanup or corrective actions. The cleanup will be designed to address releases
13 into the environment of dangerous constituents at or from the SWMUs and AOCs at the BCAG – Auburn
14 Plant, including any releases that migrate offsite

15 5. Performance by the Boeing Company of interim actions as needed, which are required,
16 reviewed and approved by Ecology in accordance with WAC 173-340-430. The purpose of the identified
17 interim actions is to eliminate or reduce the migration of contamination in the surficial and subsurface
18 soils, and groundwater. If interim actions are needed to address releases at SWMUs or AOCs listed in
19 Attachment 2 at a future date, then this paragraph will apply.

20 6. Submittal to Ecology of all previously completed subsurface characterization data
21 reports and remediation status reports prepared by or for the Boeing Company for all SWMUs and AOCs
22 identified in this Order. Ecology will review the data and reports to determine if a no further action
23 (NFA) or further action decision is appropriate for the previously completed independent remedial
24 actions. These data and reports that have already been submitted to Ecology by the Boeing Company for
25 independent remedial actions at the Auburn Plant are listed in Attachment 6.

1 BCAG – Auburn Plant: F001, F002, F003, F005, F006, F007, F008, F009, F010, F011, F017, F018,
2 D001, D002, D003, D006, D007, and K054 Other than dangerous wastes treated by its wastewater
3 treatment unit under permit-by-rule, the BCA - Auburn Plant is not storing, treating, or land-disposing of
4 dangerous wastes The BCA - Auburn Plant is currently operating under conditions of its Dangerous
5 Waste Permit signed by Ecology and the U.S E.P.A. Region X on July 13, 1987. The BCA - Auburn
6 Plant submitted a Part B renewal application dated September 30, 1998 for storage of 220 gallons of
7 dangerous waste within the 17-66 building.

8 6. On September 24th and 25th, 1997, Tetra Tech EM Inc., contractor to the U.S.E.P.A
9 Region X performed a RCRA Facility Assessment (RFA) at the dangerous waste management facility.
10 The purpose of an RFA is to identify those areas at the dangerous waste management facility where
11 releases of hazardous substances, as defined in RCW 70.105D 020 (7), may have occurred or may be
12 occurring.

13 7. Pursuant to the RFA Report and information provided by the BCA - Auburn Plant,
14 Ecology has identified (in Attachment 2) the Solid Waste Management Units (SWMUs) and Areas of
15 Concern (AOCs) at the dangerous waste management facility. SWMUs and AOCs at the dangerous
16 waste management facility have been documented in the RCRA Facility Assessment Final Report,
17 prepared for the EPA by Tetra Tech EM Inc., June 19, 1998, and filed at the Department of Ecology,
18 Northwest Regional Office. Hazardous constituents which have been detected from releases/or potential
19 releases of hazardous substances found in either soil or groundwater include, but are not limited to:
20 methyl ethyl ketone, 4-methyl 2-pentanone, xylenes, ethyl benzene, toluene, styrene, chlorobenzene, 1,2-
21 dichlorobenzene, 1,4-dichlorobenzene, acetone, arsenic, cadmium, barium, mercury, selenium, silver,
22 lead, nickel, zinc, benzene, chromates, cadmium, copper, alodine, 1,1,1-trichloroethane, 1,2-
23 Dichoroethylene, trichloroethylene, perchloroethylene, ethylene glycol ether, lubricant oils, diesel,
24 gasoline, hydraulic fluids, gear oils, sulfuric acid, hydrochloric acid, hydroflouric acid, chromic acid,
25 nitric acid, sodium hydroxide, sodium cyanide, potassium cyanide, polychlorobiphenyls, and polycyclic

1 aromatic hydrocarbons Some of the releases of these hazardous constituents are recorded in the
2 following documents:

- 3 (A) Hart Crowser, Inc., May 15, 1986, *Auburn Hazardous Waste Storage Facility*
4 *Potential Contamination Assessment* (156)
- 5 (B) Hart Crowser, Inc., July 11, 1986, *Sump and Contaminated Soil Removal,*
6 *Hazardous Waste Storage Facility, Boeing Auburn.* (155)
- 7 (C) Boeing Corporate SHEA, Quadrant, Kennedy-Jenks, 1994, *Volatile Organics in*
8 *Groundwater at Auburn Facility.* (1467)
- 9 (D) Kennedy-Jenks, November 1991, *Technical Report-Preliminary Subsurface*
10 *Investigation Rinsewater Treatment Plant, Boeing Auburn.* ((2121)
- 11 (E) Kennedy-Jenks, January 1994, *Technical Report-Hydrogeologic Investigation,*
12 *Rinsewater Treatment Plant Area, Boeing Auburn.* (123)
- 13 (F) PSAPCA and Auburn Fabrication Division, March 1990, *NOC (#3191) and*
14 *Application for Approval.* (762)
- 15 (G) SECOR International Incorporated (SECOR), July 1996, *Preliminary Subsurface*
16 *Assessment Investigation, 17-10 Building, G&L Post Mill, Boeing Commercial*
17 *Airplane, Auburn, Washington.* (1542)
- 18 (H) SECOR International Incorporated (SECOR), September 1996, *Preliminary*
19 *Subsurface Assessment Investigation, 17-06 Building, Briquetting Machine Boeing*
20 *Commercial Airplane Group.* (1324)
- 21 (I) Geoengineers, May 1991, *Report of Geoenvironmental Services, Subsurface*
22 *Assessment, Two Underground Storage Tanks Near Building 17-06, Boeing*
23 *Fabrication Division, Auburn, Washington* (72)

- 1 (J) Geoengineers, April 1992, *Report of Geoenvironmental Services, Drilling*
2 *Additional Borings, Building 17-06, Boeing Fabrication Division, Auburn,*
3 *Washington.* (147)
- 4 (K) Kennedy-Jenks, May 1996, *Technical Report-1995-Hydrogeologic Investigation*
5 *and Summary Report, Boeing Auburn.* (96)
- 6 (L) Dames and Moore, 1987-1992, *UST Groundwater Monitoring Report.* (91)
- 7 (M) Boeing Auburn, July 1997, *Letter Regarding Report of Release Pursuant to WAC*
8 *173-340-300(2), 17-05 Building, Boeing -Auburn Plant.*
- 9 (N) Kennedy-Jenks, February 1995, *Technical Report-Hydrogeologic Investigation,*
10 *Building 17-05, Boeing Auburn.* (2119)
- 11 (O) Kennedy-Jenks, May 1996, *Technical Report, 1995-Hydrogeologic Investigation*
12 *and Summary Report, Boeing Auburn.* (96)
- 13 (P) Kennedy-Jenks, April 1997, *Final Report-Building 17-05 Vapor Degreaser*
14 *Removal, Boeing Auburn.* (2169)
- 15 (Q) Geoengineers, June 1997, *Site Characterization Report, 17-29 Titanium Bailing*
16 *Area, Auburn, Washington.* <<ne>>
- 17 (R) Geoengineers, May 1991, *Report-Sump Tank Removal and Replacement, Building*
18 *17-29, The Boeing Company, Auburn, Washington.* (82)
- 19 (S) Kennedy-Jenks, May 1994, *Environmental Services Decontamination and*
20 *Demolition Projects, 17-02 and 17-05 Building.* (133)
- 21 (T) Kennedy-Jenks, May 1997, *Technical Report-Building 17-05 Area Hydrogeologic*
22 *Characterization.* <<ne>>
- 23 (U) AGI Technologies, November 1996, *Final Closure Report, Resource Conservation*
24 *and Recovery Act (RCRA) Acid and Cyanide Tank Closures, 17-07 Building, Boeing*
25 *Commercial Airplane Group-Fabrication Division, Auburn, Washington.* (2046)

1 (V) Kennedy/Jenks; October, 1993, *Independent Remedial Action, 17-66 Building East*
2 *Construction Site, Boeing Auburn.* (154)

3 (W) Kennedy/Jenks; February 22, 1994, *Building 17-08, Environmental Response*
4 *Action.* (157)

5 8 Hazardous substances have been and may continue to be released from the dangerous
6 waste management facility into the environment including: surface water drainage areas; groundwater
7 beneath and potentially beyond the dangerous waste management facility; air; human work areas; and
8 floral and faunal habitats.

9 V. ECOLOGY DETERMINATIONS

10 1. The Boeing Company is a person within the meaning of RCW 70.105D.020 (14).

11 2. The Boeing Company is the owner and operator of a dangerous waste management
12 facility that has operated, and is operating, under final status subject to Section 3005(e) of RCRA and
13 regulations promulgated thereunder, including authorized state regulations in Chapter 173-303 WAC.

14 3. Certain waste and constituents found at the facility are dangerous wastes and/or
15 dangerous constituents as defined in WAC 173-303-040, and shown in Section II of this Order.

16 4. These dangerous wastes and dangerous constituents are considered hazardous substances
17 within the meaning of RCW 70.105D.020 (7).

18 5. Based on the Findings of Fact and the administrative record, Ecology has determined that
19 releases and potential releases of hazardous substances at and/or from the BCA - Auburn Plant present a
20 threat to human health and the environment. Ecology has further determined that this Agreed Order
21 should be issued in order to achieve the objectives stated in Section III hereof.

22 6. By a letter dated April 07, 1999, the Boeing Company voluntarily waived its rights to
23 notice and comment and accepted Ecology's determination that the Boeing Company is a "potentially
24 liable person" under RCW 70.105D.040.

1 facility containing SWMUs and AOCs identified in Attachment 2, column I, the RI work plan shall
2 follow the procedures outlined in Attachment 3, Scope of Work.

3 2. Within 20 calendar days of the effective date of this Agreed Order, the Boeing Company
4 shall submit to Ecology-NWRO all reports and all data generated with respect to the independent
5 remedial investigation and cleanup activities at all SWMUs and AOCs listed in Attachment 2, column
6 III.: Independent Remediation Work Conducted and/or Additional Work Not Needed to Meet Standards
7 at the BCA - Auburn Plant. These reports and data are listed in Attachment 6.

8 3. If Ecology identifies any additional remedial investigation beyond those activities
9 conducted independently as being necessary to meet the objectives of this Agreed Order, Ecology will
10 notify the Boeing Company of its requirements for Additional Work as provided in Section VII 7.

11 4. Upon completion of the remedial investigation work described in the final Ecology-
12 approved RI work plan, the Boeing Company shall submit to Ecology-NWRO a draft RI report as
13 provided in the approved RI work plan schedule.

14 5. Within sixty (60) calendar days after receiving written Ecology approval of the final RI
15 report, the Boeing Company shall submit to Ecology-NWRO a draft FS work plan. The draft FS work
16 plan shall be written in accordance with WAC 173-340-350 and shall contain, at minimum, methods for
17 evaluating the technical, environmental health, human health, and financial costs associated with each
18 cleanup action alternative. The FS work plan shall contain a time schedule for completing the FS
19 activities and, at a minimum, the methods for evaluating the following:

20 (A) Current Conditions: the Boeing Company shall update Ecology on the current nature
21 and extent of dangerous constituents released into the environment at or from the SWMUs and
22 AOCs addressed in the RI, if different from the results of the RI report.

23 (B) Technical: the Boeing Company shall develop a set of cleanup action alternatives to
24 address those SWMUs and AOCs to be evaluated in the FS. The initial set of cleanup action
25 alternatives shall include options that meet the requirements of WAC 173-340-360 and the

1 expectations of WAC 173-340-370 The FS work plan may incorporate prescreening of cleanup
2 action alternatives in order to streamline the FS process, and may propose a focused analysis to
3 support the use of presumptive remedies recognized in U.S. Environmental Protection Agency
4 cleanup guidelines. The Boeing Company shall, at a minimum, evaluate the following for each
5 pre-screened cleanup action alternative:

6 (i) the permanence and practicability of the option, based upon factors of overall
7 protectiveness of human health and the environment, long-term effectiveness,
8 manageability of short-term risks, permanent reduction of toxicity, mobility and volume
9 of dangerous constituents, cost, implementability, and community concerns as specified
10 in WAC 173-340-360(3)(f);

11 (ii) chemical and physical characteristics and estimated quantity of remediation
12 wastes generated;

13 (iii) compliance with all applicable Federal and State applicable, relevant, and
14 appropriate regulations ("ARARs"), including but not limited to standards in RCRA, the
15 Clean Water Act, 33 U.S.C. § 1251 *et. seq.*, the Clean Air Act, 42 U.S.C. § 7401 *et. seq.*,
16 the Model Toxics Control Act ("MTCA"), RCW 70.105D, the Toxic Substances Control
17 Act, 15 U.S.C. § 2601 *et. seq.* ("TSCA"), and the Safe Drinking Water Act, 42 U.S.C. §
18 1401 *et. seq.* ("SDWA");

19 (iv) limitations of site use as a result of implementing each cleanup action
20 alternative, including but not limited to deed restrictions, access control mechanisms to
21 prevent unauthorized entry, surface covers, and prohibition on use of groundwater for
22 drinking, agricultural, or industrial purposes;

23 (v) if required by Ecology, examples of facilities using the same cleanup action
24 alternatives for similar dangerous constituents, and a discussion of the results achieved;

25 and

1 (vi) discussion of laboratory or bench-scale tests necessary to evaluate the
2 effectiveness of any cleanup action alternative

3 (C) Environmental: Evaluate the future long and short term adverse effects on the
4 environment of each remedial option, and measures necessary to mitigate any adverse effects.
5 Evaluate both the positive and negative environmental consequences of implementing each
6 remedial option.

7 (D) Human Health and the Environment: Evaluate the future long and short term potential
8 exposure to human and environmental receptors of residual contamination during and after
9 remedy implementation, based on potential exposure routes and toxicity of dangerous
10 constituents.

11 (E) Cost Estimate: Evaluate the capital costs (mobilization, design, construction, permits,
12 licenses, and taxes.) for each cleanup action alternative. Include, at a minimum, quantities, unit
13 costs, and total costs, annual operating costs (labor, expendable goods, utilities, and laboratory
14 analysis), and present worth analysis of each remedial option.

15 (F) Restoration Timeframe: Submit an estimate of the time required to meet the remediation
16 goals for each cleanup action alternative in the draft FS work plan

17 (G) Recommendation: Provide a recommendation for one or more cleanup action
18 alternatives based on the factors described above.

19 6 Upon completion of the feasibility study work described in the final Ecology approved
20 FS work plan, the Boeing Company shall submit to Ecology-NWRO a draft FS report as provided in the
21 approved FS work plan schedule. Within 60 days of receipt of Ecology comments on the FS, the Boeing
22 Company shall submit a revised FS incorporating Ecology's comments

23 7 After Ecology concurrence and approval of the final FS report, and if required by
24 Ecology, the Boeing Company shall submit a draft cleanup action plan ("DCAP") to Ecology - NWRO
25 within forty five (45) calendar days of receipt of formal notification of such requirement by letter. The

1 notification shall identify the required scope of the DCAP. The DCAP shall meet the requirements of
2 WAC 173-340-360, -400(1) through (9), -410 as well as WAC 173-303-646.

3 8. The scope of any DCAP required by Ecology shall be subject to the Additional Work
4 provisions in Section VII 7

5 9. After the parties agree upon the terms of a DCAP, the Boeing Company shall enter into
6 negotiations with Ecology regarding a consent decree or agreed order to design, construct, operate, and
7 monitor the chosen remedial option(s) described in the DCAP. After public review and comment on the
8 DCAP document and agreed order or consent decree, Ecology may modify the DCAP and agreed order
9 or consent decree. Then Ecology shall approve a final cleanup action plan ("CAP").

10 10. Notwithstanding the foregoing, if the Remedial Investigation identifies releases of
11 dangerous constituents at the Facility from both Boeing and non-Boeing third party sources which, due to
12 source(s), nature and/or location, render it impracticable for Boeing to remediate the releases from
13 Boeing sources without involving third parties (the "Commingled Releases"), Ecology may allow Boeing
14 to conduct additional Remedial Investigation and/or a Feasibility Study, and prepare a Cleanup Action
15 Plan addressing Commingled Releases pursuant to a separate agreed order or consent decree, as
16 appropriate. In such event, Boeing and Ecology may proceed as follows under this Agreed Order:

17 (A) Prepare a DCAP and issue an Interim CAP under this Agreed Order addressing non-
18 Commingled Releases and, as appropriate, any sources of Commingled Releases at the BCA -
19 Auburn Plant, pending issuance of a CAP addressing Commingled Releases under separate order
20 or decree;

21 (B) Proceed with negotiation of a consent decree or agreed order to implement the Interim
22 CAP; and

23 (C) Issue a final CAP under this Agreed Order incorporating the CAP for the Commingled
24 Releases once it is finalized under separate order or decree.

1 In lieu of or in addition to the foregoing, Boeing and Ecology may agree to take such other
2 actions as may be appropriate to provide for remediation of non-Commingled Releases and Commingled
3 Releases under separate orders or decrees.

4 11 The Boeing Company shall follow the reporting guidelines in WAC 173-340-840 for all
5 parts of this order unless otherwise agreed to by both Ecology and the Boeing Company. All data
6 generated pursuant to this order shall be submitted to Ecology-NWRO, including all outlier and duplicate
7 data. In addition, all groundwater, sediment, surface water, and soil data generated shall be submitted to
8 Ecology-NWRO as copies of the original reported laboratory data sheets, in tabulated data format, and in
9 electronic format using Office 2000, or the most recent compatible software to which Ecology and the
10 Boeing Company agree, for the constituent concentrations detected above method detection limits in the
11 above referenced environmental media. Laboratory detection limits and practical quantitation limits shall
12 be reported for each chemical constituent concentration detected.

13 12 The Boeing Company shall submit quarterly status reports to Ecology-NWRO, starting
14 from the effective date of this Agreed Order until all of the requirements of this Agreed Order are
15 completed to Ecology's satisfaction. The submittal shall be due on the 15th day of the month following
16 the three-month activity period. The Boeing Company shall describe the following in each status report:

- 17 (A) all work conducted pursuant to this Agreed Order during the last quarter;
- 18 (B) occurrence of any problems, how problems were rectified, deviations from the work plans
19 and an explanation for all deviations;
- 20 (C) projected work to occur in the upcoming quarter;
- 21 (D) summaries of significant findings, changes in personnel, summaries of contacts with all
22 federal, state, local community, and public interest groups; and
- 23 (E) all laboratory analyses (as copies of the original laboratory reporting data sheets, in
24 tabulated data format) for which quality assurance procedures were completed during the
25 quarter.

1 If both Ecology and the Boeing Company agree that such a change is necessary, the frequency of
2 progress report submittals shall be revised. This would be an example of a minor modification that may
3 be agreed to by Ecology and the Boeing Company without public comment.

4 13 The Boeing Company shall notify Ecology's Project Coordinator in writing of any newly-
5 identified SWMU(s), newly-discovered releases from known SWMU(s), and newly-discovered
6 significant releases of dangerous waste or dangerous constituents, as defined in WAC 173-303-
7 806(4)(a)(xxiv)(A), at or from the BCA - Auburn Plant no later than fifteen (15) calendar days after
8 discovery. Additional activities to address new discoveries are subject to the Additional Work provisions
9 of Section VII 7.

10 VII. TERMS AND CONDITIONS OF ORDER

11 1. Public Notices: WAC 173-340-600(10)(c) requires a thirty (30) day public comment
12 period before this Agreed Order becomes effective. Ecology shall be responsible for providing such
13 public notice. Ecology expects that the work to be conducted in the remedial investigation, feasibility
14 study or interim actions will not result in significant impacts to human health or the environment.
15 Ecology therefore intends to issue a determination of non-significance pursuant to the State
16 Environmental Policy Act, RCW 43 21C (SEPA) for the remedial investigation, feasibility study, and
17 interim actions required by this Agreed Order.

18 2. Remedial and Investigative Costs: the Boeing Company agrees to pay costs incurred by
19 Ecology pursuant to this Order. These costs shall include work performed by Ecology or Ecology's
20 contractors for investigations, remedial actions, and Order preparation, negotiations, oversight and
21 administration. Ecology costs shall include costs of direct activities and support costs of direct activities
22 as defined in WAC 173-340-550(2). The Boeing company agrees to pay the required amount within
23 thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of
24 costs incurred, an identification of involved staff, and the amount of time spent by involved staff

1 members on the project. A general description of work performed will be provided upon request
2 Itemized statements will be prepared quarterly. Failure to pay Ecology's costs within thirty (30) days of
3 receipt of the itemized statement of costs will result in interest charges. Interest charges shall accrue at
4 the rate designated in WAC 173-340-550(4). The current rate is 12% (annual percentage rate,
5 compounded monthly) on all remedial action costs not paid within ninety days of the billing date.

6
7 In order to assure payment to the proper authority, the address for mailing via the post office is:

8 Cashiering Section
9 P.O. Box 5128
10 Lacey, WA 98509-5128
11

12 If you choose to send a check by a messenger/overnight delivery service, the address to use is:

13 Cashiering Section
14 300 Desmond Drive
15 Lacey, WA 98503
16

17 Please indicate on the check that it is for cost recovery at the BCAG – Auburn Plant so it is properly
18 credited. Enclosing the bottom portion of our invoice will accomplish this

19 3. Financial Assurance: the Boeing Company shall establish and maintain financial
20 assurance for corrective action in the amount necessary to implement the Cleanup Action Plan (CAP) and
21 the Compliance Monitoring Plan (CMP), as provided in WAC 173-340-380 and WAC 173-340-410,
22 respectively, and required by WAC 173-303-646. Except as modified below and in the absence of
23 detailed regulations, Federal Register/Vol. 51, No. 206/Friday, October 24, 1986/Proposed rules and
24 Federal Register/Vol. 61, No. 85/Wednesday, May1, 1996/Proposed Rules, shall be used as guidance for
25 providing financial assurance for corrective action. In a manner consistent with this guidance, the
26 Permittee shall make satisfactory demonstration to the Department that all financial assurance documents
27 include appropriate provision for the Department to gain access to the funds to implement corrective
28 action in the event the Department determines that corrective action is not being conducted in accordance

1 with the provisions of this permit. Upon evidence of the failure of the Permittee to demonstrate
2 continuous financial assurance for corrective action, the Department may direct the payment or use of
3 funds to assure that the approved corrective action plan is carried out. Acceptable mechanisms include
4 letters of credit, surety bonds guaranteeing performance, liability insurance, trust funds, or equivalent
5 mechanisms as approved by the Department. The Boeing Company shall provide Ecology's project
6 manager with documentation of this financial assurance within sixty (60) days of Ecology's first issuance
7 of the final CAP/CMP.

8 The Boeing Company shall adjust the financial assurance coverage and provide Ecology's project
9 manager with documentation of the updated financial assurance for:

10 (A) Inflation, annually, within 30 days of the anniversary date of the first issuance of the final
11 CAP/CMP; or if applicable, the modified anniversary date, that has been set in (2), below,
12 and

13 (B) Changes in cost estimates, within 30 days of Ecology's issuance of the modified CAP/CMP,
14 which modifies the anniversary date.

15 The Boeing Company shall notify Ecology's project manager by certified mail of the commencement of a
16 voluntary or involuntary bankruptcy proceeding under Title 11, United States Code, naming the Boeing
17 Company, within ten (10) days after commencement of the proceeding. A guarantor of a corporate
18 guarantee must make such a notification if he is named as debtor as required under the terms of the
19 corporate guarantee.

20 A Potentially Liable Person [PLP] who has established financial assurance for corrective action with an
21 acceptable mechanism, mentioned above, will be deemed to be without the required financial assurance
22 or liability coverage:

23 (A) in the event of bankruptcy of the trustee or issuing institution; or

24 (B) the authority of the trustee institution to act as trustee has been suspended or revoked; or

1 (C) the authority of the institution issuing the surety bond, letter of credit or insurance policy
2 has been suspended or revoked

3 The Boeing Company must establish other financial assurance within sixty (60) days of bankruptcy, or
4 suspension/revocation of authority.

5 4. Designated Project Coordinators:

6 The Project Coordinator for Ecology is:

7 Name: Ms Robin Harrover
8 Address: Department of Ecology - Northwest Regional Office
9 3190 160th Avenue S E
10 Bellevue, WA 98008-5452
11 Telephone: (425)-649-7232
12 FAX: (425)-649-7098
13 E-mail: rhar461@ecy.wa.gov

14 The Project Coordinator for the BCA - Auburn Plant is:

15 Name: Mr. James Bet
16 Address: Boeing Environmental Affairs
17 P O. Box 3707, M/S 7A-WH
18 Seattle, WA 98124-2207
19 Telephone: (425) 865-5348
20 FAX: (425) 865-6608

21 The Project Coordinator(s) shall be responsible for overseeing the implementation of this Order. To the
22 maximum extent possible, communications between Ecology and the Boeing Company, and all
23 documents, including reports, approvals, and other correspondence concerning the activities performed
24 pursuant to the terms and conditions of this Order, shall be directed through the Project Coordinator(s).
25 Notification requirements in this Order may be satisfied by electronic mail with agreement between the
26 Project Coordinators. Should Ecology or the Boeing Company change Project Coordinator(s), written
27 notification shall be provided to Ecology or the Boeing Company at least ten (10) calendar days prior to
28 the change.

29 5. Ecology Approvals: the Boeing Company shall submit draft Submittals pursuant to the
30 schedules required by this Agreed Order or as otherwise approved hereunder. With the exception of
31 periodic status reports, Ecology will review all Submittals required by this Order, and will provide
32 written approval, or disapproval with comments and/or modifications to be made by the Boeing
33 Company. A Submittal shall become final when it is approved by Ecology in writing. Once approved in

1 writing by Ecology, all submittals to Ecology are incorporated by reference and become enforceable parts
2 of this Agreed Order, as if fully set forth herein. Following approval of any Submittal, the Boeing
3 Company shall commence all Work required thereby within fifteen (15) days after receipt of Ecology
4 approval, unless a longer time is specified by Ecology.

5 During the performance of work under an approved submittal, the Project Coordinators may
6 verbally agree to minor field modifications to the submittal. In such case, the Boeing Company shall
7 submit a description of the modification to Ecology's Project Coordinator in writing within seven (7)
8 days of the verbal agreement, and Ecology's Project Coordinator shall provide written confirmation of the
9 agreed modification.

10 When Ecology provides comments or proposed modifications to the Boeing Company on any
11 Submittal, and if the Boeing Company agrees with Ecology's comments and/or proposed modifications,
12 the Boeing Company shall submit a revised Submittal incorporating all of Ecology's comments and/or
13 proposed modifications within thirty (30) days of the Boeing Company's receipt of Ecology's comments
14 and/or proposed modifications, unless a longer time is approved by Ecology. If following submission of
15 a draft Submittal, the Boeing Company disagrees or has questions concerning Ecology's comments and/or
16 required modifications, the Boeing Company, within seven (7) days after receipt of Ecology's comments
17 or required modifications, may request a meeting or telephone conference, with the Ecology Project
18 Coordinator. Such request shall be in writing and will establish a twenty (20) day informal resolution
19 period, unless a longer period is approved by Ecology, beginning with the date of the written request.
20 The written request shall include a statement of the issues the Boeing Company wishes to address.

21 The informal resolution period shall extend the due date for resubmittal. If agreement is reached
22 within the informal resolution period, the Boeing Company shall incorporate into a revised Submittal the
23 agreed-upon comments and/or modifications within thirty (30) days after reaching agreement, unless a
24 longer time is specified by Ecology. If agreement is not reached within the informal resolution period,
25 Ecology shall send a written letter of disapproval to the Boeing Company. The Boeing Company shall
26 then either submit a revised, final draft Submittal which incorporates all Ecology comments or required
27 modifications within 30 days of receipt of such written letter of disapproval, unless a longer time is

1 approved by Ecology, or the Boeing Company may invoke the dispute resolution procedures in Section
2 VII 11(B) of this Agreed Order for all comments or required modifications the Boeing Company wishes
3 to challenge.

4 6. Performance: the Boeing Company shall notify Ecology as to the company(s) or firm
5 name(s) of any consulting engineer(s), geologist(s), hydrogeologist(s), or similar expert(s), and of any
6 contractors and/or subcontractors to be used in carrying out the terms of this Order, at least seven (7)
7 calendar days in advance of their involvement at the Facility, if possible. The Boeing Company shall
8 provide a copy of this Order to all consultants and contractors retained to perform work required by this
9 Order and shall ensure that all work undertaken by such consultants, contractors and subcontractors will
10 be in compliance with this Order. Upon request, the Boeing Company shall provide the names of such
11 engineers, hydrogeologists, toxicologists, or similar experts, and of any contractors or subcontractors
12 used in carrying out the terms of this Order.

13 WAC 173-340-400(6)(b)(i) requires that "construction" performed on the facility must be under
14 the supervision of a professional engineer registered in Washington. In addition, all work performed by
15 the Boeing Company pursuant to this Order shall be under the direction and supervision, as necessary, of
16 a professional engineer or hydrogeologist, or similar expert, with appropriate training, experience and
17 expertise in hazardous waste facility investigation and cleanup.

18 Unless manufacturing schedule needs interfere, the Boeing Company shall provide seven (7)
19 working days notice to Ecology's Project Coordinator prior to commencing any major work activities
20 pursuant to this Agreed Order. Major work activities that require a seven (7) day notice will be described
21 in the Ecology approved RI/FS and interim action work plans. If manufacturing schedules require that
22 major work activities be taken pursuant to this Agreed Order in less than seven days, Boeing will give
23 twenty-four (24) hours notice to Ecology's Project Coordinator prior to commencing this major work.

24 Except as allowed by WAC 173-340-515(2) or where necessary to abate an emergency situation,
25 the Boeing Company shall not perform any remedial actions at the Facility, outside that required by this
26 Order, unless Ecology approves the independent remedial action in writing prior to the additional
27 remedial action.

1 7. Additional Work: Ecology may determine or the Boeing Company may propose that
2 additional work is or may be necessary to implement this Agreed Order (henceforward "Additional
3 Work") If the Boeing Company proposes the Additional Work, Ecology will respond to the proposal in
4 writing within an appropriate time period, not to exceed 30 days. If the Additional Work is required by
5 Ecology, then Ecology will specify in writing the basis for its determination that the Additional Work is
6 necessary. Within fifteen (15) days after the receipt of such written determination, the Boeing Company
7 shall notify Ecology-NWRO of its willingness to perform the Additional Work or may request a meeting
8 with the Ecology Project Coordinator to discuss the Additional Work as specified in the informal dispute
9 resolution procedures set forth in Section VII 5. If, after such meeting, the Boeing Company disagrees
10 with Ecology's request for Additional Work, the Boeing Company may invoke dispute resolution
11 procedures set forth in Section VII.11B below. If dispute resolution is not invoked on Ecology's written
12 request for Additional Work, the Boeing Company shall submit a work plan for Ecology review
13 incorporating the Additional Work within thirty (30) days (or more, if approved by Ecology) after either
14 submitting notice of its willingness to perform or the date of the meeting with Ecology, as applicable.
15 Ecology's review and approval of such work plan shall be subject to the procedures set forth in Section
16 VII.5. Upon written approval of the work plan, the Boeing Company shall implement the work plan in
17 accordance with the schedule contained therein

18 8. Access: Except as provided below regarding safety and security precautions, Ecology or
19 any Ecology authorized representative shall have the authority to enter and freely move about the BCA -
20 Auburn Plant at all reasonable times for the purposes of, among other things, inspecting records,
21 operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the
22 progress in carrying out the terms of this Order; conducting such tests or collecting samples as Ecology
23 or the Project Coordinator may deem necessary; using a camera; sound recording; or using other
24 documentary type equipment to record work done pursuant to this Order; and verifying the data
25 submitted to Ecology by the Boeing Company. By signing this Agreed Order, the Boeing Company
26 agrees that this Order constitutes reasonable notice of access, and agrees to allow access to the facility by
27 Ecology and all Ecology agents at all reasonable times, with reasonable notice from Ecology, for

1 purposes of overseeing work performed under this Order Ecology shall allow split or replicate samples
2 to be taken by the Boeing Company during an inspection unless doing so interferes with Ecology's
3 sampling. The Boeing Company shall allow split or replicate samples to be taken by Ecology and shall
4 provide seven (7) days notice before any sampling activity.

5 If photographs are to be taken in a U.S Department of Defense (DOD) area that contains items
6 important to national security, then the Boeing Company shall provide a competent photographer to take
7 photographs under the instruction of Ecology staff on site subject to limitations required for protection of
8 DOD secrets, including any required DOD security clearance. All such photographs will be developed
9 and previewed by the Boeing Company, to enable the Boeing Company to assure compliance with
10 security requirements for protection of DOD secrets. The Boeing Company shall provide two copies to
11 Ecology-NWRO of all photographs taken within seven (7) days excepting any photographs for which
12 additional precautions must be followed to protect DOD secrets. The Boeing Company shall provide
13 Ecology with a log of the photographs taken, and shall identify photographs withheld for protection of
14 DOD secrets.

15 The Boeing Company's Project Coordinator or other representative may accompany Ecology's
16 representative(s) at all times for purposes of plant security, and compliance with plant and work area
17 health and safety precautions. If Ecology or its representatives seek to perform their duties at the facility
18 in a manner which is not in compliance with any written plant or work area health and safety requirement
19 or rule, or any applicable federal or state law or promulgated regulation, the Boeing Company's Project
20 Coordinator or other representative may verbally notify such Ecology representative(s) of the non-
21 compliance. Ecology shall ensure that its employees, contractors, and other representatives comply with
22 all applicable health and safety laws, and with all plant and work area health and safety plans of which
23 Ecology or its representatives have notice.

24 If Ecology desires to obtain access to any manufacturing or process areas at which the Boeing
25 Company conducts activities utilizing information which is proprietary, The Boeing Company may
26 request in writing, pursuant to RCW 43.21A.160, that documentation of such areas be designated as
27 confidential business information to protect against Ecology disclosure of information collected. If

1 Ecology desires to obtain access to any manufacturing or process areas at which the Boeing Company
2 conducts activities utilizing secrets associated with U S. Department of Defense (DOD) projects, the
3 Boeing Company may request a reasonable delay to providing such access so that the Boeing Company's
4 and Ecology's representatives may further confer regarding the purpose of the inspection in the area and
5 appropriate precautions for protecting DOD secrets. Ecology shall be responsible for obtaining any DOD
6 required security clearance prior to entering secured areas.

7 If access to offsite areas is necessary for performance of work under this Order, the Boeing
8 Company shall use reasonable best efforts to obtain such access and shall include Ecology
9 representatives among those persons authorized to enter and inspect property under any access
10 agreements obtained for performance of work under the Order. The Boeing Company shall promptly
11 notify Ecology in writing if it is unable to obtain necessary access agreement(s) from owners of offsite
12 properties and shall provide a written description of how the Boeing Company has used its reasonable
13 best efforts to obtain access.

14 9. Public Participation: the Boeing Company shall update the Public Participation Plan for
15 the facility, Attachment 4, as needed. Ecology will review and approve updates to the plan and will
16 maintain the responsibility for public participation at the facility. The Boeing Company shall help
17 coordinate and implement public participation for the facility as specified in the Ecology-approved
18 Public Participation Plan.

19 10. Retention of Records: the Boeing Company shall preserve in a readily retrievable
20 fashion, during the pendency of this Order and for ten (10) years from the date of issuance by Ecology of
21 written notification that all requirements of this Order have been satisfactorily completed, all submittals
22 to Ecology, QA/QC memoranda and audits, final work plans, final reports, field notes and laboratory
23 analytical and testing reports in its possession relevant to this Order. Should any portion of the work
24 performed thereunder be undertaken through contractors or agents, the Boeing Company agrees to
25 include in their contract(s) with all such contractors or agents a record retention requirement meeting the
26 terms of this paragraph.

1 11 Dispute Resolution: In the event a dispute arises as to a decision by Ecology's Project
2 Coordinator, the parties shall utilize the dispute resolution procedure set forth below.

3 (A) The Boeing Company shall utilize the informal dispute resolution processes provided in
4 Section VII.5 prior to proceeding with the formal dispute resolution processes described
5 in Section VII.11 (B).

6 (B) The Boeing Company may then request Ecology management review of the Ecology
7 Project Coordinator's letter of disapproval issued at the completion of the informal
8 dispute resolution process set forth in Section VII.5. This request shall be submitted in
9 writing to the Program Manager within seven (7) days of receipt of the Ecology Project
10 Coordinator's letter of disapproval. In such case, the Boeing Company shall provide the
11 Program Manager with a written statement of its position. The Boeing Company may
12 also request an extension of the due date for any Submittal, or other activity required
13 hereunder, affected by the dispute. Ecology's Program Manager shall conduct a review
14 of the dispute, and shall issue a written decision regarding the dispute within thirty (30)
15 days of the Boeing Company's request for review. The Program Manager's decision
16 shall be Ecology's final decision on the disputed matter. If a Submittal is affected by the
17 dispute, then within thirty (30) days after receipt of the Program Manager's final
18 decision, unless a longer time is approved by Ecology, the Boeing Company shall submit
19 a revised Submittal which conforms to the Program Manager's final decision.

20 The parties agree to utilize the dispute resolution process only in good faith and agree to
21 expedite, to the extent possible, the dispute resolution process whenever it is used. Implementation of
22 the formal dispute resolution procedures in Section VII.11(B) shall not provide a basis for delay of any
23 activities required in the Order, unless Ecology agrees in writing to a schedule extension.

24 12. Reservation of Rights/No Settlement: This Agreed Order is not a settlement under
25 Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or
26 a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against the
27 Boeing Company to recover remedial action costs paid to and received by Ecology under this Agreed

1 Order. In addition, Ecology will not take additional enforcement actions against the Boeing Company to
2 require those remedial actions required by this Agreed Order, provided the Boeing Company complies
3 with this Agreed Order.

4 Ecology reserves the right; however, to require additional remedial actions at the facility should
5 it deem such actions necessary

6 Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources
7 resulting from the releases or threatened releases of dangerous constituents from the BCA - Auburn
8 Plant.

9 In the event Ecology determines that conditions at the facility are creating or have the potential to
10 create a threat to the health or welfare of the people on the facility or in the surrounding area or to the
11 environment, Ecology may order the Boeing Company to stop further implementation of this Order for
12 such period of time or take other action as needed to abate the threat

13 13. Transference of Property: Prior to any voluntary conveyance or relinquishment of title,
14 easement, leasehold, or other interest in any portion of the BCAG – Auburn Plant, The Boeing Company
15 shall provide for continued implementation of all applicable requirements of this Order and
16 implementation of any remedial actions found to be necessary as a result of this Order.

17 Prior to any involuntary conveyance or relinquishment of an interest in any portion of the BCA -
18 Auburn Plant, the Boeing Company shall use reasonable best efforts to provide for continued
19 implementation of this Order and of necessary remedial actions, and shall notify Ecology if such efforts
20 are unsuccessful. If Ecology utilizes its authority to provide for continued implementation of the Order or
21 the remedy on the portion of the BCAG – Auburn Plant involuntarily conveyed or relinquished (e.g., if
22 Ecology obtains access for the Boeing Company) the Boeing Company shall be responsible for such
23 continued implementation as directed by Ecology in writing.

24 Prior to transfer of any legal or equitable interest the Boeing Company may have in the BCA -
25 Auburn Plant or any portions thereof, the Boeing Company shall serve a copy of this Order upon any
26 prospective purchaser, lessee, transferee, assignee, or other successor in such interest. At least ninety
27 (90) days prior to finalization of any transfer, the Boeing Company shall notify Ecology of the

1 contemplated transfer and of the available information, for the property to be transferred, concerning
2 SWMUs and AOCs on the property, the likelihood of releases of hazardous constituents at or from the
3 property, the likelihood of releases of hazardous constituents from other portions of the BCAG – Auburn
4 Plant onto the property to be transferred, and the remedial actions completed or underway. Ecology shall
5 use best reasonable efforts to review the information submitted by the Boeing Company on the property
6 to be transferred from the facility, and issue a written determination within 30 days after receiving same
7 that either (a) no further action (NFA) is required regarding the property to be transferred, or (b) the
8 property to be transferred must continue to be subject to this Order due to known or suspected releases of
9 hazardous constituents at that portion of the BCA - Auburn Plant. If Ecology issues a written
10 determination that a NFA is appropriate for the portion of the BCA - Auburn Plant to be transferred, then
11 that portion of the property shall cease to be considered a part of the facility, as defined in this Order, as
12 of the date Ecology's written determination is issued.

13 Interim status facilities shall notify Ecology-NWRO of the intent to transfer ownership by
14 submission of a revised Part A RCRA permit application. Final status facilities shall notify Ecology-
15 NWRO of the intent to transfer ownership by submitting a request for modification of their RCRA
16 permit.

17 14. Compliance with Other Applicable Laws:

18 (A) All actions carried out by the Boeing Company pursuant to this Order shall be
19 done in accordance with all applicable federal, state, and local requirements, including
20 requirements to obtain necessary permits.

21 (B) The Boeing Company has a continuing obligation to determine whether permits
22 or approvals exempted under RCW 70.105D.090(1) would otherwise be required for the interim
23 and final remedial actions under this Order. In the event the Boeing Company determines that
24 permits or approvals applicable to the remedial action under this Order are exempted under RCW
25 70.105D.090(1), it shall promptly notify Ecology of this determination. Ecology shall determine
26 whether Ecology or the Boeing Company shall be responsible to contact the appropriate state
27 and/or local agencies regarding such permits or approvals. If Ecology so requires, the Boeing

1 Company shall promptly consult with the appropriate state and/or local agencies, and provide
2 Ecology with written documentation from those agencies regarding the substantive requirements
3 those agencies believe are applicable to the remedial action. Ecology shall determine what, if
4 any, substantive requirements must be met by the Boeing Company and how the Boeing
5 Company must meet those requirements. Ecology shall inform the Boeing Company in writing
6 of these requirements. Once determined by Ecology, these substantive requirements shall be
7 made enforceable requirements of this Order. The Boeing Company shall not begin or continue
8 the remedial action subject to the substantive requirements until Ecology makes its final
9 determination that the appropriate substantive requirements of those agencies have been
10 identified. Ecology shall ensure that notice and opportunity for comment is provided to the
11 public and appropriate agencies prior to establishing the substantive requirements under this
12 section.

13 (C) Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
14 exemption from the procedural requirements pursuant to RCW 70.105D.090(1) would result in
15 the loss of approval from a federal agency which is necessary for the State to administer any
16 federal law, the exemption shall not apply and the Boeing Company shall comply with both the
17 procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1),
18 including any requirements to obtain permits.

19 15. Extension of Schedule: The Boeing Company may request an extension of any deadline
20 or schedule set forth in this Order or an approved Submittal. Any such request shall be submitted in
21 writing to Ecology's Project Coordinator at least twenty (20) days in advance of the pending deadline, if
22 possible. The request shall specify the reason(s) the extension is needed.

23 An extension shall only be granted for such period of time as Ecology determines is reasonable
24 under the circumstances. A requested extension shall not be effective until approved by Ecology.
25 Ecology shall act upon any written request for extension in a timely fashion. It shall not be necessary to
26 formally amend this Order when a schedule extension is granted.

1 The burden shall be on the Boeing Company to demonstrate that the extension has been
2 submitted in a timely fashion and that good cause exists for granting the extension. Good cause includes,
3 but is not limited to, the following:

4 (A) Unforeseeable circumstances beyond the reasonable control of the Boeing
5 Company or any person or entity controlled by the Boeing Company that delays or prevents the
6 timely performance of any obligation under this Order despite the Boeing Company's best efforts
7 to fulfill the obligation; or

8 (B) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or
9 other unavoidable event or casualty.

10 Neither increased costs of performance nor changed economic circumstances shall be considered
11 circumstances beyond the reasonable control of the Boeing Company.

12 Ecology shall give the Boeing Company written notification in a timely fashion of any extensions
13 granted pursuant to this section. The period of delay approved by an extension under this section shall be
14 an "excused delay" which is not subject to Stipulated Penalties under Section VIII
15
16

17 VIII. STIPULATED PENALTIES

18 Except for excused delays described in Subsections 5, 11 & 15 of Section VII, for each day the
19 Boeing Company fails to comply with any time schedules contained in this Agreed Order, or any other
20 time schedules approved or modified in writing by Ecology, the Boeing Company stipulates and agrees
21 that Ecology may, at its discretion, assess a civil penalty. The penalties to be assessed are as follows:

22 1. For failure to commence or complete field work by the time required by this Order; and
23 for failure to submit any work plans or reports by the time required by this Order: \$500.00 per day for
24 each of the first seven (7) days of delay; \$1,000.00 per day for the eighth (8th) through fourteenth (14th)

1 days of delay; \$5,000 00 per day for the fifteenth (15th) through thirtieth (30th) days of delay; and
2 \$10,000 for the thirty-first (31st) through ninetieth (90th) days of delay.

3 2. For failure to submit other required written Submittals not described above by the time
4 required pursuant to this Order: \$250.00 per day for each of the first seven (7) days of delay; \$500.00
5 per day for the eighth (8th) through fourteenth (14th) days of delay; \$2,500.00 per day for the fifteenth
6 (15th) through thirtieth (30th) days of delay; and \$5,000.00 for the thirty-first (31st) through ninetieth
7 (90th) days of delay. Ecology retains its entire rights to issue penalties or orders for damages or for any
8 other actions that are not covered by this section. Issuance of penalties under this section shall preclude
9 Ecology from issuing any other penalties for that violation.

10 Should a penalty be assessed under this section, the penalty shall begin to accrue from the date
11 on which the work was to have been performed, or the submittal was to have been made, and shall cease
12 to accrue on the date the Boeing Company performs the required work or delivers the required submittal
13 to Ecology. The assessment of penalties shall be subject to the Dispute Resolution procedures specified
14 in Section VII.11, except that the amount of a stipulated penalty is not subject to challenge. Penalties
15 shall accrue but not become payable until after dispute resolution procedures are completed. All
16 penalties will be payable within forty-five (45) days of assessment or the completion of Dispute
17 resolution procedures if applicable, to the Department of Ecology, Cashiering Section, PO Box 5128,
18 Lacey, WA 98503-0210.

19 3. The Boeing Company shall not be liable for payment of penalties if the Boeing Company
20 has submitted to Ecology a timely request for an extension of schedule, and if Ecology has received the
21 written request and has not denied the request in writing.

22 IX. SATISFACTION OF THIS ORDER

23 The provisions of this Order shall be deemed satisfied upon the Boeing Company's receipt of
24 written notification from Ecology that the Boeing Company has completed the corrective actions

1 required by this Order, as amended by any modifications, and that the Boeing Company has complied
2 with all other provisions of this Agreed Order.

3 X. AMENDMENTS

4 Ecology and the Boeing Company may modify this Agreed Order by mutual written agreement.
5 Substantial modification may require additional public notice and opportunity to comment Ecology will
6 determine if the Agreed Order modifications are substantial, thus requiring additional public notice and
7 opportunity to comment.

8 XI. ENFORCEMENT

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

10 (A) The Attorney General may bring an action to enforce this Order in a state or
11 federal court.

12 (B) The Attorney General may seek to recover, by filing an action if necessary, the
13 amounts spent by Ecology for investigative and remedial actions and orders related to the
14 facility.

15 (C) In the event the Boeing Company refuses, without sufficient cause, to comply
16 with any term of this Order, pursuant to RCW 70.105D.050, the Boeing Company will be liable
17 for:

18 (i) up to three times the amount of any costs incurred by the state of
19 Washington as a result of its refusal to comply; and

20 (ii) civil penalties of up to \$25,000 per day for each day it refuses to comply.

21 (D) This Order is not appealable to the Washington Pollution Control Hearings
22 Board. This Order may be reviewed only as provided under RCW 70.105D.060.

23

