

1 AO-09/21/2018

2 STATE OF WASHINGTON
3 DEPARTMENT OF ECOLOGY

4 In the Matter of Remedial Action by:)
5)

6 The Boeing Company and AMB Property Corporation) Second Amended
7) AGREED ORDER
8 _____ No. 01HWTRNR-3345

9 TO: The Potentially Liable Person (PLP(s)): 16
10 The Boeing Company 17
11 C/o Mr. Steve Shestak 18 Prologis
12 Director of Environment, Health and 19 C/o Mr. Steven Campbell
13 Safety (EHS) 20 Senior Vice President
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23

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I. JURISDICTION

This Second Amended Agreed Order is issued pursuant to the authority of [RCW 70.105D.050 \(I\)](#).

II. 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 used in this Order.

Additional definitions are as follows:

1. Area 1 Property means the property at the north end of the BCA- Auburn Plant, south of the YMCA/Junior Achievement property, and north of Building 17-06, as shown in the diagram in Attachment 1. This property was purchased from The Boeing Company by the AMB Corporation, and is now owned by Prologis.
2. Agreed Order or Order means this Order issued under [RCW 70.105D.050\(1\) and WAC 173-340-530](#). The term includes the text of this Order, all Attachments to this Order, and Ecology-approved submittals required pursuant to this Order. Order Attachments and Ecology-approved submittals are incorporated into this Order by this reference and are enforceable parts of this Order as if fully set forth herein.
3. Area of Concern (AOC) means any area of the Site where a release or threatened release of dangerous constituents (including dangerous waste and hazardous substances) has occurred, is occurring, is suspected to have occurred, or threatens to occur.
4. Boeing Auburn facility (BA facility) means the Boeing Commercial Airplanes, Fabrication Division- Auburn Plant property at 700 15th Street SW and all contiguous land, and structures, other appurtenances, and improvements on the land that Boeing used for recycling, reusing, reclaiming, transferring, storing, treating, or disposing of dangerous waste since 1966. This includes the property

1 described in Attachment A to the original permit which was jointly issued by Ecology and EPA in
2 August, 1987.

3 5. Boeing Commercial Airplanes, Fabrication Division- Auburn Plant (BCA- Auburn Plant)
4 means the property at 700 15th Street SW and all contiguous land, and structures, other appurtenances,
5 and improvements on the land that Boeing used for recycling, reusing, reclaiming, transferring, storing,
6 treating, or disposing of dangerous waste since 1966. However, the BCA-Auburn Plant no longer includes
7 the Safeway, YMCA/Junior Achievement, or Puget Sound Energy (PSE) properties in light of
8 modifications previously made to Part A of Boeing's RCRA Permit No. 87-1. Ecology approved the
9 modifications to Part A of the permit on September 6, 2002 for the Safeway Property, on February 27,
10 2003 for the YMCA Property, and on June 30, 2004 for the PSE Property (See Diagram, Attachment 1,
11 for the locations of the Safeway, YMCA, and PSE properties).

12 6. Cleanup Action Plan (CAP) means the document issued by Ecology under [WAC 173-340-](#)
13 [360](#) which selects Site specific corrective measures and specifies cleanup standards.

14 7. Cleanup Standards means the standards promulgated under [RCW 70.105D.030 \(2\)\(e\)](#) and
15 developed for the Site under [WAC 173-340-700\(3\)](#). These include (1) hazardous substance concentrations
16 (cleanup levels) that protect human health and the environment, (2) the location at the Site where those
17 cleanup levels must be attained (points of compliance), and (3) additional regulatory requirements that
18 apply to a cleanup because of the type of action and/or the location of the Site (applicable state and
19 federal laws).

20 8. Corrective Action means any activities including investigations, studies, characterizations
21 and corrective measures, including actions taken pursuant to [Chapter 70.105D RCW](#) and [Chapter 173-340](#)
22 [WAC](#), undertaken in whole or in part to fulfill the requirements of [WAC 173-303-64610](#) through [173-](#)
23 [303-646920](#).

24 9. Corrective Measure means any measure or action to control, prevent, or mitigate releases
25 and/or potential releases of dangerous constituents (including dangerous waste and hazardous substances)
26 at or from the Site, which action has been reviewed and approved by Ecology for the Site and set forth in

1 a Site specific Cleanup Action Plan (CAP) prepared in compliance with the requirements of Chapter 173-
2 340 WAC. Corrective measures may include interim actions as defined by Chapter 173-340 WAC.
3 Interim actions will not necessarily be set forth in a Site-specific CAP.

4 10. Dangerous Constituent means any constituent identified in WAC 173-303-9905 or 40 CFR
5 Part 264 Appendix IX, any constituent that caused a waste to be listed or designated as dangerous under
6 the provisions of Chapter 173-303 WAC, and any constituent defined as a hazardous substance by RCW
7 70.105D.020(13).

8 11. Dangerous Waste means any solid waste designated in WAC 173-303-070 through 173-
9 303-100 as dangerous or extremely hazardous or mixed waste. Dangerous wastes are considered
10 hazardous substances under RCW 70.105D.020 (13).

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

13 13. Dangerous Waste Management Unit (DWMU) is a contiguous area on or in which
14 dangerous waste is placed or has otherwise come to be located, or the largest area in which there is a
15 significant likelihood of mixing dangerous waste constituents in the same area, as defined in WAC 173-
16 303-040.

17 14. Day shall always mean a calendar day unless otherwise specified. In computing any period
18 of time under this Order, if the last day falls on a Saturday, Sunday, or a state or federal holiday, the
19 period shall run until the end of the next day which is not a Saturday, Sunday, or a state or federal
20 holiday. Any time period scheduled to begin on the occurrence of an act or event shall begin on the day
21 after the act or event.

22 15. Ecology or Ecology- NWRO means the State of Washington Department of Ecology or the
23 State of Washington Department of Ecology Northwest Regional Office.

24 16. Facility or Site means the BCA - Auburn Plant, as defined above. For the purposes of
25 implementing corrective action under WAC 173-303-64620 or 173-303-64630, Facility or Site also

1 means all contiguous property under the control of Boeing Auburn and Prologis and includes the
2 definition of Facility at RCW 70.105D.020(8).

3 17. Feasibility Study (FS) means the investigation and evaluation of potential corrective
4 measures performed in accordance with the Feasibility Study (FS) requirements of [WAC 173-340-350](#)
5 [and the RI/FS Scope of Work attached to this Order], which includes the substantive requirements for a
6 RCRA Corrective Measures Study, and undertaken in whole or in part to fulfill the corrective action
7 requirements of [WAC 173-303-64610 through 173-303-646920](#).

8 18. Hazardous Substances means the definition of hazardous substance at [RCW](#)
9 [70.105D.020\(13\)](#).

10 19. Independent Remedial Actions means remedial actions conducted without department
11 oversight or approval and not under an order, agreed order, or consent decree as defined in [WAC 173-](#)
12 [340-200 and WAC 173-340-515](#).

13 20. Parties refers to the State of Washington, Department of Ecology, The Boeing Company
14 and Prologis

15 21. Permit or Permitting Requirement, unless otherwise specified, means the requirements of
16 [Chapter 173-303 WAC](#) for applying for, obtaining, maintaining, modifying, and terminating dangerous
17 waste management permits.

18 22. Potentially Liable Person (PLP) means any person whom the Department of Ecology finds,
19 based on credible evidence, to be liable under [RCW 70.105D.040](#). The term PLP or PLPs in this Order
20 refers jointly to the Prologis and The Boeing Company. AMB Property Corporation initially became a
21 PLP as a result of its purchase of The Boeing Company's Area 1 Property on December 16, 2005. The
22 AMB Property Corporation purchased Prologis, June 2011, and assumed the name Prologis for the
23 merged corporation.

24 23. RCRA Facility Assessment (RFA) means the investigation conducted under the direction of
25 the U.S. Environmental Protection Agency – Region Ten (U.S. EPA Region X) for releases and potential
26 releases at or from the BA facility and the information contained in the report entitled “*The Boeing*

1 *Company, Auburn Fabrication Division, Resource Conservation and Recovery Act Facility Assessment,*
2 *Final Report, June 19, 1998, Prepared by Tetra Tech EM Inc*” (“RFA Report”). The RFA Report is
3 incorporated into this Order by this reference as if fully set forth herein.

4 24. Release means any intentional or unintentional spilling, leaking, pouring, emitting,
5 emptying, discharging, injecting, pumping, escaping, leaching, dumping, or disposing of dangerous waste
6 or dangerous constituents into the environment. It also includes the abandonment of or the discarding of
7 barrels, containers, and other receptacles containing dangerous waste or dangerous constituents and
8 includes the definition of release in [RCW 70.105D.020 \(32\)](#).

9 25. Remedial Investigation (RI) means a Site wide investigation and characterization
10 performed in accordance with the requirements of [Chapter 173-340 WAC](#) and the remedial
11 investigation/feasibility study (“RI/FS”) Scope of Work described in Section VI of this Order. The
12 Ecology approved RI will be deemed to be equivalent to a RCRA Facility Investigation, fulfilling the
13 corrective action requirements of WAC 173-303-64610 through 173-303-646920.

14 26. Solid Waste Management Unit (SWMU) means the definition of Solid Waste Management
15 Unit at [WAC 173-303-040](#), including any discernible location at the Site, where solid wastes have been
16 placed at any time, irrespective of whether the location was intended for the management of solid or
17 dangerous waste. These SWMUs include any area at the Site at which solid wastes, including spills, have
18 been routinely and systematically released and include regulated units as defined by [Chapter 173-303](#)
19 [WAC](#). Pursuant to the RFA Report and information provided by The Boeing Company, Ecology has
20 identified (in attachment 2) the SWMUs and Areas of Concern (AOCs) at the Site.

21 27. 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 Site are:

1 1. The Boeing Company is and has been the owner and operator of the BA facility since
2 1966. In 1974, the Boeing Company purchased GSA warehouses, adding to the overall facility's size.
3 The BCA-Auburn Plant no longer includes the Safeway, YMCA/Junior Achievement, or PSE properties
4 as described in Section II.5.

5 2. The Boeing Company owned and operated the BA facility as a dangerous waste
6 management facility on or after November 19, 1980, the date which subjects facilities to the permitting
7 requirements of the [Resource Conservation and Recovery Act, 42 U.S.C. § 6921 et. seq. \(RCRA\)](#),
8 including interim status requirements pursuant to Section 3005 of RCRA and implementing regulations
9 thereunder, and including authorized state regulations promulgated in [Chapter 173-303 WAC](#).

10 3. On August 11, 1980, the Boeing Company notified the U.S.E.P.A. Region 10 of its
11 dangerous waste management activities. In the notification, the Boeing Company identified itself as
12 managing the following dangerous wastes under [WAC 173-303-082](#) and [WAC 173-303-9904](#) at the BA
13 facility: F001, F002, F003, F005, F006, F007, F008, F009, F010, F011, F017, and F018.

14 4. Pursuant to the August 11, 1980 notification, the Boeing Company was issued
15 identification number WAD041337130 by U.S. EPA Region X.

16 5. On November 17, 1980, the Boeing Company submitted Part A of the RCRA permit
17 application to the U.S.E.P.A. Region X. In the Part A Application, the Boeing Company identified itself
18 as managing the following dangerous wastes under [WAC 173-303-082](#) and [WAC 173-303-9904](#) at the
19 BA facility: F001, F002, F003, F005, F006, F007, F008, F009, F010, F011, F017, F018, D001, D002,
20 D003, D006, D007, and K054.

21 6. On July 13, 1987, Ecology issued a final status RCRA Permit to the Boeing Company for
22 the BA facility.

23 7. On September 24th and 25th, 1997, Tetra Tech EM Inc., contractor to the U.S.E.P.A
24 Region X performed a RCRA Facility Assessment (RFA) for releases and potential releases at or from the
25 BA facility. The purpose of an RFA is to identify those areas where releases of hazardous substances, as
26 defined in [RCW 70.105D.020 \(32\)](#), may have occurred or may be occurring.

- 1 (G) SECOR International Incorporated (SECOR), July 1996, Preliminary Subsurface
2 Assessment Investigation, 17-10 Building, G&L Post Mill, Boeing Commercial
3 Airplane, Auburn, Washington. (1542)
- 4 (H) SECOR International Incorporated (SECOR), September 1996, *Preliminary*
5 *Subsurface Assessment Investigation, 17-06 Building, Briquetting Machine Boeing*
6 *Commercial Airplane Group.* (1324)
- 7 (I) Geoengineers, May 1991, *Report of Geoenvironmental Services, Subsurface*
8 *Assessment, Two Underground Storage Tanks Near Building 17-06, Boeing*
9 *Fabrication Division, Auburn, Washington.* (72)
- 10 (J) Geoengineers, April 1992, *Report of Geoenvironmental Services, Drilling Additional*
11 *Borings, Building 17-06, Boeing Fabrication Division, Auburn, Washington.* (147)
- 12 (K) Kennedy-Jenks, May 1996, *Technical Report-1995-Hydrogeologic Investigation and*
13 *Summary Report, Boeing Auburn.* (96)
- 14 (L) Dames and Moore, 1987-1992, *UST Groundwater Monitoring Report.* (91)
- 15 (M) Boeing Auburn, July 1997, *Letter Regarding Report of Release Pursuant to WAC*
16 *173-340-300(2), 17-05 Building, Boeing –Auburn Plant.*
- 17 (N) Kennedy-Jenks, February 1995, *Technical Report-Hydrogeologic Investigation,*
18 *Building 17-05, Boeing Auburn.* (2119)
- 19 (O) Kennedy-Jenks, May 1996, *Technical Report, 1995-Hydrogeologic Investigation*
20 *and Summary Report, Boeing Auburn.* (96)
- 21 (P) Kennedy-Jenks, April 1997, *Final Report-Building 17-05 Vapor Degreaser*
22 *Removal, Boeing Auburn.* (2169)
- 23 (Q) Geoengineers, June 1997, *Site Characterization Report, 17-29 Titanium Bailing*
24 *Area, Auburn, Washington.* <<ne>>
- 25 (R) Geoengineers, May 1991, *Report-Sump Tank Removal and Replacement, Building*
26 *17-29, The Boeing Company, Auburn, Washington.* (82)

1 (S) Kennedy-Jenks, May 1994, *Environmental Services Decontamination and*
2 *Demolition Projects, 17-02 and 17-05 Building.* (133)

3 (T) Kennedy-Jenks, May 1997, *Technical Report-Building 17-05 Area Hydrogeologic*
4 *Characterization.* <<ne>>

5 (U) AGI Technologies, November 1996, *Final Closure Report, Resource Conservation*
6 *and Recovery Act (RCRA) Acid and Cyanide Tank Closures, 17-07 Building, Boeing*
7 *Commercial Airplane Group-Fabrication Division, Auburn, Washington.* (2046)

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

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

12 9. Hazardous substances have been and may continue to be released at the Site into the
13 environment including: surface water drainage areas; groundwater; air; human work areas; and floral and
14 faunal habitats.

15 10. The Boeing Company submitted a Part B renewal application dated September 30, 1998
16 for storage of 220 gallons of dangerous waste within the 17-66 building.

17 11. The Department of Ecology did not issue a RCRA Permit to cover storage of the 220
18 gallons of dangerous waste within the 17-66 building. Boeing withdrew its application.

19 12. The BA facility has been operating under conditions of its Dangerous Waste Permit
20 signed by Ecology and the U.S.E.P.A. Region X in August 1987. However, the BCA-Auburn Plant no
21 longer includes the Safeway, YMCA/Junior Achievement, or PSE properties as described in Section II.5.
22 Other than dangerous wastes treated by its wastewater treatment unit under permit-by-rule, the BCA-
23 Auburn Plant will not store, treat, or land-dispose of dangerous wastes under the State of Washington
24 Dangerous Waste Management Permit No. WAD041337130.

25 13. On August 14, 2002, the Boeing Company and Ecology entered into Agreed Order No.
26 01HWTRNR-3345, wherein the Boeing Company agreed to complete a remedial investigation, a

1 feasibility study, draft a CAP, and perform interim actions as necessary to remediate the Site. This Second
2 Amended Agreed Order No. 01HWTRNR-3345 fully supersedes the 2002 Agreed Order.

3 14. On December 16, 2005, the AMB Property Corporation purchased the Area 1 Property
4 [parcels 8, 9 and 12, Attachment 1] from the Boeing Company. The Diagram in Attachment 1 represents
5 the current BCA-Auburn Plant boundaries, including the Area 1 Property.

6 15. On July 14, 2004, the Boeing Company began implementation of an interim remedial
7 action in accordance with Section III (5) of Agreed Order No. 01HWTRNR-3345. A public comment
8 period was held from May 24, 2004 through June 23, 2004 prior to Ecology approval of the Interim
9 Action Work Plan. Ecology approved the Interim Action Work Plan by letter dated July 13, 2004. See
10 Attachment 9, [the work plan]. This interim remedial action is intended to slow the migration and to
11 remediate trichloroethene in groundwater underneath Solid Waste Management Unit, S-12b, and Area of
12 Concern, A-08 [see Attachment 2]. Three injections of a non-toxic media have been completed in
13 accordance with the approved interim remedial action work plan: Final Interim Remedial Action Work
14 Plan, Boeing Auburn Area 1 (Landau Associates, May 7, 2004). By creating conditions favorable to
15 reductive dechlorination these injections have, at this time, reduced the levels of hazardous constituents in
16 groundwater. Currently, the PLPs are completing compliance monitoring for the interim remedial action
17 as required by [WAC 173-340-410](#).

18 16. The continuation of the interim action and completion of compliance monitoring for the
19 interim remedial action is set forth in Attachment 11 of this Agreed Order.

20 V. ECOLOGY DETERMINATIONS

21 1. The Boeing Company and Prologis are persons within the meaning of [RCW 70.105D.020](#)
22 [\(24\)](#).

23 2. The Boeing Company and Prologis are the owners and operators of a dangerous waste
24 management Facility that has operated, and is operating, under final status subject to [Section 3005\(e\)](#) of

1 RCRA and regulations promulgated thereunder, including authorized state regulations in Chapter 173-303
2 WAC.

3 3. Certain waste and constituents found at the Site are dangerous wastes and/or dangerous
4 constituents as defined in [WAC 173-303-040](#), and in Section II.10, 11 and 12 of this Order.

5 4. These dangerous wastes and dangerous constituents are considered hazardous substances
6 within the meaning of [RCW 70.105D.020 \(13\)](#).

7 5. Based on the Findings of Fact and the administrative record, Ecology has determined that
8 releases and potential releases of hazardous substances at and/or from the Site that originated at the BA
9 facility present a threat to human health and the environment. Ecology has further determined that this
10 Agreed Order should be issued in order to achieve the objectives stated in Section III hereof.

11 6. Second Amended Agreed Order No. 01HWTRNR-3345 fully supersedes First Amended
12 Agreed Order No. 01HWTRNR-3345.

13 7. By a letter dated April 7, 1999, the Boeing Company voluntarily waived its rights to
14 notice and comment and accepted Ecology's determination that the Boeing Company is a "potentially
15 liable person" under [RCW 70.105D.040](#).

16 8. By a letter dated December 20, 2005, the AMB Property Corporation, now Prologis
17 voluntarily waived its rights to notice and comment and accepted Ecology's determination that the AMB
18 Property Corporation, now Prologis, is a "potentially liable person" under [RCW 70.105D.040](#).

19 9. Pursuant to [RCW 70.105D.030 \(l\)](#) and [RCW 70.105D.050](#), Ecology may require
20 potentially liable persons to investigate or conduct other remedial actions with respect to the release or
21 threatened release of hazardous substances, whenever it believes such action to be in the public interest.

22 10. Ecology has determined that the actions, including investigations, required by this Order
23 are in the public interest.

24 11. By Entering into this Order, The Boeing Company and Prologis make no admissions of
25 fact or liability. However, The Boeing Company and Prologis agree not to contest the above facts or
26 status as PLPs in any proceeding or administrative action brought by Ecology to enforce this Order.

1 VI. WORK TO BE PERFORMED

2 Based on the foregoing Facts and Determinations, it is hereby ordered that the PLPs take the
3 following remedial actions and that these actions be conducted in accordance with [Chapter 173-340 WAC](#)
4 and applicable provisions of [Chapter 173-303 WAC](#), unless otherwise specifically provided for herein.

5 1. Pursuant to Agreed Order No. 01HWTRNR-3345, Section VI.1., the Boeing Company
6 submitted a draft remedial investigation (“RI”) work plan which was approved by Ecology on February
7 17, 2004. The draft RI work plan follows the requirements specified in [WAC 173-340-350](#) and the Scope
8 of Work, Attachment 3. On December 5, 2003, Ecology approved an RI work plan for the Area 1
9 Property. The PLPs shall continue to implement the RI work plans as approved by Ecology. Other
10 documents related to the RI, Feasibility Study (FS) or Draft Cleanup Action Plan (DCAP) may be viewed
11 at a local public repository. See Attachment 4, Public Participation Plan, Section III [repository].

12 2. Pursuant to Agreed Order No. 01HWTRNR-3345 Section VI. 2, the Boeing Company
13 submitted to Ecology-NWRO reports and data generated with respect to the independent remedial
14 investigation and remediation activities at SWMUs and AOCs listed in Attachment 2, column III:
15 Independent Remediation Work Conducted and/or Additional Work Not Needed to Meet Standards at the
16 Site. These reports and data are listed in Attachment 6.

17 3. The PLPs shall provide for the continued implementation, including monitoring, of the
18 Area 1 Property interim action as set forth in Attachment 11.

19 4. If Ecology identifies any additional remedial investigation beyond those activities
20 conducted independently as being necessary to meet the objectives of this Agreed Order, Ecology will
21 notify the PLPs of its requirements for Additional Work as provided in Section VII.7.

22 5. Upon completion of the remedial investigation work described in the final Ecology-
23 approved RI work plan, the PLPs shall submit to Ecology-NWRO a draft RI report as provided in the
24 approved RI work plan schedule. Within 60 days of receipt of Ecology comments on the RI Report, the
25 PLPs shall submit a revised RI report incorporating Ecology’s comments.

1 6. Within sixty (60) calendar days after receiving written Ecology approval of the final RI
2 report, the PLPs shall submit to Ecology-NWRO a draft FS work plan. The draft FS work plan shall be
3 written in accordance with [WAC 173-340-350](#) and shall contain, at minimum, methods for evaluating the
4 technical, environmental health, human health, and financial costs associated with each cleanup action
5 alternative. The FS work plan shall contain a time schedule for completing the FS activities and, at a
6 minimum, the methods for evaluating the following:

7 (A) Current Conditions: the PLPs shall update Ecology on the current nature and extent of
8 dangerous constituents released into the environment at or from the SWMUs and AOCs
9 addressed in the RI, if different from the results of the RI report.

10 (B) Technical: the PLPs shall develop a set of cleanup action alternatives to address those
11 SWMUs and AOCs to be evaluated in the FS. The initial set of cleanup action alternatives shall
12 include options that meet the requirements of [WAC 173-340-360](#) and the expectations of [WAC](#)
13 [173-340-370](#). The FS work plan may incorporate prescreening of cleanup action alternatives in
14 order to streamline the FS process, and may propose a focused analysis to support the use of
15 presumptive remedies recognized in U.S. Environmental Protection Agency cleanup guidelines.
16 The PLPs shall, at a minimum, evaluate the following for each pre-screened cleanup action
17 alternative:

18 (i) the permanence and practicability of the option, based upon factors of overall
19 protectiveness of human health and the environment, long-term effectiveness,
20 manageability of short-term risks, permanent reduction of toxicity, mobility and volume
21 of dangerous constituents, cost, implementability, and community concerns as specified
22 in [WAC 173-340-360\(3\)\(f\)](#);

23 (ii) chemical and physical characteristics and estimated quantity of remediation
24 wastes generated;

25 (iii) compliance with all applicable Federal and State applicable, relevant, and
26 appropriate regulations (“ARARs”), including but not limited to standards in RCRA, the

1 Clean Water Act, 33 U.S.C. § 1251 *et. seq.*, the Clean Air Act, 42 U.S.C. § 7401 *et. seq.*,
2 the Model Toxics Control Act (“MTCA”), RCW 70.105D, the Toxic Substances Control
3 Act, 15 U.S.C. § 2601 *et. seq.* (“TSCA”), and the Safe Drinking Water Act, 42 U.S.C. §
4 1401 *et. seq.* (“SDWA”);

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

9 (v) if required by Ecology, examples of Sites using the same cleanup action
10 alternatives for similar dangerous constituents, and a discussion of the results achieved;
11 and

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

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

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

22 (E) Cost Estimate: Evaluate the capital costs (mobilization, design, construction, permits,
23 licenses, and taxes) for each cleanup action alternative. Include, at a minimum, quantities, unit
24 costs, and total costs, annual operating costs (labor, expendable goods, utilities, and laboratory
25 analysis), and present worth analysis of each remedial option. Further, the cost of removing new
26 structures can not be a factor in favor of a less permanent clean up action under [WAC 173-340-](#)

1 [360\(3\)](#). “New structures” mean structures not in existence as of the effective date of this Agreed
2 Order.

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

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

7 7. Upon completion of the feasibility study work described in the final Ecology approved
8 FS work plan, the PLPs shall submit to Ecology-NWRO a draft FS report as provided in the approved FS
9 work plan schedule. Within 60 days of receipt of Ecology comments on the FS, the PLPs shall submit a
10 revised FS incorporating Ecology’s comments.

11 8. After Ecology concurrence and approval of the final FS report, and if required by
12 Ecology, the PLPs shall submit a draft cleanup action plan (“DCAP”) to Ecology - NWRO within forty
13 five (45) calendar days of receipt of formal notification of such requirement by letter. The notification
14 shall identify the required scope of the DCAP. The DCAP shall meet the requirements of [WAC 173-340-](#)
15 [360, -400\(1\) through \(9\), -410](#) as well as [WAC 173-303-64610 through 173-303-646920](#). The PLPs
16 acknowledge that monitoring wells or other remediation technology may need to be placed within the
17 new building structures or offices as part of a final cleanup action plan (“CAP”).

18 9. The scope of any DCAP required by Ecology shall be subject to the Additional Work
19 provisions in Section VII.7.

20 10. After the parties agree upon the terms of a DCAP, the PLPs shall enter into negotiations
21 with Ecology regarding a consent decree or agreed order to design, construct, operate, and monitor the
22 chosen remedial option(s) described in the DCAP. Existence of new structures, as defined in paragraph
23 VI. 6 (E), on the Site cannot frustrate remedial actions Ecology determines to be necessary as part of final
24 clean up. After public review and comment on the DCAP document and agreed order or consent decree,
25 Ecology may modify the DCAP and agreed order or consent decree. Then Ecology shall approve a final
26 CAP.

1 11. Notwithstanding the foregoing, if the Remedial Investigation identifies releases of
2 dangerous constituents at the Site from both the PLPs and non-PLP third party sources which, due to
3 source(s), nature and/or location, render it impracticable for the PLPs to remediate the releases from the
4 PLPs sources without involving third parties (the “Commingled Releases”), Ecology may allow the PLPs
5 to conduct an additional Remedial Investigation and/or a Feasibility Study, and prepare a Cleanup Action
6 Plan addressing Commingled Releases pursuant to a separate agreed order or consent decree, as
7 appropriate. In such event, the PLPs and Ecology may proceed as follows under this Agreed Order:

8 (A) Prepare a DCAP and issue an Interim CAP under this Agreed Order addressing non-
9 Commingled Releases and, as appropriate, any sources of Commingled Releases at the Site,
10 pending issuance of a CAP addressing Commingled Releases under separate order or decree;

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

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

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

18 12. The PLPs shall follow the reporting guidelines in [WAC 173-340-840](#) for all parts of this
19 order unless otherwise agreed to by both Ecology and the PLPs. All data generated pursuant to this order
20 shall be submitted to Ecology-NWRO, including all outlier and duplicate data. In addition, all
21 groundwater, sediment, surface water, and soil data generated shall be submitted to Ecology-NWRO as
22 copies of the original reported laboratory data sheets, in tabulated data format, and in electronic format
23 using the most recent compatible software to which Ecology and the PLPs agree, for the constituent
24 concentrations detected above method detection limits in the above referenced environmental media.
25 Pursuant to [WAC 173-340-840\(5\)](#), the PLPs shall submit all soil and groundwater sampling data to
26 Ecology according to the requirements of Ecology Policy 840 Data Submittal Requirements. Laboratory

1 detection limits and practical quantitation limits shall be reported for each chemical constituent
2 concentration detected.

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

7 (A) all work conducted pursuant to this Agreed Order during the last quarter, including interim
8 action work;

9 (B) occurrence of any problems, how problems were rectified, deviations from the work plans
10 and an explanation for all deviations;

11 (C) projected work to occur in the upcoming quarter;

12 (D) summaries of significant findings, changes in personnel, summaries of contacts with all
13 federal, state, local community, and public interest groups; and

14 (E) all laboratory analyses (as copies of the original laboratory reporting data sheets, in
15 tabulated data format) for which quality assurance procedures were completed during the
16 quarter.

17 If both Ecology and the PLPs agree that such a change is necessary, the frequency of progress report
18 submittals shall be revised. This would be an example of a minor modification that may be agreed to by
19 Ecology and the PLPs without public comment.

20 14. The PLPs shall notify Ecology's Project Coordinator in writing of any newly-identified
21 SWMU(s) or AOCs, newly-discovered releases from known SWMU(s) or AOCs, and newly-discovered
22 significant releases of dangerous waste or dangerous constituents, as defined in [WAC 173-303-](#)
23 [806\(4\)\(a\)\(xxiv\)\(A\)](#), at or from the Site no later than fifteen (15) calendar days after discovery. Additional
24 activities to address new discoveries are subject to the Additional Work provisions of Section VII.7.

25 VII. TERMS AND CONDITIONS OF ORDER

1 1. Public Notices: Ecology shall be responsible for providing public notice. Ecology
2 reserves the right to modify or withdraw any provisions of this Order should public comment disclose
3 facts or considerations to Ecology that the Order is inadequate or improper in any respect.

4 2. Remedial and Investigative Costs: The PLPs agree to pay costs incurred by Ecology
5 pursuant to this Order. These costs shall include work performed by Ecology or Ecology's contractors for
6 investigations, remedial actions, and Order preparation, negotiations, oversight and administration.
7 Ecology costs shall include costs of direct activities and support costs of direct activities as defined in
8 [WAC 173-340-550\(2\)](#). The PLPs agree to pay the required amount within thirty (30) days of receiving
9 from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification
10 of involved staff, and the amount of time spent by involved staff members on the project. A general
11 description of work performed will be provided upon request. Itemized statements will be prepared
12 quarterly. Failure to pay Ecology's costs within thirty (30) days of receipt of the itemized statement of
13 costs will result in interest charges. Interest charges shall accrue at the rate designated in [WAC 173-340-](#)
14 [550\(4\)](#). The current rate is 12% (annual percentage rate, compounded monthly) on all remedial action
15 costs not paid within ninety days of the billing date.

16
17 In order to assure payment to the proper authority, the address for mailing via the post office is:

18 Department of Ecology
19 Cashiering Unit
20 P.O. Box 47611
21 Olympia, WA 98504-7611
22

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

24 Cashiering Section
25 300 Desmond Drive SE
26 Lacey, WA 98503
27

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

1 3. Financial Assurance: The PLPs shall establish and maintain financial assurance for
2 corrective action in the amount necessary to implement the Cleanup Action Plan (CAP) and the
3 Compliance Monitoring Plan (CMP), as provided in [WAC 173-340-380](#) and [WAC 173-340-410](#),
4 respectively, and required by WAC 173-303-64620. Except as modified below and in the absence of
5 detailed regulations, Federal Register/Vol. 51, No. 206/Friday, October 24, 1986/Proposed rules and
6 Federal Register/Vol. 61, No. 85/Wednesday, May1, 1996/Proposed Rules, shall be used as guidance for
7 providing financial assurance for corrective action. In a manner consistent with this guidance, the
8 Permittees shall make satisfactory demonstration to the Department that all financial assurance documents
9 include appropriate provision for the Department to gain access to the funds to implement corrective
10 action in the event the Department determines that corrective action is not being conducted in accordance
11 with the provisions of this permit. Upon evidence of the failure of the Permittees to demonstrate
12 continuous financial assurance for corrective action, the Department may direct the payment or use of
13 funds to assure that the approved corrective action plan is carried out. Acceptable mechanisms include
14 letters of credit, surety bonds guaranteeing performance, liability insurance, trust funds, or equivalent
15 mechanisms as approved by the Department. The PLPs shall provide Ecology's project manager with
16 documentation of this financial assurance within sixty (60) days of Ecology's first issuance of the final
17 CAP/CMP. The PLPs shall adjust the financial assurance coverage and provide Ecology's project
18 manager with documentation of the updated financial assurance for:

19 (A) Inflation, annually, within 30 days of the anniversary date of the first issuance of the final
20 CAP/CMP; or if applicable, the modified anniversary date, that has been set in (B), below,
21 and

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

24 Each PLP shall notify Ecology's project manager by certified mail of the commencement of a voluntary
25 or involuntary bankruptcy proceeding under Title 11, United States Code, naming that PLP, within ten

1 (10) days after commencement of the proceeding. A guarantor of a corporate guarantee must make such a
2 notification if he is named as debtor as required under the terms of the corporate guarantee. A PLP who
3 has established financial assurance for corrective action with an acceptable mechanism, mentioned above,
4 will be deemed to be without the required financial assurance or liability coverage:

- 5 (A) in the event of bankruptcy of the trustee or issuing institution; or
- 6 (B) the authority of the trustee institution to act as trustee has been suspended or revoked; or
- 7 (C) the authority of the institution issuing the surety bond, letter of credit or insurance policy
8 has been suspended or revoked.

9 The PLP in bankruptcy must establish other financial assurance within sixty (60) days of bankruptcy, or
10 suspension/revocation of authority.

11 4. Designated Project Coordinators:

12 The Project Coordinators for Ecology are:

13 Name: Ms. Robin Harrover
14 Address: Department of Ecology - Northwest Regional Office
15 3190 160th Avenue S.E.
16 Bellevue, WA 98008-5452
17 Telephone: (425)-649-7232
18 FAX: (425)-649-7098
19 E-mail: rharr461@ecy.wa.gov

20 The Project Coordinator for the Site is:

21 Name: Mr. Carl Bach
22 Address: EH&S Remediation Project Manager
23 P.O. Box 3707, M/C 9U4-26
24 Seattle, WA 98124-2207
25 Telephone: (206) 898-0438
26 FAX: (206) 766-5343
27 Email: carl.m.bach@boeing.com

28 The Project Coordinator(s) shall be responsible for overseeing the implementation of this Order. To the
29 maximum extent possible, communications between Ecology and the PLPs, and all documents, including
30 reports, approvals, and other correspondence concerning the activities performed pursuant to the terms
31 and conditions of this Order shall be directed through the Project Coordinator(s). Notification
32 requirements in this Order may be satisfied by electronic mail with agreement between the Project

1 Coordinators. Should Ecology or the PLPs change Project Coordinator(s), written notification shall be
2 provided to Ecology or the PLPs at least ten (10) calendar days prior to the change.

3 5. Ecology Approvals and Short-form Dispute Resolution Process: The PLPs shall submit
4 draft Submittals pursuant to the schedules required by this Agreed Order or as otherwise approved
5 hereunder. With the exception of periodic status reports, Ecology will review all Submittals required by
6 this Order, and will provide written approval, or disapproval with comments and/or modifications to be
7 made by the PLPs. A Submittal shall become final when it is approved by Ecology in writing. Once
8 approved in writing by Ecology, all submittals to Ecology are incorporated by reference and become
9 enforceable parts of this Agreed Order, as if fully set forth herein. Following approval of any Submittal,
10 the PLPs shall commence all Work required thereby within fifteen (15) days after receipt of Ecology
11 approval, unless a longer time is specified by Ecology.

12 During the performance of work under an approved submittal, the Project Coordinators may
13 verbally agree to minor field modifications to the submittal. In such case, the PLPs shall submit a
14 description of the modification to Ecology's Project Coordinator in writing within seven (7) days of the
15 verbal agreement, and Ecology's Project Coordinator shall provide written confirmation of the agreed
16 modification.

17 When Ecology provides comments or proposed modifications to the PLPs on any Submittal, and
18 if the PLPs agree with Ecology's comments and/or proposed modifications, the PLPs shall submit a
19 revised Submittal incorporating all of Ecology's comments and/or proposed modifications within thirty
20 (30) days of the PLPs' receipt of Ecology's comments and/or proposed modifications, unless a longer time
21 is approved by Ecology. If following submission of a draft Submittal, the PLPs disagree or have
22 questions concerning Ecology's comments and/or required modifications, the PLPs, within seven (7) days
23 after receipt of Ecology's comments or required modifications, may request a meeting or telephone
24 conference, with the Ecology Project Coordinator. Such request shall be in writing and will establish a
25 twenty (20) day informal resolution period, unless a longer period is approved by Ecology, beginning
26 with the date of the written request. The written request shall include a statement of the issues the PLPs
27 wish to address.

1 The informal resolution period shall extend the due date for resubmittal. If agreement is reached
2 within the informal resolution period, the PLPs shall incorporate into a revised Submittal the agreed-upon
3 comments and/or modifications within thirty (30) days after reaching agreement, unless a longer time is
4 specified by Ecology. If agreement is not reached within the informal resolution period, Ecology shall
5 send a written letter of disapproval to the PLPs. The PLPs shall then either submit a revised, final draft
6 Submittal which incorporates all Ecology comments or required modifications within 30 days of receipt
7 of such written letter of disapproval, unless a longer time is approved by Ecology, or the PLPs may
8 invoke the dispute resolution procedures in Section VII.11 (B) of this Agreed Order for all comments or
9 required modifications the PLPs wish to challenge.

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

18 WAC 173-340-400(6)(b)(i) requires that "construction" performed on the Site must be under the
19 supervision of a professional engineer registered in Washington. In addition, all work performed by the
20 PLPs pursuant to this Order shall be under the direction and supervision, as necessary, of a professional
21 engineer or hydrogeologist, or similar expert, with appropriate training, experience and expertise in
22 hazardous waste Site investigation and cleanup.

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

1 (24) hours notice to Ecology’s Project Coordinator prior to commencing this major work. Except as
2 allowed by [WAC 173-340-515\(2\)](#) or where necessary to abate an emergency situation, the PLPs shall not
3 perform any remedial actions at the Site, outside that required by this Order, unless Ecology approves the
4 independent remedial action in writing prior to the additional remedial action.

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

21 8. Access: Except as provided below regarding safety and security precautions, Ecology or
22 any Ecology authorized representative shall have the authority to enter and freely move about the Site that
23 the PLPs own, control, or have access rights to (to the extent that the PLPs have such rights) at all
24 reasonable times for the purposes of, among other things, inspecting records, operation logs, and contracts
25 related to the work being performed pursuant to this Order; reviewing the progress in carrying out the
26 terms of this Order; conducting such tests or collecting samples as Ecology or the Project Coordinator
27 may deem necessary; using a camera; sound recording; or using other documentary type equipment to

1 record work done pursuant to this Order; and verifying the data submitted to Ecology by the PLPs. By
2 signing this Agreed Order, the PLPs agree that this Order constitutes reasonable notice of access, and the
3 PLPs agree to allow Ecology and all Ecology agents access to the Site that the PLPs either own, control,
4 or have access rights to (to the extent that the PLPs have such rights) at all reasonable times, with
5 reasonable notice from Ecology, for purposes of overseeing work performed under this Order. Ecology
6 shall allow split or replicate samples to be taken by PLPs during an inspection unless doing so interferes
7 with Ecology's sampling. The PLPs shall allow split or replicate samples to be taken by Ecology and shall
8 provide seven (7) days notice before any sampling activity.

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

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

1 If Ecology desires to obtain access to any manufacturing or process areas at which PLPs conduct
2 activities utilizing information which is proprietary, the PLPs may request in writing, pursuant to RCW
3 43.21A.160, that documentation of such areas be designated as confidential business information to
4 protect against Ecology disclosure of information collected. If Ecology desires to obtain access to any
5 manufacturing or process areas at which the PLPs conduct activities utilizing secrets associated with U.S.
6 Department of Defense (DOD) projects, the PLPs may request a reasonable delay to providing such
7 access so that PLPs' and Ecology's representatives may further confer regarding the purpose of the
8 inspection in the area and appropriate precautions for protecting DOD secrets. Ecology shall be
9 responsible for obtaining any DOD required security clearance prior to entering secured areas.

10 If access to areas not owned by the PLPs is necessary for performance of work under this Order,
11 the PLPs shall use reasonable best efforts to obtain such access and shall include Ecology representatives
12 among those persons authorized to enter and inspect property under any access agreements obtained for
13 performance of work under the Order. The PLPs shall promptly notify Ecology in writing if it is unable
14 to obtain necessary access agreement(s) from owners of properties not owned by the PLPs and shall
15 provide a written description of how the PLPs have used reasonable best efforts to obtain access.

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

20 10. Retention of Records: The PLPs shall preserve in a readily retrievable fashion, during
21 the pendency of this Order and for ten (10) years from the date of issuance by Ecology of written
22 notification that all requirements of this Order have been satisfactorily completed, all submittals to
23 Ecology, QA/QC memoranda and audits, final work plans, final reports, field notes and laboratory
24 analytical and testing reports in its possession relevant to this Order. Should any portion of the work
25 performed thereunder be undertaken through contractors or agents, the PLPs agree to include in their
26 contract(s) with all such contractors or agents a record retention requirement meeting the terms of this
27 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 PLPs shall utilize the informal dispute resolution processes provided in Section VII.5
4 prior to proceeding with the formal dispute resolution processes described in Section
5 VII.11.(B).

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

20 The parties agree to utilize the dispute resolution process only in good faith and agree to expedite, to the
21 extent possible, the dispute resolution process whenever it is used. Implementation of the formal dispute
22 resolution procedures in Section VII.11 (B) shall not provide a basis for delay of any activities required in
23 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 PLPs to recover remedial action costs paid to and received by Ecology under this Agreed Order. In

1 addition, Ecology will not take additional enforcement actions against the PLPs to require those remedial
2 actions required by this Agreed Order, provided the PLPs comply with this Agreed Order.

3 Ecology reserves the right to require additional remedial actions at the Site should it deem such
4 actions necessary.

5 Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources
6 resulting from the releases or threatened releases of dangerous constituents from the Site.

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

11 13. Transference of Property: The PLPs shall notify Ecology-NWRO of the intent to transfer
12 ownership by submitting the form in Attachment 12 to this Order with any changes proposed for the
13 BCA-Auburn Plant noted on the form. Prior to any voluntary conveyance or relinquishment of title,
14 easement, leasehold, or other interest by the PLPs in any portion of the Site, the PLPs shall provide for
15 continued implementation of all applicable requirements of this Order and implementation of any
16 remedial actions found to be necessary as a result of this Order. Nothing in the preceding sentence shall
17 alter or restrict the PLPs obligations under this Order for implementation of the actions described therein.

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

24 Prior to transfer of any legal or equitable interest by the PLPs in the Site or any portions thereof,
25 the PLPs shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or
26 other successor in such interest at least thirty (30) days prior to any transfer. At least ninety (90) days
27 prior to finalization of any transfer, the PLPs shall notify Ecology of the contemplated transfer and of the

1 available information, for the portion of the Site to be transferred, concerning SWMUs and AOCs, the
2 likelihood of releases of hazardous constituents at or from that portion of the Site, the likelihood of
3 releases of hazardous constituents from other portions of the Site onto the portion to be transferred, and
4 the remedial actions completed or underway. Ecology shall use best reasonable efforts to review the
5 information submitted by the PLPs on the portion of the Site to be transferred, and issue a written
6 determination within 30 days after receiving same that either (a) Ecology will not require additional
7 remedial investigation work or remedial action at this time on the property to be transferred, or (b) the
8 property to be transferred continues to require additional remedial actions due to known or suspected
9 releases of hazardous constituents on that portion of the Site.

10 14. Compliance with Other Applicable Laws:

11 (A) All actions carried out by the PLPs pursuant to this Order shall be done in
12 accordance with all applicable federal, state, and local requirements, including requirements to
13 obtain necessary permits.

14 (B) The PLPs have a continuing obligation to determine whether permits or
15 approvals exempted under [RCW 70.105D.090\(1\)](#) would otherwise be required for actions under
16 this Order. In the event the PLPs determine that permits or approvals applicable to the action
17 under this Order are exempted under [RCW 70.105D.090\(1\)](#), they shall promptly notify Ecology
18 of this determination. Ecology shall determine whether Ecology or the PLPs shall be responsible
19 to contact the appropriate state and/or local agencies regarding such permits or approvals. If
20 Ecology so requires, the PLPs shall promptly consult with the appropriate state and/or local
21 agencies, and provide Ecology with written documentation from those agencies regarding the
22 substantive requirements those agencies believe are applicable to the remedial action. Ecology
23 shall make the final determination on the additional substantive requirements that must be met by
24 the PLPs and on how the PLPs must meet those requirements. Ecology shall inform the PLPs in
25 writing of these requirements. Once established by Ecology, these substantive requirements shall
26 be made enforceable requirements of this Order. The PLPs shall not begin or continue the action
27 subject to the substantive requirements until Ecology makes its final determination that the

1 appropriate substantive requirements of those agencies have been identified. Ecology shall
2 ensure that notice and opportunity for comment is provided to the public and appropriate agencies
3 prior to establishing the substantive requirements under this section.

4 (C) Pursuant to [RCW 70.105D.090\(2\)](#), in the event Ecology determines that the
5 exemption from the procedural requirements pursuant to [RCW 70.105D.090\(1\)](#) would result in
6 the loss of approval from a federal agency which is necessary for the State to administer any
7 federal law, the exemption shall not apply and the PLPs shall comply with both the procedural
8 and substantive requirements of the laws referenced in [RCW 70.105D.090\(1\)](#), including any
9 requirements to obtain permits.

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

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

18 The burden shall be on the PLPs to demonstrate that the extension has been submitted in a timely
19 fashion and that good cause exists for granting the extension. Good cause includes, but is not limited to,
20 the following:

21 (A) Unforeseeable circumstances beyond the reasonable control of the PLPs or any
22 person or entity controlled by the PLPs that delay or prevent the timely performance of any
23 obligation under this Order despite the PLPs' best efforts to fulfill the obligation; or

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

26 Neither increased costs of performance nor changed economic circumstances shall be considered
27 circumstances beyond the reasonable control of the PLPs.

1 Ecology shall give the PLPs written notification in a timely fashion of any extensions granted
2 pursuant to this section. The period of delay approved by an extension under this section shall be an
3 "excused delay" which is not subject to Stipulated Penalties under Section VIII.
4

5 VIII. STIPULATED PENALTIES

6 Except for excused delays described in Subsections 5, 11 & 15 of Section VII, for each day the
7 PLPs fail to comply with any time schedules contained in this Agreed Order, or any other time schedules
8 approved or modified in writing by Ecology, the PLPs stipulate and agree that Ecology may, at its
9 discretion, assess a civil penalty. The penalties to be assessed are as follows:

10 1. For failure to commence or complete field work by the time required by this Order; and for
11 failure to submit any work plans or reports by the time required by this Order: \$500.00 per day for each of
12 the first seven (7) days of delay; \$1,000.00 per day for the eighth (8th) through fourteenth (14th) days of
13 delay; \$5,000.00 per day for the fifteenth (15th) through thirtieth (30th) days of delay; and \$10,000 for the
14 thirty-first (31st) through ninetieth (90th) days of delay.

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

22 Should a penalty be assessed under this section, the penalty shall begin to accrue from the date on
23 which the work was to have been performed, or the submittal was to have been made, and shall cease to
24 accrue on the date the PLPs perform the required work or deliver the required submittal to Ecology. The
25 assessment of penalties shall be subject to the Dispute Resolution procedures specified in Section VII.11,

1 except that the amount of a stipulated penalty is not subject to challenge. Penalties shall accrue but not
2 become payable until after dispute resolution procedures are completed. All penalties will be payable
3 within forty-five (45) days of assessment or the completion of Dispute resolution procedures if applicable,
4 to the Department of Ecology, Cashiering Section, PO Box 5128, Lacey, WA 98503-0210.

5 3. The PLPs shall not be liable for payment of penalties if the PLPs have submitted to Ecology
6 a timely request for an extension of schedule, and if Ecology has received the written request and has not
7 denied the request in writing.

8 IX. SATISFACTION OF THIS ORDER

9 The provisions of this Order shall be deemed satisfied upon the PLPs' receipt of written
10 notification from Ecology that the PLPs have completed the corrective actions required by this Order, as
11 amended by any modifications, and that the PLPs have complied with all other provisions of this Agreed
12 Order.

13 X. AMENDMENTS

14 Ecology and the PLPs may modify this Agreed Order by mutual written agreement. Substantial
15 modification may require additional public notice and opportunity to comment. Ecology will determine if
16 the Agreed Order modifications are substantial, thus requiring additional public notice and opportunity to
17 comment.

18 XI. ENFORCEMENT

19 1. Pursuant to [RCW 70.105D.050](#), this Order may be enforced as follows:

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

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

1 (C) In the event the PLPs refuse, without sufficient cause, to comply with any term of
2 this Order, pursuant to [RCW 70.105D.050](#), the PLPs will be liable for:

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

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

6 (D) This Order is not appealable to the Washington Pollution Control Hearings
7 Board. This Order may be reviewed only as provided under [RCW 70.105D.060](#).

8 Effective date of this Order: _____

9
10 THE BOEING COMPANY
11 By, through and for Environment, Health and Safety
12 By: Mr. Steve Shestak
13 Director of EHS, Environment Health and Safety
14

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
By: Mr. Raman Iyer, Section Manager
Hazardous Waste and Toxics Reduction
Northwest Regional Office

15
16 Date _____

Date _____

17
18 PROLOGIS
19 By: Mr. Steven Campbell
20 Senior Vice President
21

22 Date _____

23
24 _____