

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:	AGREED ORDER
Port of Vancouver	No. DE 15806
NuStar Terminals Services, Inc.	
Kinder Morgan Bulk Terminals, LLC	

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## **I. INTRODUCTION**

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Port of Vancouver (Port), NuStar Terminals Services, Inc. (NuStar) and Kinder Morgan Bulk Terminals, LLC (KMBT) under this Agreed Order (Order) is to provide for additional remedial action at the Site referred to in the Ecology database as “Vancouver Port of NuStar Cadet Swan” Site, where there has been a release or threatened release of hazardous substances. This Order requires the Port, NuStar and KMBT to conduct a supplemental Remedial Investigation (RI) regarding certain hazardous substances on a portion of the Site, prepare a Supplemental RI Report, and prepare a Feasibility Study for the Site. Ecology believes the actions required by this Order are in the public interest. This Order is in addition to, and does not supersede, Agreed Order No. 07-TC-S DE5189 and Agreed Order No. 07-TC-S DE3938.

## **II. JURISDICTION**

This Agreed Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70.105D.050(1).

## **III. PARTIES BOUND**

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. The Port, NuStar and KMBT each agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the Port, NuStar or KMBT’s responsibilities under this Order. The Port, NuStar and KMBT shall each provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

## **IV. DEFINITIONS**

Unless otherwise specified herein, the definitions set forth in RCW 70.105D, WAC 173-204 and WAC 173-340 shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as “Vancouver Port of NuStar Cadet Swan”, Facility Site Identification (FS-ID) 1026. The Site constitutes a facility under RCW 70.105D.020(8). The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located. Based upon factors currently known to Ecology, the Site is generally located in the southern half of Section 21 and northern half of Section 28 in Township 1 North, Range 1 East, Willamette Meridian) in Vancouver, Washington. See the Site Location Map (Exhibit A). For administrative convenience, the Site is identified by four portions: (i) the Swan portion between 2001 and 2501 West Fourth Plain Boulevard; (ii) the Cadet portion at 2500 West Fourth Plain Boulevard; (iii) the NuStar portion at 2565 NW Harborside Drive; and (iv) KM Operating Area portion at 2701 NW Harborside Drive). The four portions are presented on the Project Area Figure (Exhibit B).

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

C. Potentially Liable Persons (PLPs): Refers to the Port, Cadet Manufacturing Company, NuStar and KMBT. Cadet Manufacturing Company, while a named PLP, is not a party to this Order.

D. Subject PLPs: Refers to the PLPs subject to this Order: the Port, NuStar, and KMBT.

E. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order.

## V. FINDINGS OF FACT

Ecology makes the following findings of fact, without any express or implied admissions of such facts by the Subject PLPs.

A. Portions of the Site are located in a floodplain and is bounded on the southwest by the Columbia River. All five Pacific salmon species, steelhead, eulachon (smelt), American shad, white sturgeon, and other aquatic species spend various stages of their life cycles in the Columbia River adjacent to the Site. Juvenile anadromous fish use the river in the vicinity of the Site as a

migratory corridor, as well as a rearing and foraging area. White sturgeon and smelt may use the deeper pools in the vicinity of the Site for spawning grounds. The Confederated Tribes and Bands of the Yakama Nation and the State of Washington are co-managers of these fish species as signatories to the 2018-2027 *U.S. v. Oregon* Management Agreement.

B. Releases to groundwater of halogenated volatile organic compounds (HVOCs), including Trichloroethene (TCE) and Perchloroethene (PCE) and other related compounds, occurred at the Swan, Cadet and NuStar portions of the Site. HVOCs have come to be located at the KM Operating Area. Each portion of the Site contains some HVOCs in groundwater.

C. HVOC contamination at the Swan portion of the Site was discovered in 1997 near former Port Building 2220. TCE was released during the former Swan Manufacturing Company's operations where electric heaters were manufactured. TCE in a vapor degreasing tank was used to clean sheet metal parts from 1956 to 1964 at the former Swan building location. In 1964, Swan moved from this location to 2500 West Fourth Plain Boulevard where heater manufacturing continued. In 1972 the Swan Manufacturing Company and assets were purchased by Cadet Manufacturing Company.

D. Contamination at the Cadet portion of the Site was discovered in 1998 by the Port when evaluating the presence of chlorinated solvents in shallow groundwater to the east and north of the Swan source area. TCE was released from cleaning sheet metal parts in a vapor degreasing tank which was used in a building on the Cadet portion of the Site from 1964 until 1976. In 2006, the Port purchased the Cadet Manufacturing Company's property (and building) and subsequently entered into Agreed Order 07-TC-S DE-5189 with Ecology. As specified in the Agreed Order, the Port agreed to complete a remedial investigation and feasibility study for the Site.

E. HVOC in soil and groundwater at the NuStar portion of the Site was discovered in 1991 through a Site Hazard Assessment conducted by Ecology. The source of PCE and other related chlorinated solvent compounds was from product handling and transfer between storage vessels. Handling of chlorinated solvents at this location was discontinued in 1994. The NuStar portion of the Site is owned by the Port. The property was previously leased from the Port by

GATX Terminals Corporation (GATX), and is currently leased by NuStar. NuStar has been under an Agreed Order and actively remediating HVOC contamination on the NuStar portion of the Site for the past several years through a variety of interim actions including: groundwater recirculation treatment (until 2005); soil vapor extraction since 2000, which was expanded in 2008 and in 2011; and enhanced bioremediation by injection of emulsified oil substrate into the subsurface in 2008, 2011 and 2016.

F. HVOCs were discovered in the Columbia River sediment at the NuStar portion of the Site in November 2011. At this time, data indicates that HVOC-contaminated groundwater migrating into the Columbia River is a source of HVOCs in sediment. Remedial actions for sediment are being evaluated and addressed as part of the remedial investigation/feasibility study as described in Agreed Orders AO 07-TC-S DE 3938 and AO 07-TC-S DE 5189.

G. Ammonia and nitrate contamination were detected in groundwater in 2007 at the NuStar portion of the Site, and the presence was confirmed at the NuStar and KM Operating Area portions in 2017. Products that contain ammonia and nitrate were handled and stored at Terminal 2 and Terminal 3 on the NuStar portion of the Site until August 2008, and handling and storage of those products resumed in 2014. Ammonia and nitrate concentrations were confirmed in groundwater under the NuStar and KM Operating Area portions of the Site in a November 2017 comprehensive groundwater sampling event.

H. Copper contamination in groundwater at the KM Operating Area and NuStar portions of the Site were detected in January 2018 through additional analysis of November 2017 groundwater sampling data. The initial groundwater samples contain a number of other hazardous substances, including but not limited to lead, arsenic, and cadmium. A potential source of copper is from dry bulk copper concentrate powder that is off-loaded from rail cars, conveyed to storage at the KMBT facility on Terminal 2 and loaded on to ships via an overhead conveyor. Copper concentrate has been handled at this facility since at least 1982. KM has been handling copper concentrate at the KM Operating Area since 1998.

I. Several Agreed Orders have been executed for the Swan, Cadet and NuStar portions of the Site. These Agreed Orders were for preparation and completion of Remedial Investigation and Feasibility Study (RI/FS) reports and for initiation of various interim actions to clean up source areas and resulting groundwater contamination.

Swan Portion

- In 1998, Agreed Order No. 98-TC-S337 (*superseded by AO No. 07-TC-S DE 5189*)
- In 2001, Agreed Order No. 01-TCPVA-3257 (*superseded by AO No. 07-TC-S DE 5189*)
- In 2008, Agreed Order No. 07-TC-S DE5189

Cadet Portion

- In 2000, Agreed Order No. 00TCPVA-847 (*superseded by AO No. 07-TC-S DE 5189*)
- In 2008, Agreed Order No. 07-TC-S DE5189

NuStar Portion

- In 1998, Agreed Order No. DE 98-TC-S338 (*superseded by AO No. 07-TC-S DE 3938*)
- In 2007, Agreed Order No. 07-TC-S DE3938

On January 16, 2014, the Project Schedules in Agreed Orders No. 07-TC-S DE 3938 and 07-TC-S DE5189 were amended to require the Port and NuStar to submit a single, jointly prepared, draft FS report for the Swan, Cadet and NuStar portions of the Site.

J. On March 12, 2015, the Port and NuStar entered into Agreed Order No. DE 11137, requiring preparation and submittal of a preliminary Draft Cleanup Action Plan (DCAP) for the Site.

## **VI. ECOLOGY DETERMINATIONS**

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by the Subject PLPs.

A. The Port is an “owner or operator” as defined in RCW 70.105D.020(22) of a “facility” as defined in RCW 70.105D.020(8).

B. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(32) and (13), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to the Port dated March 3, 1998, pursuant to RCW 70.105D.040, -.020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that the Port is a PLP under RCW 70.105D.040 and notified the Port of this determination by letter dated April 14, 1998.

D. NuStar is an “owner or operator” as defined in RCW 70.105D.020(22) of a “facility” as defined in RCW 70.105D.020(8).

E. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(32) and (13), respectively, has occurred at the Site.

F. Based upon credible evidence, Ecology issued a PLP status letter to GATX Terminals Corporation January 7, 1998, pursuant to RCW 70.105D.040, -.020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that GATX Terminals Corporation is a PLP under RCW 70.105D.040 and notified GATX Terminals Corporation of this determination by letter dated March 4, 1998. NuStar Terminals Services, Inc. (NuStar) is the current owner of the facility formerly owned by GATX Terminals Corporation.

G. KMBT is an “owner or operator” as defined in RCW 70.105D.020(22) of a “facility” as defined in RCW 70.105D.020(8).

H. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(32) and (13), respectively, has occurred at the Site.

I. Based upon credible evidence, Ecology issued a PLP status letter to KMBT May 2, 2018, pursuant to RCW 70.105D.040, -.020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that KMBT is a PLP under RCW 70.105D.040 and notified KMBT of this determination by letter dated July 19, 2018.

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

K. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan. Any party may propose an interim action under this Order. If the Parties are in agreement concerning the interim action, the Parties will follow the process in Section VII.E. If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70.105D, or to undertake the interim action itself.

## VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the Subject PLPs take the following remedial actions at the Site. These remedial actions must be conducted in accordance with WAC 173-340 and 173-204:

A. The Subject PLPs are required under this Agreed Order to work cooperatively to complete the following remedial actions under the following schedule:

1. Prepare a Supplemental Remedial Investigation (RI) Work Plan regarding the release or potential release of contaminants associated with materials handled by NuStar and materials handled by KMBT (including but not limited to copper, related metals, ammonia, and nitrate) at a portion of the Site. The workplan will include a summary of current and past materials handled at the portion of the Site and likely contaminants associated with those materials. The portion of the Site to be investigated includes properties leased from the Port by NuStar, and the KM Operating Area as well as areas surrounding those properties that may contain soil, groundwater, sediment and surface water where contamination originating from a source on Port or leased property or operations area may have come to be located. Submit this work plan within ninety(90) days from the effective date of this Order. Ecology will endeavor to provide comments to the Subject PLPs within forty-five (45) days of receipt of the Supplemental RI Work Plan.
2. Implement the Supplemental RI Work Plan as approved by Ecology. Within sixty (60) days of Ecology approval of that work plan, RI work must begin.
3. Within 120 days of completion of Supplemental RI field work, prepare and submit to Ecology an agency review Supplemental RI Report.
4. Within 180 days of Ecology's approval of the Supplemental RI Report as a public review ready draft, the Subject PLPs shall submit to Ecology a draft Feasibility Study Report for the Site.
5. The PLPs will cooperate and provide a single draft Feasibility Study Report for the Site in compliance with requirements of this Order, and the requirement for a Feasibility Study for the Site in Agreed Orders 07-TC-S DE 3938 and DE 07-TC-S DE 5189.

B. To effectuate the work to be performed under this Order in the most efficient manner, certain Subject PLPs may elected to take the lead in performing various aspects of the work required under this Order. Language in this Order, or the exhibits attached hereto, may reflect this agreement among the Subject PLPs. However, the Subject PLPs remain strictly, jointly, and severally liable for the performance of any and all obligations under this Order. In the event a Subject PLP identified as a lead should fail to timely and properly complete performance of all or any portion of its work, all Subject PLPs must perform that remaining work, if any.

C. If any of the Subject PLPs learns of a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in soil, groundwater, sediment and/or surface water, that Subject PLP, within seven (7) days of learning of the change in condition, shall notify Ecology and the other Subject PLPs in writing of said change and provide Ecology and the other Subject PLPs with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.

D. All plans or other deliverables submitted by the Subject PLPs for Ecology's review and approval under shall, upon Ecology's approval, become integral and enforceable parts of this Order.

E. If the Parties agree on an interim action under Section VI.K, the Subject PLPs shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). The Subject PLPs shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and the Subject PLPs are required to conduct the interim action in accordance with the approved Interim Action Work Plan.

F. If Ecology determines that the Subject PLPs have failed to make sufficient progress or failed to implement the remedial action required by this Order, in whole or in part, Ecology may, after notice to the Subject PLPs, perform any or all portions of the remedial action required by this Order or at Ecology's discretion allow the Subject PLPs an opportunity to correct. In an emergency, Ecology is not required to provide notice to the Subject PLPs, or an opportunity for dispute resolution prior to performing remedial action required under this Order. The Subject PLPs shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

G. Except where necessary to abate an emergency situation or where required by law, the Subject PLPs shall not perform any remedial actions at the Site to address the contamination that is the subject of this Order, outside those remedial actions required by this Order or another MTCA Order for this Site, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section VIII.J. (Amendment of Order). In the event of an emergency, or where actions are taken as required by law, the Subject PLPs must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

### **VIII. TERMS AND CONDITIONS**

#### **A. Payment of Remedial Action Costs**

The Subject PLPs shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work concerning this Order performed by Ecology or its contractors for, or on, the Site under RCW 70.105D, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). For all Ecology costs incurred, the Subject PLPs shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70.105D.055, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

**B. Designated Project Coordinators**

The project coordinator for Ecology is:

Craig Rankine, Cleanup Site Manager  
Washington Department of Ecology  
SWRO – Vancouver Field Office  
12121 NE 99<sup>th</sup> Street, Suite 2100  
Vancouver, WA 98682  
(360) 690-4795  
Craig.Rankine@ecy.wa.gov

The project coordinator for the Port is:

Patty Boyden  
Director of Environmental Services  
Port of Vancouver  
3103 NW Lower River Road  
Vancouver, WA 98660  
(360) 992-1103  
pboyden@portvanusa.com

The project coordinator for NuStar is:

Joe Aldridge  
Remediation Director  
NuStar Energy, L.P.  
19003 IH-10 West  
San Antonio, Texas 78257  
210-918-2723 (o)  
210-748-0431 (c)  
Joe.Aldridge @NuStarEnergy.com

The project coordinator for KMBT is:

Richard Sherman, Manager Remediation  
Kinder Morgan  
One Terminal Road  
Carteret, NJ 07008  
(732) 541-5161 ext. 75224  
Richard\_sherman@kindermorgan.com  
737-541-5161 ext 75224 (o)  
732-850-6359 (c)

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the Subject PLPs, and all

documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. Any written communication from the Port, NuStar, or KMBT with Ecology's project coordinator shall be shared with the other Subject PLPs. Any written communication response from Ecology's project coordinator to written communication from the Port, NuStar, or KMBT shall be shared by Ecology's project coordinator with other Subject PLPs.

The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order. Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

### **C. Performance**

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

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

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

**D. Access**

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that any of the Subject PLPs either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the Subject PLPs' progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the Subject PLPs. The Subject PLPs shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the Subject PLPs where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the Subject PLPs unless an emergency prevents such notice. All persons who access the Site pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

The Subject PLPs shall work cooperatively to provide access to each other's portions of the Site for the performance of remedial actions required under this Order. This provision shall not affect the Port's rights as the landowner, or alter the parties' respective obligations under the KM Management Agreement or the NuStar lease.

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

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

If requested by Ecology, the Subject PLPs shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the Subject PLPs pursuant to implementation of this Order. The Subject PLPs shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the Subject PLPs and/or their authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.E (Access), Ecology shall notify the Subject PLPs prior to any sample collection activity unless an emergency prevents such notice.

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

**F. Public Participation**

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

1. If agreed to by Ecology, develop appropriate mailing lists and prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.
2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. Likewise, Ecology shall notify the Subject PLPs prior to the issuance of all press releases and fact sheets related to the Site, and before meetings related to the Site with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the Subject PLPs that do not receive prior Ecology approval, the Subject PLPs

shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

3. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

4. When requested by Ecology, arrange and/or continue information repositories to be located at the following locations:

- a. Vancouver Community Library  
901 C Street  
Vancouver, WA 98660
- b. Ecology's Southwest Regional Office  
300 Desmond Dr.  
Lacey, WA 98504-7775

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Site shall be maintained in the repository at Ecology's Southwest Regional Office in Lacey, Washington.

#### **G. Retention of Records**

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, the Subject PLPs shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, the Subject PLPs shall make all records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right the Subject PLPs may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If any of the Subject PLPs withholds any requested records based on an assertion of privilege, that Subject PLPs shall provide Ecology with a privilege log

specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

## **H. Resolution of Disputes**

1. In the event that any of the Subject PLPs (individually or jointly) elects to invoke dispute resolution that Subject PLP must utilize the procedure set forth below.

a. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), the Subject PLP has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision (Informal Dispute Decision) stating: the nature of the dispute; the Subject PLP's position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

c. The Subject PLP may then request regional management review of the dispute. This request (Formal Dispute Notice) must be submitted in writing to the Southwest Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

d. The Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar days of receipt of the Formal Dispute Notice. The Decision on Dispute shall be Ecology's final decision on the disputed matter.

2. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

3. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

4. In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section VII.E (Work to be Performed) or initiating enforcement under Section X (Enforcement).

#### **I. Extension of Schedule**

1. A request by a Subject PLP for an extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and when good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended.
- b. The length of the extension sought.
- c. The reason(s) for the extension.
- d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on the Subject PLPs to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

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

b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty.

c. Endangerment as described in Section VIII.K (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of the Subject PLPs.

3. Ecology shall act upon the Subject PLP's written request for extension in a timely fashion. Ecology shall give the Subject PLPs written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section VIII.J (Amendment of Order) when a schedule extension is granted.

4. At the Subject PLPs' request, an extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of one of the following:

a. Delays in the issuance of a necessary permit which was applied for in a timely manner.

b. Other circumstances deemed exceptional or extraordinary by Ecology.

c. Endangerment as described in Section VIII.K (Endangerment).

#### **J. Amendment of Order**

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section VIII.L (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the unanimous written consent of Ecology and all the Subject PLPs. Ecology will provide its written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

When requesting a change to the Order, the Subject PLPs shall submit a written request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request is received. If Ecology determines that the change is substantial, then the Order must be formally amended. Reasons for the disapproval of a proposed change to this Order shall be stated in writing. If Ecology does not agree to a proposed change, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.H (Resolution of Disputes).

**K. Endangerment**

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

In the event the Subject PLPs determine that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment, the Subject PLPs may cease such activities. The Subject PLPs shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction, the Subject PLPs shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the Subject PLPs' cessation of activities, it may direct the Subject PLPs to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, the Subject PLPs' obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.I (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

**L. Reservation of Rights**

This Order is not a settlement under RCW 70.105D. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against the Subject PLPs to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against the Subject PLPs regarding remedial actions required by this Order, provided the Subject PLPs comply with this Order.

Ecology nevertheless reserves its rights under RCW 70.105D, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health or the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

By entering into this Order, the Subject PLPs do not admit to any liability for the Site. Although the Subject PLPs are committing to conducting the work required by this Order under the terms of this Order, the Subject PLPs each expressly reserve all rights available under law, including but not limited to the right to seek cost recovery or contribution, and the right to assert any defenses to liability in the event of enforcement.

**M. Transfer of Interest in Property**

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by the Subject PLPs without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to a Subject PLP's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, that Subject PLP shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least

thirty (30) days prior to any transfer, that Subject PLP shall notify Ecology of said transfer. Upon transfer of any interest, that Subject PLP shall notify all transferees of the restrictions on the activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

**N. Compliance with Applicable Laws**

1. *Applicable Laws.* All actions carried out by the Subject PLPs pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits or approvals, except as provided in RCW 70.105D.090. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Order. The Subject PLPs have a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or the Subject PLPs, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and the Subject PLPs must implement those requirements.

2. *Relevant and Appropriate Requirements.* All actions carried out by the Subject PLPs pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. At this time, no relevant and appropriate requirements have been identified as being applicable to the actions required by this Order. If additional relevant and appropriate requirements are identified by Ecology or the Subject PLPs, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and the Subject PLPs must implement those requirements.

3. Pursuant to RCW 70.105D.090(1), the Subject PLPs may be exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, the Subject PLPs shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70.105D.090(1) that have been issued by local government, the Parties agree

that Ecology has the non-exclusive ability under this Order to enforce those local government permits and/or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

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

Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1) would result in the loss of approval from a federal agency that is necessary for the state to administer any federal law, the exemption shall not apply and the Subject PLPs shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements to obtain permits or approvals.

**O. Indemnification**

The Subject PLPs agree to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries

to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions of the Subject PLPs, their officers, employees, agents, or contractors in entering into and implementing this Order. However, the Subject PLPs shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

#### **IX. SATISFACTION OF ORDER**

The provisions of this Order shall be deemed satisfied upon the Subject PLPs' receipt of written notification from Ecology that the Subject PLPs have completed the remedial activity required by this Order, as amended by any modifications, and that the Subject PLPs have complied with all other provisions of this Agreed Order.

#### **X. ENFORCEMENT**

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

- A. The Attorney General may bring an action to enforce this Order in a state or federal court.
- B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
- C. A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:
  1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply.
  2. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.
- D. This Order is not appealable to the Washington Pollution Control Hearings Board.

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

Effective date of this Order: 05/20/2019

**PORT OF VANCOUVER**

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**Patty Boyden**  
Director of Environmental Services  
Port of Vancouver, USA  
(360) 992-1103

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**



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**Rebecca Lawson**  
Section Manager  
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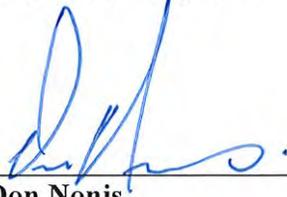
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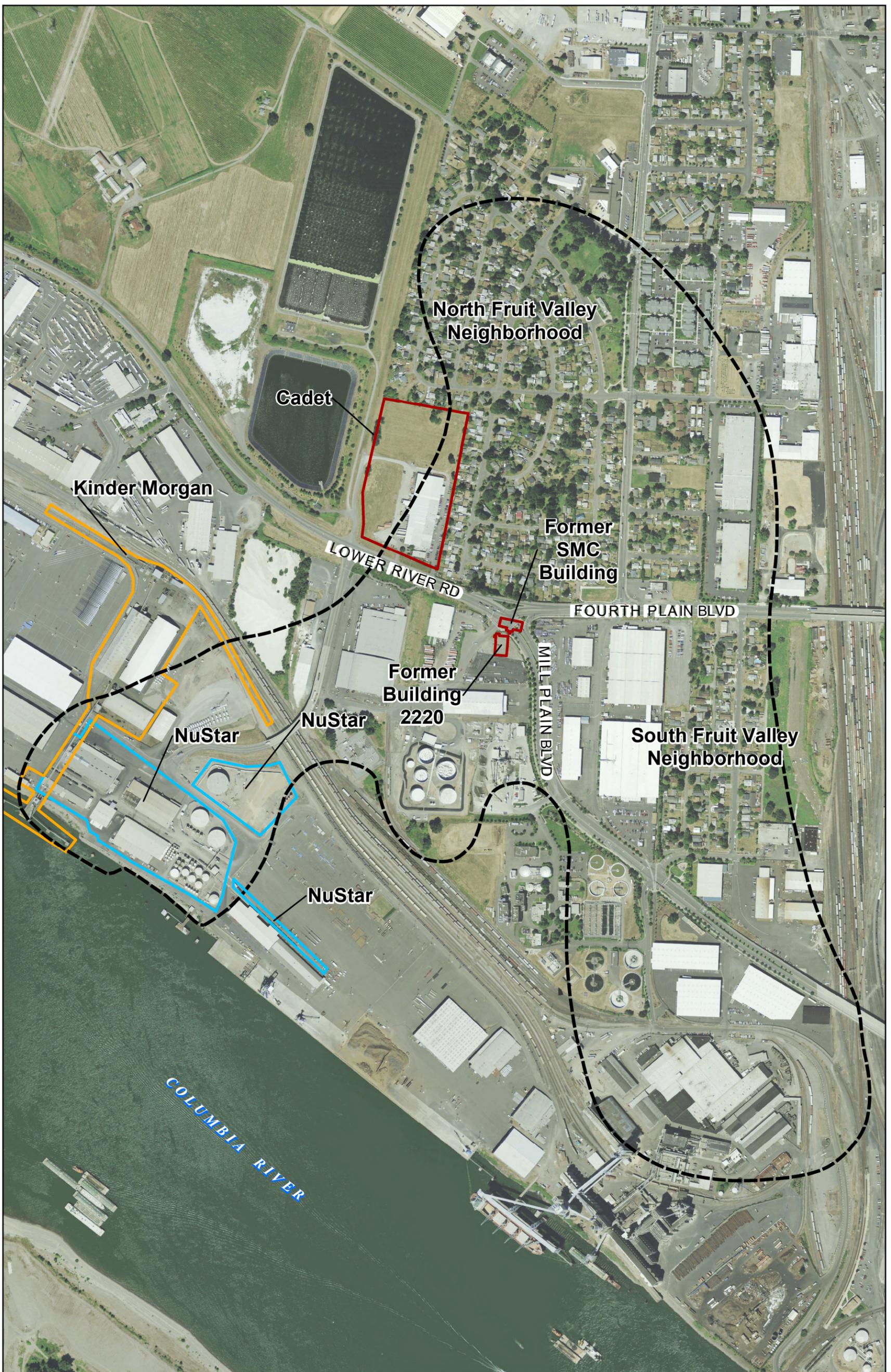
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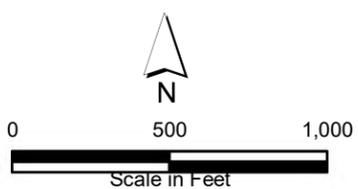
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**Don Nonis**  
West Region General Manager  
Kinder Morgan  
604-985-3177



**Exhibit A  
Site Location Map**

NuStar, SMC, Cadet,  
and Kinder Morgan  
Vancouver, WA



--- Extent of Contamination

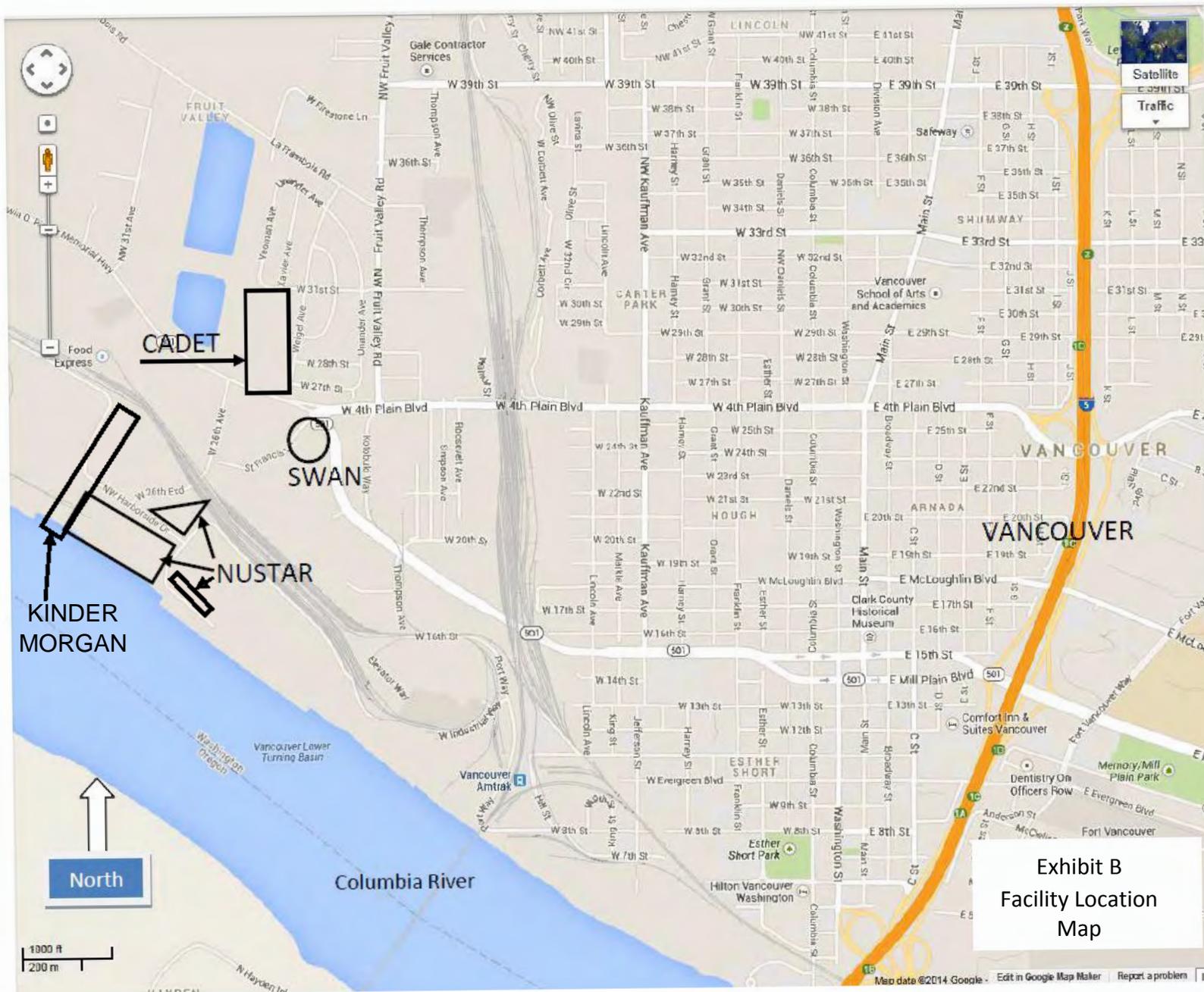


Exhibit B  
 Facility Location  
 Map