

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:	AGREED ORDER
PORT BLAKELY TREE FARMS (LIMITED PARTNERSHIP)	No. DE 16944

TO: Rene Ancinas
 Port Blakely Tree Farms (Limited Partnership)
 1501 4th Ave, Suite 2150
 Seattle, WA 98101

TABLE OF CONTENTS

I.	INTRODUCTION.....	3
II.	JURISDICTION.....	3
III.	PARTIES BOUND	3
IV.	DEFINITIONS	3
V.	FINDINGS OF FACT	4
VI.	ECOLOGY DETERMINATIONS.....	7
VII.	WORK TO BE PERFORMED	8
VIII.	TERMS AND CONDITIONS.....	11
	A. Payment of Remedial Action Costs	11
	B. Designated Project Coordinators	11
	C. Performance	12
	D. Access	13
	E. Sampling, Data Submittal, and Availability	14
	F. Public Participation.....	14
	G. Retention of Records.....	16
	H. Resolution of Disputes.....	16
	I. Extension of Schedule.....	18
	J. Amendment of Order	19
	K. Endangerment	20
	L. Reservation of Rights.....	21
	M. Transfer of Interest in Property.....	21
	N. Compliance with Applicable Laws.....	22
	P. Indemnification.....	24
IX.	SATISFACTION OF ORDER.....	24
X.	ENFORCEMENT	24
	EXHIBIT A Approximate Site Location Diagram	
	EXHIBIT B Scope of Work and Schedule	
	EXHIBIT C Ecology Policy Number 840, Data Submittal Requirements	

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Port Blakely Tree Farms (Limited Partnership) (Port Blakely) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires Port Blakely to perform a Remedial Investigation and Feasibility Study (RI/FS) and prepare a draft Cleanup Action Plan (CAP) at the Blakely Harbor Park Site. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

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

III. PARTIES BOUND

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

IV. DEFINITIONS

Unless otherwise specified herein, the definitions set forth in 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 Blakely Harbor Park. 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 at Blakely Avenue & 3-T Road, Bainbridge Island, WA 98110 as shown in the Site Location Diagram (Exhibit A).

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

C. Potentially Liable Persons (PLP(s)): Refers to Port Blakely and Bainbridge Island Metro Park & Recreation District (BI Parks).

D. Subject PLPs: PLP signatories to this Order.

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 Port Blakely and BI Parks:

A. Blakely Harbor is an embayment on the southwest shore of Bainbridge Island, Washington. In 1864, Captain William Renton purchased land around Port Blakely Harbor on Bainbridge Island and established a sawmill there. The sawmill business was formally incorporated as the Port Blakely Mill Company in 1876. The mill burnt down and was rebuilt in 1888.

B. John and James Campbell, nephews of William Renton, took over the mill and the Port Blakely Mill Company after Renton's death in 1891.

C. John and James Campbell sold the Port Blakely Mill Company to Michigan lumbermen David Skinner and John W. Eddy in 1903. The mill burnt down again in 1907 and was rebuilt. It operated off and on until 1922, sometimes under lease including a lease to Dominion Mill Company from approximately 1916 until 1923. It was torn down in 1924.

D. Between 1864 and 1922, operations included a succession of sawmill buildings, a foundry and machine shop, a power house, log booming and storage areas, and at least one hog fuel refuse burner. At its peak, the mill produced 200 million board feet of lumber per year.

E. In December 1922, John W. Eddy, David Skinner, and James G. Eddy reincorporated the Port Blakely Mill Company under the laws of Washington State, under the same name. In a letter to the Secretary of State, John Eddy, as President for the Port Blakely Mill Company wrote, “The Port Blakely Mill Company, a corporation duly organized under the laws of the State of California and authorized to do business in the State of Washington, hereby consents to the organization of a Washington Corporation of the same or similar name, and represents to the Hon. Secretary of State that the purpose of organizing the Port Blakely Mill Company under the laws of the State of Washington is for the convenience of transaction of business, as all of its property is in the State of Washington and substantially all of its stockholders are in the State of Washington and residents thereof, and it is proposed that all of the stock in the Washington corporation shall be delivered to the stockholders of the California corporation share for share, and the California corporation thereafter dissolved and its business discontinued.”

F. In 1923, one year after the mill closed, David Skinner and the Eddy’s divided the assets of the Port Blakely Mill Company. Skinner took over management of the company’s fleet of ships. The Eddy’s took over management of the company’s timber lands and continued using the Port Blakely Mill Company name.

G. In 1984, members of the Eddy family and others created The Port Blakely Company. It was the intent of the incorporators that three existing companies, including the Port Blakely Mill Company, would be liquidated and “convert[ed]” to a limited partnership. The Port Blakely Company would serve as the General Partner of Blakely Tree Farms Limited Partnership. The limited partnership is known today as Port Blakely Tree Farms (Limited Partnership), known under this order as “Port Blakely.”

H. On December 15, 1999, BI Parks acquired a 20 acre parcel of land within the former mill footprint for the purpose of creating a park. It acquired the land through the assignment of a purchase option agreement between Port Blakely and the Bainbridge Island Land Trust. The park was subsequently enlarged by three additional BI Parks acquisitions: 1) one acre (the South Jetty Parcel) on July 19, 2000; 2) eighteen acres on the west side of County Club Road on October 18, 2001; and 3) what is known as the Yama parcel on October 20, 2010. The property owned by BI Parks is an open space park, with unrestricted public access to site soils and intertidal sediments.

I. In November 2018, Ecology conducted an initial investigation based upon information from a 2009 environmental investigation in Blakely Harbor by the City of Bainbridge Island. The result of the investigation indicated that concentrations of lead, zinc, and copper were present in sediments at levels above applicable Sediment Quality Standards chemical criteria.

J. Sampling in the spring and summer of 2019 indicated the presence of lead, mercury, phenols, and polycyclic aromatic hydrocarbons above sediment screening levels. Sediment sampling indicated dioxins/furans above natural background. Surface soil samples indicated arsenic, lead, total carcinogenic polycyclic aromatic hydrocarbons, and total dioxin/furans concentrations exceeded cleanup levels.

K. Wood debris is present in intertidal and subtidal sediments within the former mill footprint. Samples of sediment in the log pond, inner harbor intertidal areas, and shallow subtidal areas along the northern shore near historical structures contained greater than 6% total volatile solids (TVS). Elevated TVS can be an indicator of woody debris accumulation.

L. When large volumes of wood waste are present in the aquatic environment, metabolic processes deplete the availability of dissolved oxygen creating an anoxic environment in which anaerobic bacteria take over the decomposition process. As a result, a number of toxic byproducts are released, including ammonia, sulfide, benzoic acid and benzenemethanol, all of which are considered a “hazardous substance” under MTCA.

VI. ECOLOGY DETERMINATIONS

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by Port Blakely and BI Parks:

A. 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.

B. Based upon credible evidence, Ecology issued a PLP status letter to BI Parks dated December 4, 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 BI Parks is a PLP under RCW 70.105D.040 and notified BI Parks of this determination by letter dated February 15, 2019;

C. As the current owner of the upland and tideland portion of the Site, BI Parks is an “owner or operator” as defined in RCW 70.105D.020(22) of a “facility” as defined in RCW 70.105D.020(8).

D. Based upon credible evidence, Ecology issued a PLP status letter to Port Blakely dated December 4, 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 Port Blakely is a PLP under RCW 70.105D.040 and notified Port Blakely of this determination by letter dated February 15, 2019.

E. As the former owner of the upland and tideland portion of the Site at the time of disposal or release, Port Blakely is an “owner or operator” as defined in RCW 70.105D.020(22) of a “facility” as defined in RCW 70.105D.020(8).

F. 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.

G. 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. Either 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 Port Blakely take the following remedial actions at the Site. These remedial actions must be conducted in accordance with WAC 173-340 and 173-204:

A. Port Blakely shall perform an RI/FS for the Site, as well as develop a public review draft CAP, in accordance with the Scope of Work and Schedule, which are attached to this order as Exhibit B. This work shall include, but is not limited to the following tasks:

- i. Compile and summarize existing data regarding previous Site investigations;
- ii. Develop a conceptual site model;

- iii. Identify potential data gaps;
- iv. Develop a sampling and analysis plan (SAP) to address data gaps on the Site. The SAP should include a description of planned investigations to determine the lateral and vertical extent of contamination on Site.
- v. Port Blakely shall perform the investigations and present the results to Ecology in the draft RI/FS report. In addition, the draft RI/FS report shall include identification of soil, sediment and groundwater cleanup levels, where appropriate, and those areas requiring remediation. The FS section shall include the evaluation of cleanup action alternatives.
- vi. Port Blakely shall prepare a preliminary Draft Cleanup Action Plan describing final cleanup actions for the site, consistent with MTCA and SMS requirements.

B. The following naming conventions shall be used for documents: Agency Review Draft (designation for the first time Ecology receives a document); Public Review Draft (designates a document ready for public comment); Final (designation for a document after public comment and Ecology approval); and the preliminary Draft Cleanup Action Plan (designation for the Subject PLP(s)'s version of the DCAP).

C. If (a) Subject PLP(s) learn(s) 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, or sediments, the Subject PLP(s), within fourteen (14) days of learning of the change in condition, shall notify Ecology in writing of said change and provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.

D. All plans or other deliverables submitted by Port Blakely for Ecology's review and approval under the Scope of Work and Schedule (Exhibit B) 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.G, Port Blakely shall prepare and submit to Ecology a draft 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). Port Blakely 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 Port Blakely is required to conduct the interim action in accordance with the approved Interim Action Work Plan.

F. If Ecology determines that Port Blakely has 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 Port Blakely, perform any or all portions of the remedial action or at Ecology's discretion allow Port Blakely an opportunity to correct. In an emergency, Ecology is not required to provide notice to Port Blakely, or an opportunity for dispute resolution. Port Blakely 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, Port Blakely shall not perform any remedial actions at the Site outside those remedial actions required by this Order to address the contamination that is the subject of this Order, 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, Port Blakely

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

Port Blakely shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under 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). Ecology has accumulated \$15,345.87 in remedial action costs related to this Site as of October 31, 2019. For all Ecology costs incurred, Port Blakely 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:

John Evered
Toxics Cleanup Program
PO Box 47600

Olympia, WA 98504-7600
(360) 407-7071
jeve461@ecy.wa.gov

The project coordinator for Port Blakely is:

Anne Fitzpatrick
Geosyntec Consultants
520 Pike Street, Suite 2600
Seattle, WA 98101
(206) 496-1461
afitzpatrick@geosyntec.com

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and Port Blakely, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

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.

Any 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 final 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.

Port Blakely shall notify Ecology in writing of the identity of any engineer(s), geologist(s), technical leads, consulting firms, and other key personnel 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 a Subject PLP 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 a Subject PLP. Port Blakely shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by Port Blakely 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 a Subject PLP 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.

E. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, Port Blakely 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, Port Blakely shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by Port Blakely pursuant to implementation of this Order. Port Blakely shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow Port Blakely and/or its authorized representatives 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.D (Access), Ecology shall notify Port Blakely 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, Port Blakely 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, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

2. Notify Ecology's project coordinator prior to the issuance 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 Port Blakely 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 Port Blakely that do not receive prior Ecology approval, Port Blakely 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 contribute to information repositories to be located at the following locations:

- a. Poulsbo Library
700 NE Lincoln Street
Poulsbo, WA
- b. Department of Ecology Toxics Cleanup Program
Headquarters Office
300 Desmond Drive
Lacey, WA

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 Headquarters 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, Port Blakely 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, Port Blakely 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 Port Blakely may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If Port Blakely withholds any requested records based on an assertion of privilege, it 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 Port Blakely elects to invoke dispute resolution it must utilize the procedure set forth below.

a. Upon the triggering event (e.g., receipt of Ecology's project coordinator's written decision or an itemized billing statement), Port Blakely has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of the 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; Port Blakely's position with regard to the dispute; Ecology's position with regard to the dispute; and the extent of resolution reached by informal discussion.

c. Port Blakely may then request regional management review of the dispute. This request (Formal Dispute Notice) must be submitted in writing to the Headquarters 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 (Work to be Performed) or initiating enforcement under Section X (Enforcement).

I. Extension of Schedule

1. Port Blakely's request 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 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 Port Blakely 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 Port Blakely 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 Port Blakely.
- 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 Port Blakely.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give Port Blakely 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 to the schedule for the work to be performed pursuant to this Order, 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 Port Blakely's 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 written consent of Ecology and Port Blakely. 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, Port Blakely 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 Port Blakely to cease such activities for such period of time as it deems necessary to abate the danger. Port Blakely shall immediately comply with such direction.

In the event Port Blakely 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, Port Blakely may cease such activities. Port Blakely 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, Port Blakely shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Port Blakely's cessation of activities, it may direct Port Blakely to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, Port Blakely's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.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 Port Blakely to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against Port Blakely regarding remedial actions required by this Order, provided Port Blakely complies 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, Port Blakely does not admit to any liability for the Site. Although Port Blakely is committing to conducting the work required by this Order under the terms of this Order, Port Blakely expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, 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 a Subject PLP 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, the 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, the Subject PLP shall notify Ecology of said transfer. Upon transfer of any interest, the 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 Port Blakely 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. Port Blakely has 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 Port Blakely, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and Port Blakely must implement those requirements.

2. *Relevant and Appropriate Requirements.* All actions carried out by Port Blakely 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 Port Blakely, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and Port Blakely must implement those requirements.

3. Pursuant to RCW 70.105D.090(1), Port Blakely 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, Port Blakely 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. Port Blakely has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or Port Blakely 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 Port Blakely shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Port Blakely 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 Port Blakely and on how Port Blakely must meet those requirements. Ecology shall inform Port Blakely in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Port Blakely 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 Port Blakely 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

Port Blakely agrees 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 Port Blakely, its officers, employees, agents, or contractors in entering into and implementing this Order. However, Port Blakely 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 Port Blakely's receipt of written notification from Ecology that Port Blakely has completed the remedial activity required by this Order, as amended by any modifications, and that Port Blakely has complied with all other provisions of this Agreed Order.

X. ENFORCEMENT

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

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

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

C. 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: _____

PORT BLAKELY TREE FARMS
(LIMITED PARTNERSHIP)



RENE ANCINAS
Chairman & CEO
Seattle, WA
(206) 624-5810

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

BARRY ROGOWSKI
Section Manager
Toxics Cleanup Program
Headquarters Cleanup Section
(360) 407-7226