

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

The Port of Seattle and
The Boeing Company

AGREED ORDER

No. DE 18064

TO: The Port of Seattle
c/o Mr. Stephen P. Metruck
Executive Director
Pier 69
2711 Alaskan Way
Seattle, WA 98111

The Boeing Company
c/o Mr. Steven Shestak
Director of Environment
PO BOX 3707 M/C 9U4-08
Seattle, WA 98124

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology), the Port of Seattle (the Port), and the Boeing Company (Boeing) (collectively, the Parties) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the Port and Boeing (collectively, the PLPs) to prepare a Remedial Investigation (RI), Feasibility Study (FS), and Draft Cleanup Action Plan (DCAP). 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 they are fully authorized to enter into this Order and to execute and legally bind such Party to comply with this Order. The PLPs agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the PLPs' responsibility under this Order. The PLPs 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 Terminal 115 Plant 1. The Site constitutes a facility under RCW 70.105D.020(8) (Terminal 115 Plant 1 Facility). 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 6000 West Marginal Way SW, Seattle, Washington 98106, as shown in the Approximate Terminal 115 Plant 1 Property Boundary (Exhibit A).

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

C. Potentially Liable Persons (PLPs): Refers to the Port and Boeing.

D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order.

All exhibits are integral and enforceable parts of this Order.

V. FINDINGS OF FACT

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

A. Based upon factors currently known to Ecology, the Site is generally located at 6000 West Marginal Way SW in Seattle, Washington, on the west bank of the Lower Duwamish Waterway (LDW) approximately 1.6 miles south of Harbor Island. King County tax records note that parcel number 5367202505 covers approximately 98.7 acres, and is currently owned by the Port as shown in the Approximate Terminal 115 Plant 1 Property Boundary (Exhibit A). The property is zoned IG1 U85, indicating general industrial zoning, and is currently used for upland marine cargo marshalling area and cargo storage, warehouse, and processing facilities. Most of the existing Terminal 115 property upland area and dock structures have been in place since approximately the late 1970s.

B. Between 1917 and 1970, Boeing owned and operated an aircraft manufacturing facility (Boeing Plant 1) on the southern portion of the Site. A 1945 study by the State of Washington Pollution Control Commission indicates Boeing Plant 1 discharged chromic acid waste and cutting oil into the turning basin of the LDW. The report also indicated that chromic acid was spilled or dripped onto soil at the Boeing Plant 1 property. In 1970, Boeing Plant 1 was sold to the Port and the structures demolished and redeveloped as a fish processing and cold storage facility (Seafreeze) in 1978.

C. In 1994, three 6,000-gallon underground storage tanks (USTs) were removed from the former Boeing Plant 1 location along with 750 cubic yards of petroleum impacted soils. Petroleum hydrocarbons were identified in soil and groundwater. Additionally, free-phase hydrocarbons were observed in groundwater.

D. A confirmed release occurred near a 4,000-gallon UST operated by Seafreeze that was also the location of former Boeing Plant 1 USTs 5, 6, and 7. Separate phase hydrocarbons were observed in the tank excavation, and groundwater sampling indicated impacts from vinyl chloride, diesel range hydrocarbons, benzene, and lead.

E. Reports indicate that gasoline and service stations, as well as a refinery, operated in the far southeast corner of the Terminal 115 Plant 1 property prior to 1965. Tax records indicate a “refinery building” was constructed in 1952 and was removed around 1964. Tax records and aerial photographs indicate that the service station was demolished in 1965.

F. Prior to 1970, a gasoline service station was located in the far southwest corner of the Terminal 115 Plant 1 property. USTs and above ground storage tanks (ASTs) were used to store fuel for the service station. The service station was demolished by 1970.

G. In the southwest portion of the Terminal 115 Plant 1 property, an aluminum re-melting facility (Material Reclamation and Maralco Aluminum) operated from 1952–1985. In 1995–1996, a 9,500-gallon UST containing diesel/heating oil and a 600-gallon heating oil UST were removed from the property, along with petroleum contaminated soil. In 1994, reports confirm that there was 2 feet of separate phase hydrocarbon present on groundwater, and contamination was confirmed in soil.

H. In the central portion of the Terminal 115 Plant 1 property, a 5,000-gallon kerosene UST was removed in 1989. Soil samples indicate a release of diesel.

I. Reports confirm that portions of the Terminal 115 Plant 1 property have soil and groundwater impacted by releases of diesel- and gasoline-range hydrocarbons, lead, and benzene. Toluene, ethylbenzene, and xylenes are suspected hazardous substances associated with gasoline-range hydrocarbon and are likely present at this Site.

J. In November 2014, EPA issued a Record of Decision (ROD) for the Lower Duwamish Waterway (LDW) site. The ROD provides a description of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Selected Remedy for the in-waterway portion of the LDW CERCLA site. The in-waterway portion and cleanup, as defined in the ROD, addresses contaminated sediments and surface water below the mean higher high water (MHHW) level (in the LDW, MHHW is 11.3 feet above the mean lower low water (MLLW) level). The coordination between Ecology and EPA for source control and in-waterway cleanup activities has been established in a 2014 Memorandum of Agreement (MOA). The MOA designates EPA as the Lead Agency for the in-waterway portion of the LDW site and Ecology is the Lead Agency for source control activities.

VI. ECOLOGY DETERMINATIONS

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

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

B. The Boeing Company was a former “owner or operator” during the time of a release of a hazardous substance as defined in RCW 70.105D.020(22) of a “facility” as defined in RCW 70.105D.020(8).

C. 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.

D. Based upon credible evidence, Ecology issued a PLP status letter to the Port dated August 13, 2015, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. By letter dated October 2, 2015, the Port waived its rights to notice and comment and accepted Ecology’s determination that the Port is a PLP under RCW 70.105D.040. Ecology issued a determination

that the Port was a PLP under RCW 70.105D.040 and notified the Port of this determination by letter dated October 6, 2015.

E. Based upon credible evidence, Ecology issued a PLP status letter to Boeing dated August 13, 2015, pursuant to RCW 70.105D.040, .020(26), and WAC 173-340-500. By letter dated September 16, 2015, Boeing voluntarily waived its rights to notice and comment and accepted Ecology's determination that Boeing is a PLP under RCW 70.105D.040. Ecology issued a determination that Boeing was a PLP under RCW 70.105D.040 and notified Boeing of this determination by letter dated October 6, 2015.

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. 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 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 PLPs shall conduct work as detailed in the Scope of Work and Schedule (Exhibit B). That work includes preparation of a Data Summary Report (DSR) and a Work Plan to conduct a Remedial Investigation (RI). After Ecology approval of the Data Summary Report and RI Work Plan, the PLPs will implement the RI Work Plan and then prepare a RI Report and Feasibility Study (FS). After Ecology approval of the Public Review RI Report and FS, the PLPs shall prepare a preliminary draft Cleanup Action Plan (DCAP).

B. If the PLPs learn 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, then the PLPs, within seven (7) 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.

C. The PLPs shall submit to Ecology written quarterly Progress Reports that describe the actions taken during the previous quarter to implement the requirements of this Order. All Progress Reports shall be submitted by the fifteenth (15th) day of the month in which they are due after the effective date of this Order. Unless otherwise specified by Ecology, Progress Reports and any other documents submitted pursuant to this Order shall be sent by certified mail, return receipt requested, to Ecology's project coordinator. The Progress Reports shall include the information outlined in Exhibit B, Task 9.

D. All plans or other deliverables submitted by the PLPs for Ecology's review and approval under the Scope of Work and Schedule (Exhibit B) shall become integral and enforceable parts of this Order upon Ecology's approval.

E. If the Parties agree on an interim action under Section VI.G, the 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 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 PLPs are required to conduct the interim action in accordance with the approved Interim Action Work Plan.

F. If Ecology determines that the PLPs have failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to the PLPs and after providing the PLPs a reasonable timeframe, as determined by Ecology, remedy the alleged deficiency, perform any or all portions of the remedial action or at Ecology's discretion allow the PLPs opportunity to correct. In an emergency, Ecology is not required to provide notice to the PLPs, or an opportunity for dispute resolution. The 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 PLPs 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, the 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.

H. For purposes of the identification requirement of section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), performance of requirements under Section VII (Work to Be Performed) and Section VIII (Terms and Conditions) is restitution or required to come into compliance with law. Ecology is not giving tax advice and does not bear the burden of proving entitlement to any deduction. This Order shall remain in effect even if the IRS or a court decides against the deductibility of any payment.

VIII. TERMS AND CONDITIONS

A. Payment of Remedial Action Costs

The 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 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 \$\$45,366.06 in remedial action costs related to this Site as of December 31, 2019. For all Ecology costs incurred, the 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, the amount of time spent by involved staff members on the project, and 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:

Maureen Sanchez
Northwest Regional Office
Toxics Cleanup Program
3190 160th Avenue SE
Bellevue, WA 98008
Telephone: 425-649-7254
masa461@ecy.wa.gov

The project coordinator for The Port is:

Roy Kuroiwa
Senior Environmental Program Manager
Port of Seattle
Pier 69, 2711 Alaskan Way
Telephone: 206-787-3814
Kuroiwa.r@portseattle.org

The project coordinator for Boeing is:

Joseph Flaherty
EHS Remediation Group
The Boeing Company
PO BOX 3707 M/C 1P-310
Seattle, WA 98124
Telephone: 206-769-5987
Joseph.L.Flaherty@boeing.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 the Parties 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.

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 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 the PLPs either own, control, or have 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 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 PLPs. The PLPs shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the 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 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.

E. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the 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 PLPs shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the PLPs pursuant to implementation

of this Order. The PLPs shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site pursuant to this Order. Ecology shall, upon request, allow the 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.D (Access), Ecology shall notify the 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 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, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.
2. Notify Ecology's project coordinator prior to the preparation and 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. Ecology shall notify the 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 PLPs that do not receive prior Ecology approval, the 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. Seattle Public Library–South Park Branch
8604 Eighth Avenue S. at S. Cloverdale St.
Seattle, WA 98108
- b. Ecology’s Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008

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 Northwest Regional Office in Bellevue, 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 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 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 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 the PLPs withhold any requested records based on an assertion of privilege, the 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 the PLPs elect to invoke dispute resolution, the PLPs 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 PLPs have 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 position of the PLPs with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

c. The PLPs may then request regional management review of the dispute. This request (Formal Dispute Notice) must be submitted in writing to the Northwest 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. Requests from the PLPs 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 the 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 PLPs including delays caused by unrelated third parties or Ecology, such as (but not limited to) labor strikes or delays by Ecology in reviewing, approving, or modifying documents submitted by the 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 PLPs.

3. Ecology shall act upon any written request from the PLPs for extension in a timely fashion. Ecology shall give the 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 request of the PLPs, 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 all Parties. 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 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 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 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 PLPs may cease such activities. The 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 PLPs shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the PLPs' cessation of activities, it may direct the PLPs to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, the obligations of the PLPs 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 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 PLPs regarding remedial actions required by this Order, provided the 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 and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

By entering into this Order, the PLPs do not admit to any liability for the Site. Although the PLPs are committing to conducting the work required by this Order under the terms of this Order, the PLPs expressly reserve 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 the Port without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to transfer by the Port of any interest in all or any portion of the Site, and during the effective period of this Order, the Port shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, the Port shall notify Ecology and Boeing of said transfer; if thirty (30) days prior notice is not possible, notice shall be provided as soon as practicable. Upon transfer of

any interest, the Port 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 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 PLPs have a continuing obligation to identify additional applicable federal, state, and local requirements that 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 PLPs, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and the PLPs must implement those requirements.

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

3. Pursuant to RCW 70.105D.090(1), the 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 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 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 any Party determines that additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other Parties of its determination. Ecology shall determine whether Ecology or the PLPs shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, the 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 PLPs and on how the PLPs must meet those requirements. Ecology shall inform the PLPs in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. The 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 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 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 PLPs, its officers, employees, agents, or contractors in entering into and implementing this Order. However, the 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 receipt by the PLPs of written notification from Ecology that the PLPs have completed the remedial activity required by this Order, as amended by any modifications, and that the 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.

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

Effective date of this Order: _____

PORT OF SEATTLE

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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Executive Director
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206-787-3814

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The Boeing Company
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EXHIBIT A
APPROXIMATE TERMINAL 115 PLANT 1 PROPERTY BOUNDARY



Legend:

 Terminal 115 Plant 1 Property Boundary

0 250 500 1,000 Feet

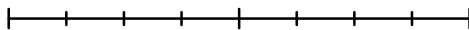


Exhibit A
Approximate Terminal 115 Plant 1
Property Boundary



EXHIBIT B
SCOPE OF WORK (SOW) AND SCHEDULE

EXHIBIT B SCOPE OF WORK (SOW) AND SCHEDULE

SCOPE OF WORK

PURPOSE

The work under this Agreed Order (AO) involves conducting a Data Summary Report, Remedial Investigation (RI), and Feasibility Study (FS), including interim actions if required, and preparing a preliminary Draft Cleanup Action Plan (DCAP) to select a cleanup alternative if agreed to by Ecology. The purpose of the RI, FS, and preliminary DCAP for the Site is to provide sufficient data, analysis, and evaluations to enable Ecology to select a cleanup alternative for the Site.

The Port of Seattle and Boeing (PLPs) shall coordinate with Ecology throughout the development of the RI/FS, Data Summary Report, Interim Action, and preliminary DCAP and shall work closely with Ecology on Work Plan development, reporting, and project implementation as needed.

The work to be performed under this AO will focus on characterizing known and suspected hazardous substances at the Site. The Remedial Investigation/Feasibility Study for the Lower Duwamish Waterway (LDW), focused on the nature and extent of hazardous substance contamination in sediments to evaluate remedial alternatives. The USEPA may require additional investigations of the LDW sediments. The LDW Record of Decision addressed contamination caused by an EPA-defined list contaminants of concern (COCs) in sediments in the LDW, which may differ from the COC list for the Site. Based on existing data and data gaps, an investigation of sediments adjacent to and near the upland portion of the Site may be required under the terms of this AO.

The SOW is divided into nine major tasks as follows:

- Task 1. Data Summary Report
- Task 2. RI Work Plan
- Task 3. Remedial Investigation
- Task 4. Interim Action(s) (if required)
- Task 5. Feasibility Study
- Task 6. SEPA Compliance
- Task 7. Public Participation
- Task 8. DCAP
- Task 9. Progress Reports

TASK 1. DATA SUMMARY REPORT

The PLPs shall prepare a Data Summary Report that briefly updates general facility information, history and conditions, past investigations including data collection and results since issuance of the Environmental Conditions Report in 2011, hazardous substances sources, etc. The Data Summary Report will include data in tabular and figure form, and will include Preliminary Cleanup Levels published by Ecology that are protective of surface water for comparison.

TASK 2. RI WORK PLAN

The PLPs shall prepare an RI Work Plan. The RI Work Plan shall include an overall description and schedule of all RI activities. The RI Work Plan shall define the project management strategy for implementing and reporting on RI activities, the responsibility and authority of all organizations, and key personnel involved in conducting the RI will be outlined.

A RI Planning Meeting will be held prior to submittal of the RI Work Plan. The purpose of the RI Planning Meeting is to review requirements for the RI Work Plan and plan RI fieldwork, discuss the preliminary Conceptual Site Model, and identify project data needs and possible interim actions.

The RI Work Plan shall describe general facility information; site history and conditions, including previous operations; past field investigations, including any data collection and analysis of soils, air, groundwater, surface water, and sediments compared to screening levels; a preliminary conceptual site model showing contaminants, migration pathways in all environmental media, potential receptors, geology and groundwater system characteristics; past, current, and future land use; identification of natural resources and ecological receptors; hazardous substances and their sources, etc.; in compliance with WAC 173-340-350 and WAC 173-204-560.

As part of the project background, existing environmental data on site soil, groundwater, surface water, and sediments will be compiled and evaluated for data gaps. The data gaps will be used as the basis for conducting additional site investigations, if necessary. The RI Work Plan will also identify specific data collection procedures in a Sampling and Analysis Plan (SAP) and Quality Assurance Project Plan (QAPP) as part of the RI Work Plan in compliance with WAC 173-340-820 and WAC 173-204-600 for defining the nature and extent of contamination. The PLPs will also submit a copy of the Health and Safety Plan (HASP) for the project.

The SAP identifies the proposed number and location of all environmental samples and methods, including soil borings; groundwater monitoring wells; soil, groundwater, seep, catch basin, and sediment samples; approximate depths of soil boring, monitoring wells, and sediment samples; and includes a QAPP. The SAP will describe the sampling objectives; the rationale for the sampling approach (based upon the identified data gaps), and plans for data use; and shall provide a detailed description of sampling tasks. The SAP shall describe specifications for sample identifiers; sampling equipment; the type, number, and location of samples to be collected; the analyses to be performed; descriptions of sampling equipment and methods to be used; sample documentation; sample containers, collection, and handling; data and records management; and schedule.

The QAPP will be prepared in accordance with the Guidance for Preparation of Quality Assurance Project Plans, EPA Region 10, Quality Data Management Program, QA/R-5 and requirements of the EPA Contract Laboratory Program. The QAPP will also follow Ecology's Guidelines for

Preparing Quality Assurance Project Plans for Environmental Studies (July 2004)¹ and Sediment Sampling and Analysis Plan Appendix (February 2008)² if sediment sampling is needed. Laboratories must meet the accreditation standards established in WAC 173-50. Data quality objectives will reflect the criteria or threshold values used for the source control evaluation.

The SAP, including the QAPP and HASP, will be submitted to Ecology for review and approval. Work may not begin without written approval from Ecology. The plan shall provide seven (7) days notice to Ecology prior to beginning sampling. Ecology may obtain split samples.

The PLPs or their contractors shall submit all sampling data generated under this SAP and any other collected data to Ecology for entry into the Environmental Information Management System (EIM) in accordance with WAC 173-340-840(5) and Ecology's Toxics Cleanup Program Policy 840: Data Submittal Requirements. All validated data will be entered into the EIM database within thirty (30) days of final data report submittals.

RI Work Plan tasks and subtasks may include, but are not limited to the following, as necessary to resolve data gaps identified in the RI Work Plan:

- Sampling and analysis of soil, groundwater, product, and seeps.
- Sampling and analysis of stormwater and catch basin solids to determine whether the stormwater system is a source of contamination to sediments.
- Evaluate the potential to contaminate or recontaminate sediments, including analysis of the following pathways:
 - Direct discharges
 - Stormwater discharges
 - Overland flow
 - Groundwater discharges and seeps
 - Soil erosion
 - Site operations
 - Spills, dumping, leaks, housekeeping, and management practices
- Defining the nature and extent of contamination based on screening levels protective of all receptors at and downgradient of the Site.

The PLPs will provide Ecology with two (2) copies of the Agency Review Draft RI Work Plan, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and comment. Once Ecology reviews and approves the RI Work Plan, it will be considered the Final RI Work Plan, and can then be implemented. Once approved by Ecology, PLPs shall prepare two (2) copies of the Final RI Work Plan and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology. The PLPs will implement the Final RI Work Plan according to the schedule contained in this Exhibit.

¹ Found at <http://www.ecy.wa.gov/biblio/0403030.html>

² Found at <http://www.ecy.wa.gov/biblio/qapp.html>

TASK 3. REMEDIAL INVESTIGATION

The PLPs shall conduct a RI that meets the requirements of WAC 173-340-350(7) and WAC 173-204-560 according to the Final RI Work Plan as approved by Ecology. The RI will determine the nature and extent of contamination exceeding preliminary Model Toxics Control Act (MTCA) and Sediment Management Standards (SMS) cleanup levels, and other regulatory requirements. The RI must provide sufficient data and information to define the nature and extent of contamination.

Field sampling and analysis will be completed in general accordance with the SAP and QAPP. Deviation(s) from the approved SAP and QAPP must be communicated to Ecology immediately and documented as required by Ecology.

Laboratory analysis data shall also be provided in electronic format when it has been validated. Raw laboratory data will be provided to Ecology upon request. Validated analytical data shall be uploaded into EIM within thirty (30) days of the submittal of the RI and any other report containing new data.

Prior to submittal of the Agency Review Draft RI Report, a RI Pre-Report Check-In will be held. During the RI Pre-Report Check-In, Ecology and the PLPs will review available data and an updated conceptual site model and discuss the content and organization of the Draft RI Report.

The PLPs shall compile the results of the RI into an Agency Review Draft RI Report. The PLPs shall prepare two (2) copies of the Agency Review Draft RI Report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and comment.

After incorporating Ecology's comments on the Agency Review Draft RI Report and obtaining Ecology approval, the PLPs shall prepare five (5) copies of a Public Review Draft RI Report and submit them, including one electronic copy of each in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment. Electronic survey data for monitoring locations, electronic lab data, and electronic GIS and autocad files including maps of contaminant distribution shall also be provided for both the Agency Review Draft RI Report and Public Review Draft RI Report either in the report or as attachments. The RI Report will not be considered final until after a public review and comment period.

If the data collected during this investigation is insufficient to define the full nature and extent of contamination and/or to select a cleanup action plan, an additional phase of investigation shall be conducted to define the extent of contamination.

TASK 4. INTERIM ACTIONS (if required)

Remedial actions implemented prior to completion of the RI/FS, including those that:

- are 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

- correct a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed
- are needed to provide for completion of the RI/FS or design of the cleanup action

will be considered interim actions, will be implemented in accordance with WAC 173-340-430 and the AO, and will be designed in a manner that will not foreclose reasonable alternatives for any final cleanup action that may be required.

As detailed in the AO, if required by Ecology, or if proposed by the Port and Boeing and approved by Ecology, the PLPs will implement an interim action. Based upon information in the Agency Review Draft RI Report, interim action(s) may be needed to expedite control of releases to sediments or other environmental media pursuant to WAC 173-340-430.

The scope of the interim actions may include, but not be limited to, typical source control or containment elements such as:

- Soil removal
- Groundwater remediation
- Sediment
- Repair, slip lining, replacement, or closure of stormwater conveyances or other structures such as conduits, vaults, catch basins, etc.
- Removal of underground storage tanks and pipes
- Removal of old drain fields or former surface impoundments
- Proper abandonment of old wells
- Removal of contaminated building or other structural material
- Construction of a treatment facility
- Shoreline stabilization such as bulkhead repair, erosion or seepage control, and grading or clearing

If an interim action is to be performed, the PLPs will prepare and submit for Ecology approval an Agency Review Draft Interim Action Work Plan (IAWP) with detail commensurate with the work to be performed. The Agency Review Draft IAWP shall include, as appropriate:

- Description of the interim action including its purpose, general requirements, and relationship to the (final) cleanup action (to the extent known)
- Summary of relevant RI/FS information, including at a minimum existing site conditions and alternative interim actions considered
- Information regarding design and construction requirements, including a proposed schedule and personnel roles and responsibilities
- Compliance Monitoring Plan
- SAP/QAPP
- Permits required

The PLPs will also submit a copy of the Health and Safety Plan for the project. The PLPs will be responsible for complying with the State Environmental Policy Act (SEPA) Rules, including

preparing and submitting an environmental checklist for the interim action, and will assist Ecology with presentations at any additional meetings or hearings that might be necessary for SEPA compliance or as part of the Public Participation Plan.

Once approved by Ecology, the PLPs will implement the interim action according to the schedule contained in the IAWP.

The PLPs shall prepare two (2) copies of the Agency Review Draft IAWP and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review. The PLPs shall incorporate Ecology's comments and then prepare two (2) copies of the Public Review Draft IAWP and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology. After a public notice and comment period for the Public Review Draft IAWP (and SEPA determination), Ecology will approve the IAWP (if appropriate) and the document will be considered final. The PLPs shall prepare three (3) copies of the Final IAWP and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and approval. Once approved by Ecology, the Port and Boeing will implement the interim action according with the approved schedule.

Upon successful completion of the work, an Agency Review Draft Interim Action Report will be prepared as a separate deliverable. The PLPs shall prepare two (2) copies of the Agency Review Draft Interim Action Report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and approval. After incorporating Ecology's comments on the Agency Review Draft Interim Action Report and after Ecology approval, the Port and Boeing shall prepare three (3) copies of the Final Interim Action Report and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology. Electronic GIS and autocad files shall also be provided for all Draft and Final Reports.

TASK 5. FEASIBILITY STUDY

The PLPs shall use the information obtained in the RI to prepare an Agency Review Draft Feasibility Study (FS) that meets the applicable requirements of WAC 173-340-350(8) according to the Schedule in this Exhibit. The Agency Review Draft FS will evaluate remedial alternatives for site cleanup, consistent with MTCA and SMS requirements to ensure protection of human health and the environment by eliminating, reducing, or otherwise controlling risk posed through each exposure pathway and migration route.

Prior to beginning the FS, a FS Planning Meeting will be held to review Applicable, Relevant and Appropriate Requirements (ARARs), potential remedial alternatives, and establish points of compliance.

The Agency Review Draft FS will provide a detailed analysis of each remedial alternative according to the applicable requirements of WAC 173-340-350, MTCA Remedial Investigation and Feasibility Study, and WAC 173-204-560, SMS Cleanup Study. The remedial alternatives will be evaluated for compliance with the applicable requirements of WAC 173-340-360, Selection of Cleanup Actions, and WAC 173-204-560(4), including a detailed evaluation of remedial alternatives relative to the following criteria:

- Compliance with cleanup standards and applicable laws
- Protection of human health
- Protection of the environment
- Provision for a reasonable restoration time frame
- Use of permanent solutions to the maximum extent practicable
- The degree to which recycling, reuse, and waste minimization are employed
- Short-term effectiveness
- Long-term effectiveness
- Net environmental benefit
- Implementability
- Provision for compliance monitoring
- Cost-effectiveness
- Prospective community acceptance

The remedial alternative that is judged to best satisfy the evaluation criteria will be identified. Justification for the selection will be provided, and the recommended remedial alternative further developed, in the FS Report.

The PLPs shall prepare two (2) copies of the Agency Review Draft FS and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review. After addressing Ecology’s comments on the Agency Review Draft FS, the Port and Boeing shall prepare three (3) copies of the Public Review Draft FS and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for distribution and public comment. The FS will not be considered final until after a public review and comment period.

TASK 6. SEPA COMPLIANCE

The PLPs shall be responsible for complying with the State Environmental Policy Act (SEPA) Rules, including preparing and submitting an environmental checklist. If the result of the threshold determination is a determination of significance (DS), the PLPs shall be responsible for the preparation of draft and final environmental impact statements. The PLPs shall assist Ecology with coordinating SEPA public involvement requirements with MTCA public involvement requirements whenever possible, such that public comment periods and meetings or hearings can be held concurrently.

TASK 7. PUBLIC PARTICIPATION

The PLPs shall assist Ecology to prepare a Draft and Final Public Participation Plan that complies with the provisions of WAC 173-340-600(9).

The PLPs shall support Ecology in presenting the Public Review Draft RI Report and the Public Review Draft FS Report, Public Review Draft CAP, and SEPA evaluations at one public meeting or hearing for each document. A combined public meeting or hearing may be held with Ecology approval. The PLPs will assist Ecology with presentations at any additional meetings or hearings that might be necessary for SEPA compliance or as part of the Public Participation Plan.

After the public comment periods are completed, the PLPs shall prepare an Agency Review Draft Responsiveness Summary that addresses public comments. The PLPs shall prepare two (2) copies of the Agency Review Draft Responsiveness Summary and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and approval.

After incorporating Ecology's comments and after Ecology approval, the PLPs shall prepare five (5) copies each of the Final Responsiveness Summary, Final RI Report, and Final FS Report after public comments are incorporated and submit them to Ecology for distribution, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats.

TASK 8. PRELIMINARY DRAFT CLEANUP ACTION PLAN

Upon Ecology approval of the Public Review Draft Remedial Investigation Report and Public Review Draft Feasibility Study, a Cleanup Action Plan Meeting will be held regarding the Cleanup Action Plan. The Cleanup Action Plan Meeting will be used to review plans for developing the Agency Review preliminary Draft Cleanup Action Plan (DCAP).

The PLPs shall prepare an Agency Review preliminary DCAP in accordance with WAC 173-340-380 that provides a proposed remedial action to address the contamination present on the Site. Where contaminated sediments are included in the remedial action, the cleanup plan will comply with WAC 173-204-580, in addition to the MTCA requirements cited above. The preliminary DCAP shall include a general description of the proposed remedial actions; cleanup standards developed from the RI/FS and rationale regarding their selection; a schedule for implementation; description of any institutional controls proposed; and a summary of applicable local, state, and federal laws pertinent to the proposed cleanup actions.

The PLPs will submit an Agency Review preliminary DCAP for Ecology's review and approval. The Agency Review preliminary DCAP will include, but not be limited to, the information listed under WAC 173-340-380. The PLPs shall prepare two (2) copies of the Agency Review preliminary DCAP and submit them, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats, to Ecology for review and approval.

After receiving Ecology's comments on the Agency Review preliminary DCAP, if any, the PLPs shall revise the preliminary DCAP to incorporate Ecology's comments and submit five (5) copies of the Public Review DCAP, including one electronic copy each in Word (.doc) and Adobe (.pdf) formats. Electronic GIS and autocad files shall also be provided for both Draft Reports.

TASK 9. PROGRESS REPORTS

- The PLPs shall submit progress reports quarterly. Progress reports shall be submitted to Ecology until satisfaction of this AO in accordance with Section VII.C of the AO. Progress reports shall be submitted to the Ecology project coordinator by the 15th of the month following the reporting quarter. If this day is a weekend or holiday, deliverables

will be submitted to Ecology on the next business day. At a minimum, progress reports shall contain the information regarding the preceding reporting period: a description of the actions taken to comply with this Order, including a list of on-site activities that have taken place during the quarter.

- Summaries of sampling and testing reports and other data reports received by the PLPs, including all raw data (including laboratory analyses) during the past quarter and identification of the sources of the samples.
- Description of all deviations from the Scope of Work and Schedule (described herein) during the current quarter and any planned deviations in the upcoming quarter.
- For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.
- Summaries of solutions developed and implemented or planned to address any actual or anticipated problems or delays.
- Summaries of contacts with representatives of the local community, public interest groups, press, and federal, state, or tribal governments.
- Changes in key personnel.
- A description of work planned for the next reporting period, including a list of deliverables for the upcoming quarter.

Progress reports will be submitted as separate documents or as an attachment to an email distribution list.

SCHEDULE OF DELIVERABLES

The schedule for deliverables described in the Agreed Order and the Scope of Work is presented below. If the date for submission of any item or notification required by this Schedule of Deliverables occurs on a weekend, state or federal holiday, the date for submission of that item or notification is extended to the next business day following the weekend or holiday. Where a deliverable due date is triggered by Ecology notification, comments or approval, the starting date for the period shown is the date the PLPs received such notification, comments or approval by certified mail, return receipt requested, unless otherwise noted below. Where triggered by Ecology receipt of a deliverable, the starting date for the period shown is the date Ecology receives the deliverable by certified mail, return receipt requested, or the date of Ecology signature on a hand-delivered form.

RI/FS Deliverables	Completion Times
Data Summary Report	PLPs to submit 6 months following the effective date of the Agreed Order
Agency Review Draft RI Work Plan	90 calendar days following Ecology's approval of the Data Summary Report
Final RI Work Plan	PLPs to submit 60 calendar days after incorporating Ecology comments on Draft RI Work Plan.
Completion of RI Fieldwork	18 months following Ecology's approval of the Final RIWP, SAP, QAPP, and HSP
Agency Review Draft RI Report	PLPs to submit 90 days following receipt of laboratory data set
Public Review Draft RI Report	PLPs to make available 60 calendar days following receipt of Ecology comments on Agency Review Draft RI Report
Agency Review Draft FS	PLPs to submit 90 days following completion of Public Review Draft RI Report
Public Review Draft FS	PLPs to make available 60 calendar days following receipt of Ecology's comments on the Agency Review Draft FS
Agency Review Preliminary Draft Cleanup Action Plan (DCAP)	PLPs to submit 90 calendar days following the meeting between the PLPs and Ecology to discuss Ecology's evaluation of public comments on the Draft FS and the PLPs plans for the DCAP