

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

Estate of Sophie Sussman and
Tacoma Metals, Inc.

ENFORCEMENT ORDER

No. DE 17990

TO: Estate of Sophie Sussman
c/o Loren Dunn
Beveridge & Diamond, P.C.
600 University St., Suite 1601
Seattle, WA 98101

Tacoma Metals, Inc.
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Ecology Agreed Order No. DE 17989
Ecology Policy 840 – Data Submittal Requirements
Relevant and Appropriate Requirements

I. INTRODUCTION

The objective of the State of Washington, Department of Ecology (Ecology) under this Enforcement Order (Order) is to require remedial action at a facility where there has been a release or threatened release of hazardous substances.

Ecology is entering into Agreed Order No. DE 17990 (2020 Agreed Order) with Potentially Liable Parties (PLPs) International Paper Company and General Metals of Tacoma (hereinafter “AO PLPs”). The 2020 Agreed Order requires the AO PLPs to conduct a supplemental Remedial Investigation and Feasibility Study (RI/FS) per WAC 173-340-350 and WAC 173-204-560 at the Tacoma Metals Site (Site). *See* Exhibit C at 3.

Ecology is issuing this Enforcement Order (Order) to the PLPs who did not sign the 2020 Agreed Order, the Estate of Sophie Sussman and Tacoma Metals, Inc. (hereinafter “EO PLPs”). This Order requires the EO PLPs to conduct a supplemental RI/FS per WAC 173-340-350 and WAC 173-204-560 at the Site. Ecology expects that all PLPs, the AO PLPs and the EO PLPs, will work jointly in completing the work required by this Order and the 2020 Agreed Order. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

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

III. POTENTIALLY LIABLE PERSONS BOUND

This Enforcement Order shall apply to and be binding upon the EO PLPs. To the extent allowed by law, changes in ownership or corporate status shall not alter the EO PLPs’ responsibility under this Order. The EO 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 and WAC 173-340 shall control the meanings of the terms in this Order.

A. Site: The Site (or Facility) refers to the Tacoma Metals Site (Site). 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 1919 Portland Avenue, Tacoma, Washington. The Site is more particularly described in Exhibit A to this Order which is a detailed site diagram.

B. Potentially Liable Persons (PLPs): Refers to the Estate of Sophie Sussman, General Metals of Tacoma, International Paper Company, Portland Avenue Associates, LLC, and Tacoma Metals Inc.

C. EO PLPs: Refers to PLPs subject to the Order (the Estate of Sophie Sussman and Tacoma Metals).

D. AO PLPs: Refers to the PLPs who are parties to the 2020 Agreed Order (International Paper Company and General Metals of Tacoma).

E. Enforcement Order or Order: Refers to this Order and each of the exhibits to the Order. All exhibits are an integral and enforceable part of this Order.

F. 2000 Order: Refers to Agreed Order No. DE 97-5435, entered in 2000 by Ecology, Mr. and Mrs. Leslie Sussman, and Portland Avenue Associates, for the purpose of conducting a remedial investigation/feasibility study (RI/FS) at the Site.

V. FINDINGS OF FACT

Ecology makes the following findings of fact:

A. The Tacoma Metals; Inc. Site (Site) is generally located at 1919 Portland Avenue, Tacoma, Washington, as shown in the Site Location Diagram (Exhibit A).

B. Portion of property at the Site was first developed in the late 1900s to early 1910s. In or around that time, a creosoting plant was constructed on part of the Site. The St. Paul & Tacoma Lumber Company operated the creosoting plant until the late 1920s to early 1930s. The primary creosoting plant facilities included the main creosoting plant structure, which housed a 130-foot treatment retort and a 1,500-gallon aboveground storage tank (AST). Two separate ASTs (102,000-gallon and 450,000-gallon) were located north of the main structure. The International Paper Company acquired the St. Paul & Tacoma Lumber Company in 1958.

C. In the early 1940s, the Defense Plant Corporation acquired a portion of the Site and entered into a contract with Wilkeson Products Company to build a coke manufacturing facility was constructed on property at the Site. Other structures associated with the coke plant were located on the western portion of the former Tacoma Metals Property, in the vicinity of and east of the former creosoting plant location. The coke manufacturing facility operated from approximately May 1943 to November 1944, when Wilkeson Products was liquidated.

D. Leslie and Sophie Sussman (the Sussmans) acquired real property located at 1919 Portland Avenue in the early 1950s and their corporation, General Metals, Inc. began operating a metal recycling facility at that property. From early 1950s until April 1983, General Metals, Inc., operated the facility and leased the property from the Sussmans. From May 1983 until March 1999, Tacoma Metals, Inc., operated the facility. During this time Tacoma Metals, Inc. leased the property from the Sussmans. In March 1997, the Sussmans transferred the property to Portland Avenue Associates, LLC, which was owned by Leslie and Sophie Sussman.

E. The operational history of the metal recycling facility included the handling of scrap ferrous and non-ferrous metal and processing scrap metal materials. Processing included dismantling and draining transformers, dismantling lead-acid batteries and recovery and recycling lead from copper cables. Scrap materials containing copper, brass, lead, aluminum and stainless steel were processed, handled, and/or redistributed. Metals recycling operations ceased in 1999.

F. On September 9, 1983, the United States Environmental Protection Agency (EPA) issued the owners of Tacoma Metals, Inc. a Notice of Non-Compliance for failure to comply with the Toxic Substance Control Act (TSCA) regulations. The TSCA violation concerned Tacoma Metals' transformer handling practices at the Site.

G. Ecology and EPA conducted a joint inspection during March 1988 and collected soil and sediment samples from a catch basin sump. Results of these samples showed elevated concentrations of polychlorinated biphenyls (PCBs) and heavy metals (arsenic, cadmium, chromium, copper, lead and mercury) exceeding the Model Toxics Control Act (MTCA) Method A cleanup levels. The concentrations of some of the heavy metals aluminum, antimony, barium, iron, manganese, nickel, and zinc) were five to ten times the background concentrations. Based on this investigation, Ecology placed the Site on the site information system (SIS) list on February 14, 1992, and ranked the Site on August 17, 1992. The Site scored a ranking of 2 due to elevated levels of PCBs and metals detected in site soils.

H. A partial cleanup of some PCB contaminated areas was conducted in March 1989. Approximately 70 to 80 cubic yards of PCB-contaminated soils were excavated from two areas, treated on-site and disposed-offsite in the Arlington Hazardous Waste Landfill. Subsequent sampling performed as part of the RI confirms that PCB contamination remains on the Site.

I. On September 27, 1991, the Tacoma Public Works Department notified Ecology of a release of cutting oil into the city storm water collection system from the Site.

J. In January 2000, Ecology, the Sussmans and Portland Avenue Associates entered into the 2000 Order that required the Sussmans and Portland Avenue Associates to perform a remedial investigation/feasibility study (RI/FS) for the Site. Pursuant to the 2000 Order, the Sussmans and Portland Avenue Associates performed an initial remedial investigation (RI) at the Site between 2000 and 2001. The purpose of the 2000 RI was to characterize the nature and extent of impacts to environmental media, including confirmation of the results of several limited

investigations performed prior to the RI between 1988 and 1995, develop a site model, and evaluate remedial options based on findings of the investigation.

K. Prior to the construction of an earthen levee by the U.S. Army Corps of Engineers in the late 1940s and 1950s, the southern bank of the Puyallup River was adjacent to the northern boundary of the Site. Construction of the levee shifted a portion of the river to the north and which provided separation of the Site from the main river channel. The former channel area was gradually filled-in with primarily wood-waste material by other property owners.

L. In 2005, the Puyallup River Side Channel (PRSC) project was constructed. This project was one of the central components of the habitat mitigation for the Thea Foss and Wheeler-Osgood Waterways Remediation Project. This project included the construction of a new setback flood control levee, excavation of the habitat area, placement of habitat materials, and breaching and lowering the elevation of the part of the former levee, creating an estuary adjacent to the Site. During the construction of the PRSC, waste materials were discovered. These materials included unexploded military ordnance, lead-containing battery casings and associated contaminated soil, damaged and deteriorated drums, and metal debris including automobile engines.

M. In June 2005, Ecology approved the construction of a Temporary Containment Unit at the Site to store and treat the lead-contaminated soils that were discovered during the PRSC construction. Approximately 4,000 tons (3,100 cubic yards) of soil were stored and treated. The treatment consisted of the addition of a reagent to bond with the metals in the soil to immobilize them from leaching. By August 2007, soil treatment and off-site disposal and transport of the soil to landfill were completed.

N. Leslie Sussman died on April 23, 2000. Sophie Sussman died on January 8, 2012. The Estate of Sophie Sussman is the successor to the 2000 Order's obligations of the Sussmans. On July 25, 2014, the Pierce County Superior Court, under case number 12-2-14683-2, issued an Order granting the Estate of Sophie Sussman's Motion for Partial Summary Judgment on Escheat of Portland Avenue Associates, LLC to the State of Washington. As a result of the Court's July

25, 2014 Order, three parcels of property at the Site, formerly owned by Portland Avenue Associates, LLC, are now owned by the State of Washington, and managed by the Washington State Department of Natural Resources.

O. Additional RI/FS investigation activities were performed at the Site between 2002 and 2014. The Sussman Estate submitted, among other things, an initial RI/FS, dated October 2001; Augmented RI/FS, dated October 30, 2013; Revised Augmented RI/FS Report, dated September 2014; and Revised Draft RI/FS, dated June 22, 2018. International Paper also prepared an FS Addendum, dated June 30, 2015, and an Interim Action Work Plan, dated November 17, 2017. Ecology sent comment letters on the September 2014 Revised Augmented RI/FS Report and the June 2015 FS Addendum dated April 18, 2016 and April 21, 2016, respectively. Ecology provided subsequent comments on the 2018 Revised Draft RI/FS on December 3, 2018 directing the PLPs to address remaining data gaps regarding petroleum, cPAH and naphthalene impacted soil located at a depth of 20 to 32 feet within the on-and off-property areas of the site. These soils are impacting groundwater beneath the site and the FS does not include alternatives to address this contamination. In addition, the soil beneath the former 450,000 gallon above ground storage tank and northeast of that area needs additional characterization.

P. Environmental investigations at the Site have documented the presence of hazardous substances in various media including soil and groundwater. The contaminants of concern identified in these investigations as exceeding published MTCA cleanup levels include:

- **Soil** – metals, PCBs, carcinogenic polycyclic aromatic hydrocarbons (cPAHs), naphthalene, and benzene, toluene, ethylbenzene, and total xylenes (BTEX), total petroleum hydrocarbons in the diesel and heavy oil ranges (TPH-D and -O).
- **Groundwater** – metals, PCBs, cPAHs, naphthalene, BTEX, TPH-D, and TPH-O.
- **Indoor Air** – There is a potential for vapors from soil and/or groundwater contaminated with volatile organic compounds (VOCs) including naphthalene, BTEX, and TPH-D at the Site to cause an exceedance of indoor air cleanup levels if structures are built in the future over portions of the Site that contain VOCs.

Q. On June 16, 2017, the Pierce County Superior Court, under case number 12-2-14683-2, issued an Order declaring that the Estate of Sophie Sussman is liable as a matter of law under MTCA, RCW 70.105D, for remedial action costs at the Tacoma Metals Site. On November 3, 2017, the Pierce County Superior Court, under case number 12-2-14683-2, issued an Order declaring that General Metals of Tacoma, Inc. is liable as a matter of law under MTCA, RCW 70.105D, for remedial action costs at the Site.

VI. ECOLOGY DETERMINATIONS

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

A. Each of the EO PLPs is a former “owner or operator” as defined in RCW 70.105D.020(22) of a “facility” as defined in RCW 70.105D.020(8).

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

C. Based upon credible evidence, Ecology issued PLP status letters to the EO PLPs pursuant to RCW 70.105D.040, RCW 70.105D.020(21), 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 determinations to each of those PLPs that they were PLPs under RCW 70.105D.040.

D. 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.

E. 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.D. 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.

F. That in order to facilitate a single feasibility study, per WAC 173-340-350(8), Ecology has determined that the EO PLPs receiving this Enforcement Order shall work with the AO PLPs to complete a final comprehensive FS and conduct other actions required by Section VII (Work to be Performed) and the 2020 Agreed Order's Schedule.

VII. WORK TO BE PERFORMED

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

A. Supplemental RI/FS Work Plan. The EO PLPs shall prepare and submit to Ecology for review and approval a work plan to implement a Supplemental Remedial Investigation (RI) and complete an update to the Feasibility Study (FS) in accordance with WAC 173-340-350. The EO PLPs shall submit the draft RI/FS work plan to Ecology within 60 days of the effective date of this Order. The EO PLPs shall also submit the final RI/FS work plan incorporating Ecology's comments within 30 days of receiving Ecology's comments on the draft RI/FS work plan. Once approved by Ecology, the RI/FS work plan shall become an integral and enforceable part of this Order. The EO PLPs may consult with Ecology prior to writing the RI/FS Work Plan, to discuss scope of the work and outline for the work plan. At a minimum, the RI/FS work plan shall include the items below.

- Investigate soils impacted with total petroleum hydrocarbons (TPH) as diesel- and oil-range organics (DRO/ORO), total polycyclic aromatic hydrocarbons (cPAHs), and/or total naphthalenes above site preliminary soil cleanup levels (CULs) which are located at depths between 20 and 32 feet below ground surface in the vicinity of the City of Tacoma East 18th St Right of Way and the former Simpson Property, and provide alternatives for addressing these contaminants in an update to the June 22, 2018 FS for the Site.
- Investigate soil beneath the former 450,000-gallon above-ground storage tank (AST) and northeast of that area (towards the Puyallup River) and provide alternatives for addressing these contaminants in the update to the FS for the Site.
- Investigate groundwater beneath the site in the area of City of Tacoma right-of-way and in the northeast portion of the site which is impacted by DRO/ORO, total cPAHs, and total naphthalenes and provide alternatives for addressing these contaminants in an updated FS for the Site.

B. Supplemental RI Field Work. The EO PLPs shall perform a supplemental remedial investigation that meets the requirements of 173-340-350 and implements the approved work plan. The EO PLPs shall begin remedial investigation field work within 30 days of receiving Ecology's approval of the final RI/FS Work Plan.

C. Laboratory and field screening results. The EO PLPs shall submit laboratory and field screening results from the remedial investigation field work to Ecology. The EO PLPs shall submit laboratory results to the Ecology project manager within 15 days following the EO PLPs receipt of data from the laboratory(ies). The EO PLPs shall submit field screening results to the Ecology project manager within 15 days of performing field screening.

D. Electronic Data Submittal. In accordance with Section VIII.E (Sampling, Data Submittal and Availability) of this Order, the EO PLPs shall submit all data generated for the supplemental RI to Ecology's EIM database. The EO PLPs may coordinate with Ecology's project manager before uploading data to the EIM database. The EO PLPs shall submit data to EIM database within 30 days from completion of the data validation.

E. Draft Supplemental RI Report. The EO PLPs shall prepare and submit to Ecology for review and approval a draft Supplemental RI report documenting the findings of the Supplemental RI that meets the requirements of WAC 173-340-350. The EO PLPs may consult

with Ecology prior to writing the Draft Supplemental RI Report, to discuss the report outline. The Draft Supplemental RI Report shall incorporate relevant data from previous reports and studies, and those data shall be incorporated in the maps and tables of the Supplemental RI Report along with data from the RI field work. After making revisions based on Ecology's comments on an Agency Review Draft Supplemental RI Report, the EO PLPs shall submit a Public Review Draft Supplemental RI Report. The EO PLPs shall submit the Agency Review Draft Supplemental RI Report to Ecology no longer than 60 days from completion of the field work. The EO PLPs shall submit the Public Review Draft Supplemental RI Report that incorporates Ecology's comments within 30 days of receiving Ecology's comments on the Agency Review Draft Supplemental RI Report.

F. Updated FS. The EO PLPs shall prepare and submit to Ecology for review and approval a draft update to the June 22, 2018 FS (Updated FS) that meets the requirements of WAC 173-340-350. The EO PLPs may consult with Ecology prior to writing the Draft Updated FS, to discuss the report outline. The Draft Updated FS shall incorporate the relevant data from the supplemental RI and the June 22, 2018 Revised Draft RI/FS, and include alternatives that address all contaminants on the Site. After making revisions based on Ecology's comments on an Agency Review Draft Updated FS, the EO PLPs shall submit a Public Review Draft Updated FS. The EO PLPs shall submit the Agency Review Draft Updated FS to Ecology no longer than 60 days from completion of the Supplemental RI Report. The EO PLPs shall submit the Public Review Draft Updated FS that incorporates Ecology's comments within 30 days of receiving Ecology's comments on the Agency Review Draft Updated FS.

G. The Public Review Draft Supplemental RI Report and Updated FS will be subject to public notice and opportunity to comment before final approval by Ecology, in accordance with WAC 173-340-600(13)(c).

F. The following naming following naming conventions shall be used for documents submitted under this Order: Agency Review Draft (designation for the first time Ecology receives

a document); Public Review Draft (designates a document ready for public comment); and Final (designation for a document after public comment and Ecology approval).

G. If an EO PLP(s) learns of a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in soil and/or groundwater, the EO PLP(s), 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 field monitoring data, laboratory analyses, sampling results) relating to the change in conditions.

H. Progress Reports and Communications with Ecology. Unless otherwise directed by Ecology, the EO PLPs shall submit to Ecology written monthly Progress Reports that describe the actions taken during the previous month to implement the requirements of this Order. All Progress Reports shall be submitted by the tenth (10th) 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 following:

1. A list of on-site activities that have taken place during the month.
2. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests.
3. Description of all deviations from the Schedule (Exhibit C) during the current month and any planned deviations in the upcoming month.
4. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.
5. All raw data (including laboratory analyses) received during the previous quarter (if not previously submitted to Ecology), together with a detailed description of the underlying samples collected.
6. A list of deliverables and planned activities for the upcoming month.

I. All plans or other deliverables submitted by the EO PLPs for Ecology's review and approval under the Schedule (Exhibit C) shall, upon Ecology's approval, become integral and enforceable parts of this Order.

H. If Ecology determines that the EO 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 EO PLPs, perform any or all portions of the remedial action or at Ecology's discretion allow the EO PLPs opportunity to correct. In an emergency, Ecology is not required to provide notice to the EO PLPs, or an opportunity for dispute resolution. The EO PLPs shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.B (Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section X (Enforcement).

I. Except where necessary to abate an emergency situation or where required by law, the EO 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 EO PLPs must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

VIII. TERMS AND CONDITIONS

A. Remedial Action Costs

The EO 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, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). For all Ecology costs incurred, the EO PLPs shall pay the required amount within thirty (30) days of receiving from

Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

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

B. Designated Project Coordinators

The project coordinator for Ecology is:

Andrew Smith, PE
Department of Ecology Toxics Cleanup Program
P.O. Box 47775
Olympia, WA 98504
(360) 407-6247
E-mail: ansm461@ecy.wa.gov

The project coordinator for Sussman Estate is:

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Aspect Consulting LLC
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Bainbridge Island, WA 98110-1810
206-780-7728
E-mail: pbannister@aspectconsulting.com

The project coordinator for Tacoma Metals is:

Thomas Morin, L.G.
Environmental Partners Inc.
1180 NW Maple Street, Suite 310
Issaquah, WA 98027
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E-mail: thomm@epi-wa.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 the EO PLPs, and all

documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. 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, hydrologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

The EO 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

RCW 70.105D.030(1)(a) authorizes Ecology or any Ecology authorized representative to enter all property at the Site that the EO PLPs either own, control, or have access rights to, after

reasonable notice unless an emergency prevents such notice. The EO PLPs shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the EO PLPs where remedial activities or investigations will be performed pursuant to this Order.

E. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the EO 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 EO PLPs shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the EO PLPs pursuant to the implementation of this Order. The EO PLPs shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the EO PLPs and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section VIII.E (Access), Ecology shall notify the EO 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. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of the work performed pursuant to this Order, the EO 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 EO PLPs shall make all such records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right the EO 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 EO PLPs withhold any requested records based on an assertion of privilege, the EO 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.

G. Resolution of Disputes

1. In the event that the EO PLPs elect to invoke dispute resolution, the EO 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 EO 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 EO PLPs' position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

c. The EO PLPs may then request regional management review of the dispute. This request (Formal Dispute Notice) must be submitted in writing to the Southwest Region

Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

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

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

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

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

H. Extension of Schedule

1. The EO PLPs 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 when good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended.
- b. The length of the extension sought.
- c. The reason(s) for the extension.

d. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on the EO 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. The existence of good cause shall be determined by Ecology in its sole discretion. Good cause may include, but may not be limited to:

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

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

c. Endangerment as described in Section VIII.J (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 EO PLPs.

3. Ecology shall act upon any the EO PLPs' written request for extension in a timely fashion. Ecology shall give the EO PLPs written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved in writing by Ecology.

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

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

b. Other circumstances deemed exceptional or extraordinary by Ecology.

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

I. 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 EO PLPs to cease such activities for such period of time as it deems necessary to abate the danger. The EO PLPs shall immediately comply with such direction.

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

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

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

J. Reservation of Rights

Ecology 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.

K. Transfer of Interest in Property

Before any voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by an EO PLP(s), the EO PLP(s) shall provide 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.

Further, prior to the EO PLPs' transfer of any interest in all or any portion of the Site, the EO PLPs 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 EO PLPs shall notify Ecology of said transfer. Upon transfer of any interest, the EO PLPs 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.

L. Compliance with Applicable Laws

1. *Applicable Law.* All actions carried out by the EO PLPs pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. The permits or specific federal, state, or local requirements that the agency has determined are applicable and that are known at the time of the execution of this Order have been identified in Exhibit D. The EO PLPs have a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or the EO PLPs, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and the EO PLPs must implement those requirements.

2. *Relevant and Appropriate Requirements.* All actions carried out by the EO PLPs pursuant to this Order shall be done in accordance with relevant and appropriate requirements

identified by Ecology. The relevant and appropriate requirements that Ecology has determined apply have been identified in Exhibit D. If additional relevant and appropriate requirements are identified by Ecology or the EO PLPs, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and the EO PLPs must implement those requirements.

3. Pursuant to RCW 70.105D.090(1), the EO 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 EO 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.

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

5. 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 EO 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.

IX. SATISFACTION OF ORDER

The provisions of this Order shall be deemed satisfied upon the EO PLPs' receipt of written notification from Ecology that the EO PLPs have completed the remedial activity required by this Order, and that the EO PLPs have complied with all other provisions of this Enforcement 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: May 27, 2020

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

 *for*

Rebecca S. Lawson, P.E., LHG
Section Manager
Toxics Cleanup Program
Southwest Regional Office
360-407-6241

EXHIBIT A



Legend

- Tacoma Metals Site Boundary
- Property Parcel Boundary
- Direct Push Soil Boring (2014)
- ◆ Previous Soil Boring
- Monitoring Well
- ⊠ Test Pit
- ==== Extent of Soil Exceeding Interim Action Cleanup Levels from 4 to 15 ft bgs

0 20 40
SCALE IN FEET

DRAFT

**Exhibit A
Site Plan**



EXHIBIT B

**EXHIBIT B
Tacoma Metals Site**

SCHEDULE OF DELIVERABLES

The schedule for project work and deliverables described in the Agreed Order 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 International Paper and General Metals 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-delivery form.

| Deliverables | Completion Times |
|--|--|
| Supplemental RI/FS Work Plan | 60 calendar days following the effective date of the Agreed Order |
| Ecology provide comments on RI Work Plan | Endeavor to provide Ecology's comments within 30 calendar days following receipt of RI Work Plan |
| Supplemental RI Field Work | Begin remedial investigation field work within 30 days of receipt of Ecology's approval of the final RI/FS work plan |
| Agency Review Draft Supplemental RI Report | 90 days following completion of field work. |
| Ecology provide comments on Agency Review Draft Supplemental RI Report | Endeavor to provide Ecology's comments within 45 calendar days following receipt of Agency Review Draft Supplemental RI Report |
| Public Review Draft Supplemental RI Report | 30 calendar days following receipt of Ecology comments on the Agency Review Draft Supplemental RI Report |
| Agency Review Draft Updated FS | 60 calendar days following Ecology acceptance of the Public Review Draft Supplemental RI Report |
| Ecology provide comments on Agency Review Draft Updated FS | Endeavor to provide Ecology's comments within 45 calendar days following receipt of Agency Review Draft Updated FS |
| Public Review Draft Updated FS | 30 calendar days following receipt of Ecology comments on the Agency Review Draft Updated FS |

EXHIBIT C

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

INTERNATIONAL PAPER
COMPANY and GENERAL
METALS OF TACOMA, INC.

AGREED ORDER

No. DE 17989

TO: Kirt J. Cuevas
International Paper Company
6400 Poplar Avenue
Memphis, TN 38197

Brenda Meehan
General Metals of Tacoma, Inc.
299 S.W. Clay Street, Suite 350
P.O. Box 10047
Portland, Oregon 97296

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology), the International Paper Company (International Paper), and General Metals of Tacoma, Inc. (General Metals) 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 International Paper and General Metals (collectively referred to as “Subject PLPs”) to conduct a supplemental Remedial Investigation (RI) and update the Feasibility Study (FS) per WAC 173-340-350 and WAC 173-204-560. Ecology believes the actions required by this Order are in the public interest.

Simultaneous with the issuance of this Order, Ecology is issuing an Enforcement Order to the Sussman Estate and Tacoma Metals pursuant to WAC 173-340-540. The Enforcement Order requires the Sussman Estate and Tacoma Metals to conduct the same remedial actions required by this Order.

II. JURISDICTION

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

III. PARTIES BOUND

This 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. Subject PLPs agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Subject PLPs’ responsibility under this Order. Subject 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 and WAC 173-340 shall control the meanings of the terms in this Order.

A. Site: The Site (or Facility) refers to the Tacoma Metals Site (Site). 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 1919 Portland Avenue, Tacoma, Washington. The Site is more particularly described in Exhibit A to this Order which is a detailed site diagram.

B. Parties: Refers to the State of Washington, Department of Ecology, the International Paper Company, and General Metals of Tacoma, Inc.

C. Potentially Liable Persons (PLPs): Refers to the Estate of Sophie Sussman, General Metals of Tacoma, Inc., International Paper Company, Portland Avenue Associates, LLC, and Tacoma Metals Inc.

D. Subject PLP(s): Refers to PLPs subject to this Order (International Paper Company, and General Metals of Tacoma, Inc.).

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.

F. 2000 Order: Refers to Agreed Order No. DE 97-5435, entered in 2000 by Ecology, Mr. and Mrs. Leslie Sussman, and Portland Avenue Associates, for the purpose of conducting a remedial investigation/feasibility study (RI/FS) at the Site.

V. FINDINGS OF FACT

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

A. The Tacoma Metals; Inc. Site (Site) is generally located at 1919 Portland Avenue, Tacoma, Washington, as shown in the Site Location Diagram (Exhibit A).

B. Portion of property at the Site was first developed in the late 1900s to early 1910s. In or around that time, a creosoting plant was constructed on part of the Site. The St. Paul & Tacoma Lumber Company operated the creosoting plant until the late 1920s to early 1930s. The primary creosoting plant facilities included the main creosoting plant structure, which housed a

130-foot treatment retort and a 1,500-gallon aboveground storage tank (AST) Two separate ASTs (102,000-gallon and 450,000-gallon) were located north of the main structure. International Paper acquired the St. Paul & Tacoma Lumber Company in 1958.

C. In the early 1940s, the Defense Plant Corporation acquired a portion of the Site and entered into a contract with Wilkeson Products Company to build a coke manufacturing facility was constructed on property at the Site. Other structures associated with the coke plant were located on the western portion of the former Tacoma Metals Property, in the vicinity of and east of the former creosoting plant location. The coke manufacturing facility operated from approximately May 1943 to November 1944, when Wilkeson Products was liquidated.

D. Leslie and Sophie Sussman (the Sussmans) acquired real property located at 1919 Portland Avenue in the early 1950s and their corporation, General Metals, Inc. began operating a metal recycling facility at that property. From early 1950s until April 1983, General Metals, Inc., operated the facility and leased the property from the Sussmans. From May 1983 until March 1999, Tacoma Metals, Inc., operated the facility. During this time Tacoma Metals, Inc. leased the property from the Sussmans. In March 1997, the Sussmans transferred the property to Portland Avenue Associates, LLC, which was owned by Leslie and Sophie Sussman.

E. The operational history of the metal recycling facility included the handling of scrap ferrous and non-ferrous metal and processing scrap metal materials. Processing included dismantling and draining transformers, dismantling lead-acid batteries and recovery and recycling lead from copper cables. Scrap materials containing copper, brass, lead, aluminum and stainless steel were processed, handled, and/or redistributed. Metals recycling operations ceased in 1999.

F. On September 9, 1983, the United States Environmental Protection Agency (EPA) issued the owners of Tacoma Metals, Inc. a Notice of Non-Compliance for failure to comply with the Toxic Substance Control Act (TSCA) regulations. The TSCA violation concerned Tacoma Metals' transformer handling practices at the Site.

G. Ecology and EPA conducted a joint inspection during March 1988 and collected soil and sediment samples from a catch basin sump. Results of these samples showed elevated

concentrations of polychlorinated biphenyls (PCBs) and heavy metals (arsenic, cadmium, chromium, copper, lead and mercury) exceeding the Model Toxics Control Act (MTCA) Method A cleanup levels. The concentrations of some of the heavy metals (aluminum, antimony, barium, iron, manganese, nickel, and zinc) were five to ten times the background concentrations. Based on this investigation, Ecology placed the Site on the site information system (SIS) list on February 14, 1992, and ranked the Site on August 17, 1992. The Site scored a ranking of 2 due to elevated levels of PCBs and metals detected in site soils.

H. A partial cleanup of some PCB contaminated areas was conducted in March 1989. Approximately 70 to 80 cubic yards of PCB-contaminated soils were excavated from two areas, treated on-site and disposed-offsite in the Arlington Hazardous Waste Landfill. Subsequent sampling performed as part of the RI confirms that PCB contamination remains on the Site.

I. On September 27, 1991, the Tacoma Public Works Department notified Ecology of a release of cutting oil into the city storm water collection system from the Site.

J. In January 2000, Ecology, the Sussmans and Portland Avenue Associates entered into the 2000 Order that required the Sussmans and Portland Avenue Associates to perform a remedial investigation/feasibility study (RI/FS) for the Site. Pursuant to the 2000 Order, the Sussmans and Portland Avenue Associates performed an initial remedial investigation (RI) at the Site between 2000 and 2001. The purpose of the 2000 RI was to characterize the nature and extent of impacts to environmental media, including confirmation of the results of several limited investigations performed prior to the RI between 1988 and 1995, develop a site model, and evaluate remedial options based on findings of the investigation.

K. Prior to the construction of an earthen levee by the U.S. Army Corps of Engineers in the late 1940s and 1950s, the southern bank of the Puyallup River was adjacent to the northern boundary of the Site. Construction of the levee shifted a portion of the river to the north and which provided separation of the Site from the main river channel. The former channel area was gradually filled-in with primarily wood-waste material by other property owners.

L. In 2005, the Puyallup River Side Channel (PRSC) project was constructed. This project was one of the central components of the habitat mitigation for the Thea Foss and Wheeler-Osgood Waterways Remediation Project. This project included the construction of a new setback flood control levee, excavation of the habitat area, placement of habitat materials, and breaching and lowering the elevation of the part of the former levee, creating an estuary adjacent to the Site. During the construction of the PRSC, waste materials were discovered. These materials included unexploded military ordnance, lead-containing battery casings and associated contaminated soil, damaged and deteriorated drums, and metal debris including automobile engines.

M. In June 2005, Ecology approved the construction of a Temporary Containment Unit at the Site to store and treat the lead-contaminated soils that were discovered during the PRSC construction. Approximately 4,000 tons (3,100 cubic yards) of soil were stored and treated. The treatment consisted of the addition of a reagent to bond with the metals in the soil to immobilize them from leaching. By August 2007, soil treatment and off-site disposal and transport of the soil to landfill were completed.

N. Leslie Sussman died on April 23, 2000. Sophie Sussman died on January 8, 2012. The Estate of Sophie Sussman (“Sussman Estate”) is the successor to the Agreed Order obligations of the Sussmans. On July 25, 2014, the Pierce County Superior Court, under case number 12-2-14683-2, issued an Order granting the Sussman Estate’s Motion for Partial Summary Judgment ~~onbrought by the~~ Escheat of Portland Avenue Associates, LLC to the State of Washington. As a result of the Court’s July 25, 2014 Order, three parcels of property at the Site, formerly owned by Portland Avenue Associates, LLC, are now owned by the State of Washington, and managed by the Washington State Department of Natural Resources.

O. Additional RI/FS investigation activities were performed at the Site between 2002 and 2014. The Sussman Estate submitted, among other things, an initial RI/FS, dated October 2001; Augmented RI/FS, dated October 30, 2013; Revised Augmented RI/FS Report, dated September 2014; and Revised Draft RI/FS, dated June 22, 2018. International Paper also prepared an FS Addendum, dated June 30, 2015, and an Interim Action Work Plan, dated November 17,

2017. Ecology sent comment letters on the September 2014 Revised Augmented RI/FS Report and the June 2015 FS Addendum dated April 18, 2016 and April 21, 2016, respectively. Ecology provided subsequent comments on the 2018 Revised Draft RI/FS on December 3, 2018 directing the PLPs to address remaining data gaps regarding petroleum, cPAH and naphthalene impacted soil located at a depth of 20 to 32 feet within the on-and off-property areas of the site. These soils are impacting groundwater beneath the site and the FS does not include alternatives to address this contamination. In addition, the soil beneath the former 450,000 gallon above ground storage tank and northeast of that area needs additional characterization.

P. Environmental investigations at the Site have documented the presence of hazardous substances in various media including soil and groundwater. The contaminants of concern identified in these investigations as exceeding published MTCA cleanup levels include:

- **Soil** – metals, PCBs, carcinogenic polycyclic aromatic hydrocarbons (cPAHs), naphthalene, and benzene, toluene, ethylbenzene, and total xylenes (BTEX), total petroleum hydrocarbons in the diesel and heavy oil ranges (TPH-D and -O).
- **Groundwater** – metals, PCBs, cPAHs, naphthalene, BTEX, TPH-D, and TPH-O.
- **Indoor Air** – There is a potential for vapors from soil and/or groundwater contaminated with volatile organic compounds (VOCs) including naphthalene, BTEX, and TPH-D at the Site to cause an exceedance of indoor air cleanup levels if structures are built in the future over portions of the Site that contain VOCs.

Q. On June 16, 2017, the Pierce County Superior Court, under case number 12-2-14683-2, issued an Order declaring that the Estate of Sophie Sussman is liable as a matter of law under MTCA, RCW 70.105D, for remedial action costs at the Tacoma Metals Site. On November 3, 2017, the Pierce County Superior Court, under case number 12-2-14683-2, issued an Order declaring that General Metals of Tacoma, Inc. is liable as a matter of law under MTCA, RCW 70.105D, for remedial action costs at the Site.

VI. ECOLOGY DETERMINATIONS

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

A. International Paper 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. General Metals is a former “owner or operator” 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 PLP status letters to International Paper and General Metals pursuant to RCW 70.105D.040, RCW 70.105D.020(21), 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 to International Paper and General Metals that each is a PLP under RCW 70.105D.040.

E. 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.

F. 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.M 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 Subject PLPs take the following remedial actions at the Site. These remedial actions must be conducted in accordance with WAC 173-340 unless otherwise specifically provided for herein:

A. Supplemental RI/FS Work Plan. Subject PLPs shall prepare and submit to Ecology for review and approval a work plan to implement a Supplemental Remedial Investigation (RI) and complete an update to the Feasibility Study (/FS) in accordance with WAC 173-340-350. The Subject PLPs shall submit the draft RI/FS Work Plan to Ecology within 60 days of the effective date of this Agreed Order. The Subject PLPs shall submit the final RI/FS work plan incorporating Ecology's comments within 30 days of receiving Ecology's comments on the draft RI/FS work plan. Once approved by Ecology, the RI/FS work plan shall become an integral and enforceable part of this Order. Subject PLPs may consult with Ecology prior to writing the RI/FS Work Plan, to discuss scope of the work and outline for the work plan. At a minimum, the RI/FS work plan shall include the items below.

- Investigate soils impacted with total petroleum hydrocarbons (TPH) as diesel- and oil-range organics (DRO/ORO), total polycyclic aromatic hydrocarbons (cPAHs), and/or total naphthalenes above site preliminary soil cleanup levels (CULs) which are located at depths between 20 and 32 feet below ground surface in the vicinity of the City of Tacoma East 18th St Right of Way and the former Simpson Property, and provide alternatives for addressing these contaminants in an update to the June 22, 2018 FS for the Site.
- Investigate soil beneath the former 450,000-gallon above-ground storage tank (AST) and northeast of that area (towards the Puyallup River) and provide alternatives for addressing these contaminants in the update to the FS for the Site.
- Investigate groundwater beneath the site in the area of City of Tacoma right-of-way and in the northeast portion of the site which is impacted by DRO/ORO, total cPAHs, and total naphthalenes and provide alternatives for addressing these contaminants in an updated FS for the Site.

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

C. Supplemental RI Field Work. Subject PLPs shall perform a supplemental remedial investigation that meets the requirements of 173-340-350 and implements the approved work plan. Remedial investigation field work shall begin within 30 days of receiving Ecology's approval of the final RI/FS Work Plan. If issues arise concerning access to the parcels of the Site managed by the Department of Natural Resources, Subject PLPs may request assistance from the Washington State Department of Ecology and an extension of the schedule pursuant to Section VIII.I.

D. Laboratory and field screening results. Subject PLPs shall submit laboratory and field screening results from the remedial investigation field work to Ecology. The Subject PLPs shall submit laboratory results to the Ecology project manager within 15 days following Subject PLPs' receipt of data from the laboratory(ies). The Subject PLPs shall submit field screening results to the Ecology project manager within 15 days of performing field screening.

E. Electronic Data Submittal. In accordance with Section VIII.E (Sampling, Data Submittal and Availability) of this Order, Subject PLPs shall submit all data generated for the supplemental RI to Ecology's EIM database. Subject PLPs may coordinate with Ecology's project manager before uploading data to the EIM database. The Subject PLPs shall submit data to EIM database within 30 days from completion of the data validation.

F. Draft Supplemental RI Report. Subject PLPs shall prepare and submit to Ecology for review and approval a draft Supplemental RI report documenting the findings of the Supplemental RI that meets the requirements of WAC 173-340-350. Subject PLPs may consult with Ecology prior to writing the Draft Supplemental RI Report, to discuss the report outline. The

Draft Supplemental RI Report shall incorporate relevant data from previous reports and studies, and those data shall be incorporated in the maps and tables of the Supplemental RI Report along with data from the RI field work. After making revisions based on Ecology's comments on an Agency Review Draft Supplemental RI Report, Subject PLPs shall submit a Public Review Draft Supplemental RI Report. The Subject PLPs shall submit the Agency Review Draft Supplemental RI Report to Ecology no longer than 90 days from completion of the field work. The Subject PLPs shall submit the Public Review Draft Supplemental RI Report that incorporates Ecology's comments within 30 days of receiving Ecology's comments on the Agency Review Draft Supplemental RI Report.

G. Updated FS. Subject PLPs shall prepare and submit to Ecology for review and approval a draft update to the June 22, 2018 FS (Updated FS) that meets the requirements of WAC 173-340-350. Subject PLPs may consult with Ecology prior to writing the Draft Updated FS, to discuss the report outline. The Draft Updated FS shall incorporate the relevant data from the supplemental RI and the Revised Draft RI/FS, dated June 22, 2018, and include alternatives that address all contaminants on the Site. After making revisions based on Ecology's comments on an Agency Review Draft updated FS, Subject PLPs shall submit a Public Review Draft Updated FS. The Subject PLPs shall submit the Agency Review Draft Updated FS to Ecology no longer than 60 days from completion of the Supplemental RI Report. Submit the Public Review Draft Updated FS that incorporates Ecology's comments within 30 days of receiving Ecology's comments on the Agency Review Draft Updated FS.

H. The Public Review Draft Supplemental RI and Updated FS, will be subject to public notice and opportunity to comment before final approval by Ecology, in accordance with WAC 173-340-600(13)(c).

I. The following naming conventions shall be used for documents submitted under this Order: Agency Review Draft (designation for the first time Ecology receives a document); Public Review Draft (designates a document ready for public comment); and Final (designation for a document after public comment and Ecology approval).

J. If Subject 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 media (e.g., soil, groundwater, or air), Subject 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.

K. Progress Reports and Communications with Ecology. Subject 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. Subject PLPs shall submit all Progress Reports by the tenth (10th) day of the month in which they are due after the effective date of this Order. Unless otherwise specified by Ecology, Subject PLPs shall send Progress Reports and any other documents submitted pursuant to this Order by e-mail to Ecology's project coordinator. The Progress Reports shall include the following:

1. A list of on-site activities that have taken place during the quarter.
2. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests.
3. Description of all deviations from the Schedule (Exhibit B) during the current quarter and any planned deviations in the upcoming quarter.
4. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.
5. All raw data (including laboratory analyses) received during the previous quarter (if not previously submitted to Ecology), together with a detailed description of the underlying samples collected.
6. A list of deliverables for the upcoming quarter if different from the schedule.

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

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

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

O. Except where necessary to abate an emergency situation or where required by law, Subject 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, Subject PLPs must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

VIII. TERMS AND CONDITIONS

A. Payment of Remedial Action Costs

Subject PLPs shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work 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 pursuant to this Order. These costs shall include work performed by Ecology attributable to the Subject PLPs prior to the issuance of this Order, but shall not include any costs incurred by Ecology under the 2000 Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Subject PLPs shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

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

B. Designated Project Coordinators

The project coordinator for Ecology is:

Andrew Smith, PE
Department of Ecology Toxics Cleanup Program
P.O. Box 47775
Olympia, WA 98504
(360) 407-6247
E-mail: ansm461@ECY.WA.GOV

The project coordinator for International Paper is:

Paul E. Kalina, PE
AECOM
1111 Third Avenue, Suite 1600
Seattle, WA 98101
(206) 438-2172
E-mail: paul.kalina@aecom.com

The project coordinator for General Metals is:

Matthew G. Dalton
Dalton Olmsted Fuglevand Inc.
1236 NW Finn Hill Road

Poulsbo, WA 98370
360-380-0862
E-mail: mdalton@dofnw.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 Subject PLPs, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. 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.

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

D. Access

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that International Paper 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 International Paper's 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 International Paper. The State of Washington shall provide access to those portions of the Site it owns to International Paper and their agents, contractors and subcontractors.

Subject PLPs shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by Subject PLPs or the State of Washington where remedial activities or investigations will be performed pursuant to this Order. Ecology shall cooperate and assist Subject PLPs to obtain access to the portions of the Site owned by the State of Washington, specifically Parcel Nos. 8950000390, 0320032043, and 8950000352. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by Subject PLPs unless an emergency prevents such notice. All persons who access the Site pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

E. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, Subject PLPs shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in

both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements) (attached hereto as Exhibit C), and/or any subsequent procedures specified by Ecology for data submittal.

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

1. If agreed to by Ecology, develop appropriate mailing lists and prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, 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 of all press releases and fact sheets, and before meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. Likewise,

Ecology shall notify the Subject PLPs prior to the issuance of all press releases and fact sheets related to the Site, and before meetings related to the Site with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by Subject PLPs that do not receive prior Ecology approval, Subject PLPs shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

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

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

- a. Tacoma Public Library – Main Branch
Northwest Room
1102 Tacoma Avenue South
Tacoma, WA 98402
- b. Ecology’s Southwest Regional Office
300 Desmond Drive
Lacey, WA 98503

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 in Lacey, Washington except for archived records which are stored at State Archives in Olympia, 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, International Paper 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, Subject PLPs shall make all records available to Ecology and allow access for review within a reasonable time.

Nothing in this Order is intended to waive any right Subject PLPs may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If Subject PLPs withhold any requested records based on an assertion of privilege, Subject PLPs shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged.

H. Resolution of Disputes

1. In the event that Subject PLPs elect to invoke dispute resolution the PLP(s) 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), Subject 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; Subject PLPs' positions with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

c. Subject PLPs may then request regional management review of the dispute. Subject PLPs must submit this request (Formal Dispute Notice) in writing to the Southwest Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written

statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

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

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

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

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

I. Extension of Schedule

1. A Subject PLP'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 Subject PLPs to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

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

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

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

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

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

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

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

b. Other circumstances deemed exceptional or extraordinary by Ecology.

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

J. Amendment of Order

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

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

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

K. Endangerment

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

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

documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Subject PLPs' cessation of activities, it may direct Subject PLPs to resume such activities.

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

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

L. Reservation of Rights

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

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

By entering into this Order, neither of the Subject PLPs admits to any liability for the Site. Although Subject PLPs are committing to conducting the work required by this Order under the terms of this Order, Subject 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 Subject PLPs without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to Subject PLPs' transfer of any interest in all or any portion of the Site, and during the effective period of this Order, Subject PLPs 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, Subject PLPs shall notify Ecology of said transfer. Upon transfer of any interest, International Paper 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 Subject PLPs pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits or approvals, except as provided in RCW 70.105D.090. The permits or specific federal, state, or local requirements that the agency has determined are applicable and that are known at the time of the execution of this Order have been identified in Exhibit D. Subject PLPs have a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or Subject PLPs, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and Subject PLPs must implement those requirements.

2. *Relevant and Appropriate Requirements.* All actions carried out by Subject PLPs pursuant to this Order shall be done in accordance with relevant and appropriate requirements

identified by Ecology. The relevant and appropriate requirements that Ecology has determined apply have been identified in Exhibit D. If additional relevant and appropriate requirements are identified by Ecology or Subject PLPs, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and Subject PLPs must implement those requirements.

3. Pursuant to RCW 70.105D.090(1), Subject PLPs may be exempt from the procedural requirements of RCW 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, Subject PLPs shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70.105D.090(1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Order to enforce those local government permits and/or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

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

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

O. Indemnification

Subject PLPs agree to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions of Subject PLPs, their respective officers, employees, agents, or contractors in entering into and implementing this Order. However, Subject PLPs shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

IX. SATISFACTION OF ORDER

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

X. ENFORCEMENT

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

- A. The Attorney General may bring an action to enforce this Order in a state or federal court.
- B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

C. A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:

1. Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply.

2. Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

D. This Order is not appealable to the Washington Pollution Control Hearings Board.

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

Effective date of this Order: May 27, 2020

INTERNATIONAL PAPER COMPANY



Kirt J. Cuevas
Vice President, EH&S
6400 Poplar Avenue
Memphis, TN 38197
901-419-7100

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY



Rebecca S. Lawson, P.E., LHG
Section Manager
Toxics Cleanup Program
Southwest Regional Office
360-407-6241

GENERAL METALS OF TACOMA, INC.

[NAME OF SIGNATORY]
[Title of signatory]
[Location]
[Telephone]

C. A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:

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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

 for

Rebecca S. Lawson, P.E., LHG
Section Manager
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Southwest Regional Office
360-407-6241

GENERAL METALS OF TACOMA, INC.



Michael R. Henderson
President
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EXHIBIT A



Legend

- Tacoma Metals Site Boundary
- Property Parcel Boundary
- Direct Push Soil Boring (2014)
- ◆ Previous Soil Boring
- Monitoring Well
- ⊠ Test Pit
- Extent of Soil Exceeding Interim Action Cleanup Levels from 4 to 15 ft bgs

0 20 40
SCALE IN FEET

DRAFT

**Exhibit A
Site Plan**



EXHIBIT B

**EXHIBIT B
Tacoma Metals Site**

SCHEDULE OF DELIVERABLES

The schedule for project work and deliverables described in the Agreed Order 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 International Paper and General Metals 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-delivery form.

| Deliverables | Completion Times |
|--|--|
| Supplemental RI/FS Work Plan | 60 calendar days following the effective date of the Agreed Order |
| Ecology provide comments on RI Work Plan | Endeavor to provide Ecology's comments within 30 calendar days following receipt of RI Work Plan |
| Supplemental RI Field Work | Begin remedial investigation field work within 30 days of receipt of Ecology's approval of the final RI/FS work plan |
| Agency Review Draft Supplemental RI Report | 90 days following completion of field work. |
| Ecology provide comments on Agency Review Draft Supplemental RI Report | Endeavor to provide Ecology's comments within 45 calendar days following receipt of Agency Review Draft Supplemental RI Report |
| Public Review Draft Supplemental RI Report | 30 calendar days following receipt of Ecology comments on the Agency Review Draft Supplemental RI Report |
| Agency Review Draft Updated FS | 60 calendar days following Ecology acceptance of the Public Review Draft Supplemental RI Report |
| Ecology provide comments on Agency Review Draft Updated FS | Endeavor to provide Ecology's comments within 45 calendar days following receipt of Agency Review Draft Updated FS |
| Public Review Draft Updated FS | 30 calendar days following receipt of Ecology comments on the Agency Review Draft Updated FS |

EXHIBIT C



Toxics Cleanup Program

Policy 840: Data Submittal Requirements

Established: August 1, 2005

Revised: April 12, 2016

Contact: Policy & Technical Support Unit, Headquarters

Purpose: This Policy provides guidance on the submission of environmental monitoring data generated or collected during the investigation or cleanup of contaminated sites under the Model Toxics Control Act.

References: [WAC 173-340-840 \(5\)](#)
[Chapter 173-204 WAC](#)
[Environmental Information Management System Database](#)
[Sediment Cleanup Users Manual II](#)

Attachments: A - Model Grant and Permit Condition

Disclaimer: This Policy is intended solely for the guidance of Ecology staff. It is not intended, and cannot be relied on, to create rights, substantive or procedural, enforceable by any party in litigation with the state of Washington. Ecology may act at variance with this Policy depending on site-specific circumstances, or modify or withdraw this Policy at any time.

Approved by:

James J. Pendowski, Program Manager
Toxics Cleanup Program

Accommodation Requests: To request ADA accommodation, including materials in a format for the visually impaired, call Ecology's Toxics Cleanup Program at 360-407-7170. Persons with impaired hearing may call Washington Relay Service at 711. Persons with speech disability may call TTY at 877-833-6341.

Purpose and Applicability

The investigation and cleanup of contaminated sites generate a large volume of environmental monitoring data that need to be properly managed to facilitate regulatory decisions. The data also need to be accessible by Ecology staff, site owners, consultants, and the general public.

This Policy describes the requirements for submitting environmental monitoring data generated or collected during the investigation and cleanup of contaminated sites under Chapter 70.105D RCW, Model Toxics Control Act (MTCA).

This Policy applies to Ecology staff and any person who investigates or cleans up contaminated sites and submits related environmental sampling data to Ecology, including potentially liable persons, Voluntary Cleanup Program (VCP) customers, prospective purchasers, government agencies, and Ecology contractors.

1. Unless otherwise specified by Ecology, all environmental monitoring data generated during contaminated site investigations and cleanups are required to be submitted to Ecology in both written format and electronically through EIM.

Environmental monitoring data include biological, chemical, physical, and radiological data generated during site investigations and cleanups under the Model Toxics Control Act Cleanup Regulation (Chapter 173-340 WAC) and the Sediment Management Standards (Chapter 173-204 WAC).

The Environmental Information Management System (EIM) is a searchable database that contains data collected by Ecology (or by environmental contractors on behalf of Ecology), and by Ecology grant recipients, local governments, the regulated community, and volunteers.

Under this Policy, data are considered to be “environmental monitoring data” if generated or collected during:

- a. Site investigations and cleanups conducted under an order, agreed order or consent decree, permit, grant, loan, contract, interagency agreement, memorandum of understanding; or
- b. An independent remedial action.

Under this Policy, data are not considered to be environmental monitoring data if generated or collected for the following studies. This means that entering data into EIM, while encouraged, is optional for:

- a. Non site-specific studies;
- b. Site hazard assessments that result in no further action; and
- c. All initial site investigations.

2. Orders, agreed orders, consent decrees, or permits must include a condition that site-specific environmental sampling data be submitted in compliance with this Policy.

For those reports prepared and submitted for review under an order, agreed order, consent decree, or permit, the environmental sampling data must be entered into EIM at the time of report submittal. If reports for such work do not include documentation that data was submitted in compliance with this Policy, the reports shall be deemed incomplete and a notice will be provided to the submitter.

Generally, Ecology should not review such reports until that documentation is provided. The assistant attorney general assigned to the site should be consulted for an appropriate response when Ecology's review is delayed due to failure of data entry into EIM.

3. Site-specific environmental sampling data must be entered into EIM before Ecology will review independent remedial action reports under the Voluntary Cleanup Program.

For independent remedial action reports prepared and submitted under Ecology's Voluntary Cleanup Program (VCP), environmental sampling data must be entered into EIM at the time any report is submitted requesting an opinion on the sufficiency of the action under the VCP.

However, Ecology may establish an alternate deadline for entering data into EIM if this Policy creates undue hardship on the VCP customer and Ecology does not need the data in EIM to begin the review.¹ But in no case will Ecology issue a No Further Action (NFA) opinion letter under the VCP—either for the whole site or a property located within the site—until the data has been entered into EIM.

If sampling data has not been entered into EIM, Ecology may still review the report for the limited purpose of determining whether it contains sufficient information to provide an opinion. If the report is incomplete, Ecology may also respond to the VCP customer's request for an opinion by issuing an administrative letter rejecting the report and requesting additional information.

¹ For example, when a site has multiple groundwater sampling events over time, it may be more efficient to enter the data into EIM at one time after monitoring is completed, rather than for each monitoring event. Another example would be where a VCP consultant is using EIM for the first time and needs additional time to learn how to use the system.

4. Grants, contracts, interagency agreements or memoranda of understanding issued after the effective date of this Policy must include a condition that site-specific data be submitted in compliance with this Policy.

Reports on such work will not be accepted as complete until the data have been submitted in compliance with this Policy. If a payment or transfer of funds is involved in the transaction, the relevant payment or transfer shall be withheld until this requirement has been met. Attachment A contains example language to include in these documents.

5. Data generated during upland investigations and cleanups must be submitted electronically using Ecology's EIM.

The Environmental Information Management System is Ecology's main database for environmental monitoring data. Proper submission of data through this system meets the requirement of submitting such data in an electronic format.

Additional information about EIM, including instructions for data submittal, can be found on Ecology's EIM website at <http://www.ecy.wa.gov/eim/>. The Toxic Cleanup Program's (TCP) EIM Coordinator can also provide technical assistance to site managers and consultants who use EIM.

6. Data generated during sediment investigations and cleanups must be submitted electronically using Ecology's EIM.

Effective March 1, 2008, EIM is Ecology's data management system for sediment-related data. Proper submission of data through EIM meets the requirement of submitting such data in an electronic format. Electronic data must be submitted to Ecology simultaneously with the accompanying report.

For additional information on sediment sampling and analysis plan requirements, see Ecology's *Sediment Cleanup Users Manual (SCUM II)* Publication No. 12-09-057, available at: <https://fortress.wa.gov/ecy/publications/summarypages/1209057.html>

The Sediment Data Coordinator in TCP's Aquatic Land Cleanup Unit (ALCU) can also provide technical assistance with EIM.

7. Data submitted electronically using EIM must be checked by the Toxics Cleanup Program's EIM Coordinator before the data will be officially loaded into EIM.

Normally, TCP's EIM Coordinator will receive a notice that data have been submitted through EIM. Upon receipt of the notice, the EIM Coordinator should notify the Cleanup Project Manager. The EIM Coordinator then reviews the submittal for quality control and officially loads the data into the system.

Attachment A

Model Grant and Permit Condition

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Model Grant and Permit Condition

The following condition is to be inserted in grants, loans, contracts, interagency agreements, and memoranda of understandings where site-specific environmental monitoring data is expected to be generated:

All sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with WAC 173-340-840(5) and Ecology Toxics Cleanup Program Policy 840: Data Submittal Requirements. Electronic submittal of data is not required for site hazard assessments that result in no further action and initial site investigations. (FOR GRANTS, AND LOANS ADD: Failure to properly submit sampling data will result in Ecology withholding payment and could jeopardize future funding.)

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EXHIBIT D

EXHIBIT D

Tacoma Metals Site

APPLICABLE, APPROPRIATE AND RELEVANT REQUIREMENTS

- Model Toxics Control Act (Chapter 173.105D RCW), and Model Toxics Control Act Regulation (Chapter 173-340 WAC).
- Sediment Management Standards (Chapter 173-204 WAC).
- State Water Pollution Control Act (Chapter 90.48 RCW).
- Washington State Hazardous Waste Management Act (Chapter 70.105 RCW, and State Dangerous Waste Regulation (Chapter 173-303).
- Solid Waste Management-Reduction and Recycling (Chapter 70.95 RCW).
- Minimum Standards for Construction and Maintenance of Wells (Chapter 173-160 RCW).
- Occupational Safety and Health Act (OSHA), 29 CFR Subpart 1910.120
- Washington Industrial Safety and Health Act (WISHA).

EXHIBIT D



Toxics Cleanup Program

Policy 840: Data Submittal Requirements

Established: August 1, 2005

Revised: April 12, 2016

Contact: Policy & Technical Support Unit, Headquarters

Purpose: This Policy provides guidance on the submission of environmental monitoring data generated or collected during the investigation or cleanup of contaminated sites under the Model Toxics Control Act.

References: [WAC 173-340-840 \(5\)](#)
[Chapter 173-204 WAC](#)
[Environmental Information Management System Database](#)
[Sediment Cleanup Users Manual II](#)

Attachments: A - Model Grant and Permit Condition

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Approved by:

James J. Pendowski, Program Manager
Toxics Cleanup Program

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EXHIBIT E

EXHIBIT E

Tacoma Metals Site

APPLICABLE, APPROPRIATE AND RELEVANT REQUIREMENTS

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- Sediment Management Standards (Chapter 173-204 WAC).
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