

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

Port of Port Angeles
338 West First Street
P.O. Box 1350
Port Angeles, WA 98362

AGREED ORDER

No. DE 9546

TO: Port of Port Angeles
338 West First Street
P.O. Box 1350
Port Angeles, WA 98362

TABLE OF CONTENTS

I.	INTRODUCTION.....	3
II.	JURISDICTION.....	3
III.	PARTIES BOUND.....	3
IV.	DEFINITIONS	4
V.	FINDINGS OF FACT	5
VI.	ECOLOGY DETERMINATIONS.....	9
VII.	WORK TO BE PERFORMED	10
	A. Interim Action.....	11
	B. Remedial Investigation/Feasibility Study (RI/FS).....	12
	C. Draft Cleanup Action Plan.....	16
	D. Draft Final RI/FS	17
	E. Quarterly Progress Reports.....	17

F.	Progress.....	18
VIII.	TERMS AND CONDITIONS OF ORDER.....	19
A.	Public Notice.....	19
B.	Remedial Action Costs	19
C.	Implementation of Remedial Action.....	20
D.	Designated Project Coordinators	20
E.	Performance	21
F.	Access	22
G.	Sampling, Data Submittal, and Availability	23
H.	Public Participation.....	23
I.	Retention of Records.....	25
J.	Resolution of Disputes	25
K.	Extension of Schedule.....	26
L.	Amendment of Order	28
M.	Endangerment	28
N.	Reservation of Rights.....	29
O.	Transfer of Interest in Property.....	30
P.	Compliance with Applicable Laws	30
Q.	Indemnification	32
IX.	SATISFACTION OF ORDER.....	32
X.	ENFORCEMENT	32
EXHIBIT A.	Site Diagram	
EXHIBIT B.	Interim Action Work Plan	
EXHIBIT C.	Schedule to the Agreed Order for the K Ply Site	
EXHIBIT D.	List of Applicable Permits and Applicable or Relevant and Appropriate Requirements (ARARs) to the Agreed Order for the K Ply Site	

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and the Port of Port Angeles (Port) under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires the Port to (1) demolish mill structures and implement environmental controls during and after demolition as an Interim Action, (2) complete a Remedial Investigation/Feasibility Study (RI/FS) for the K Ply Site, and (3) prepare a draft cleanup action plan for the K Ply Site. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

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

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. The Port agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the Port's responsibility under this Order. The Port 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 Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms in this Order.

A. Site: The Site is referred to as the K Ply Site (Site) and is generally located at 439 Marine Drive, Port Angeles, Washington. The site includes the former K Ply Mill property owned by the Port and is defined by the extent of contamination caused by the release of hazardous substances at the site. Based upon factors currently known to Ecology, the Site is more particularly described in the Site Diagram (Exhibit A). An investigation conducted under Agree Order No. DE 03TCPSR-5738 (Marine Trades Area Site), has determined that soil and groundwater contamination from sources on the neighboring Marine Trades Area and Petit Oil properties (which lie to the west of the K Ply Mill property), does not extend as far east as the K Ply Site's western Site boundary depicted on Exhibit A, and that contamination from sources on the K Ply site does not extend as far west as the boundary. The Site constitutes a Facility under RCW 70.105D.020(5).

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

C. Potentially Liable Person (PLP): Refers to the Port.

D. Agreed Order or Order: Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order. The terms "Agreed Order" or "Order" shall include all exhibits to this Order.

E. Interim Action: Refers to the demolition of the former K Ply mill structure and environmental work performed in conjunction with the demolition. The requirements for the Interim Action are set forth in the Interim Action Work Plan (Exhibit B).

F. Agency Review Draft: Refers to a draft of a deliverable prepared by the Port for first review by Ecology.

G. Public Review Draft: Refers to a revision of a deliverable that addresses and incorporates the comments made by Ecology on the Agency Review Draft, and that the Port proposes to be issued for public review and comment, subject to Ecology's determination that the document is ready for public review.

V. FINDINGS OF FACT

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

A. The Port is a municipal corporation under the laws of the state of Washington and owns the property known as the K Ply mill property and manages adjacent state-owned filled harbor area pursuant to RCW 79.90.475 and Port Management Agreement No. 22-080013, by and between the Port and the State of Washington Department of Natural Resources.

B. The K Ply property was operated as a plywood mill from about 1941 to 2011. Under Agreed Order DE 03TCPSR-5738 signed by Ecology, the Port, and ChevronTexaco Products Company ("Chevron") in 2005, the K Ply property was described as part of the Marine Trades Area Site, which also included the Marine Trades Area ("MTA") property and the Petit

Oil property. A draft Remedial Investigation (“RI”) report prepared under Agreed Order DE 03TCPSR-5738 characterized the nature and extent of releases of hazardous substances to soil and groundwater at the MTA Site, including the K Ply property. The contaminants of concern identified in the draft RI included benzene/ethylbenzene/toluene/xylenes (“BTEX”), diesel to oil-range petroleum hydrocarbons (“TPH-Dx”), and gasoline-range petroleum hydrocarbons (“TPH-G”). Further details regarding the history of investigations and regulatory interactions at the MTA Site are set forth in Agreed Order DE 03TCPSR-5738.

C. The draft RI determined that the areas of soil and groundwater contamination from sources on the MTA and Petit Oil properties were separate and distinct from the areas of soil and groundwater contamination on the K Ply property. Based on the draft RI, Ecology concurred with the Port’s request to address the releases at the K Ply property separately from the releases at the MTA and Petit Oil properties. This determination is embodied in the 2012 amendment to Agreed Order DE 03TCPSR-5738 for the MTA Site.

D ITT Rayonier (“Rayonier”) operated the plywood mill on the K Ply property from about 1971 to 1989. During Rayonier’s operations, hydraulic oil leaked from press machinery to soil and pooled on groundwater under the mill structure. In 1990, Remedial Action Order No. DE 90-S255 was issued by Ecology to implement a cleanup remedy for the hydraulic oil, including extraction, oil recovery, and long-term monitoring. In addition, a soil cleanup was required for pentachlorophenol-impacted soil found in the Panel Oiler area.

E. Current Information Regarding Soil on the K Ply Property.

TPH-G and/or BTEX-contaminated soil is present beneath the northern end of the mill structure, where gasoline is commingled with separate-phase hydraulic oil (TPH-Dx) present at the water

table and smear zone and the southern end where soil contamination has been detected over a broad area. The hydraulic oil impacts to soil do not appear to extend beyond the mill structure. In addition, a large area of moderate level TPH-G and BTEX-contaminated soil extends from the southwest corner of the mill (covered by a raised concrete slab), to the eastern part of the mill. The presence and extent of contamination under the mid-section of the mill structure is not well defined due to minimal data in this area. TPH-G in soil was also detected north of the mill structure, near the bulkhead. TPH-D contaminated soil was detected near former oil underground storage tanks (USTs) between the mill facility and Cedar Street but appears to be confined to this area. Low-level TPH-D contaminated soil was also detected near the bulkhead. A small area of pentachlorophenol-impacted soil remained following the interim action in the Panel Oiler area.

F. Current Information Regarding Groundwater on the K Ply Property.

1. A plume with elevated concentrations of benzene and TPH-G in the upper 10 feet of groundwater extends over a large portion of the K Ply property, including the majority of the footprint of the mill structure. The plume has two downgradient lobes, a western lobe beneath Cedar Street and an eastern lobe beneath the mill structure. The eastern lobe extends to the bulkhead but the western lobe does not. Groundwater data indicates that hydraulic oil does not extend to the bulkhead, either as dissolved constituents or as separate-phase product.

2. The source of the eastern lobe appears to be the commingled hydraulic oil/gasoline contaminated area beneath the northern end of the mill. Gasoline in soil beneath the southern portion of the mill structure may also be contributing to the eastern lobe.

3. The source of the western lobe, otherwise known as the Cedar Street Benzene Plume, is largely benzene and TPH-G contaminated soil beneath the mill structure. The elevated benzene concentrations in groundwater beneath Cedar Street between K Ply and Platypus Marine were identified unexpectedly in 2005. Earlier investigations in the mid-1990s had identified only trace to non-detect levels of benzene in groundwater in this area. Based on the widespread distribution of soil contamination beneath the mill and its presence at shallow depths below grade in multiple locations, one or more releases of gasoline within the mill structure appear to be the likely source(s) of the plume.

4. Stormwater from the roof of the mill structure that is channeled to and infiltrating through contaminated soil beneath the mill structure may also contribute contaminants to the groundwater plumes.

5. A small area of contaminated groundwater is located in the alleyway between the former Peninsula Fuel Company property, K Ply property, and Platypus Marine property. TPH-G was detected in this portion of the plume. Benzene concentrations in this area were relatively low and suggest that the alleyway sources and the sources of more widespread concentrations of benzene in downgradient groundwater in the eastern and western lobes described above are different. The source for impacts to groundwater in this area is primarily residual gasoline and diesel contamination in subsurface soils found near pipelines that historically served Peninsula Fuels.

6. No contaminants of concern have been found in groundwater below the upper 10 feet of the saturated zone.

G. The Port intends to demolish most of the mill structure to ground surface (footings beneath ground surface will not be removed) in order to complete the RI/FS for the Site and implement remediation measures, as necessary. The Port intends to implement environmental controls during demolition (*e.g.*, hazardous materials abatement, erosion and stormwater controls) and following demolition will continue to implement environmental controls (*e.g.*, consolidating and covering contaminated soils, monitoring, assessment) via an Interim Action Work Plan (Exhibit B).

VI. ECOLOGY DETERMINATIONS

A. The Port is an “owner or operator” as defined in RCW 70.105D.020(17) of a “facility” as defined in RCW 70.105D.020(5).

B. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(25) and RCW 70.105D.020(10), respectively, has occurred at the Site.

C. By letter dated November 23, 1994, the Port voluntarily waived its rights to notice and comment and accepted Ecology’s determination that the Port is a PLP under RCW 70.105D.040. The waiver and Ecology’s determination were for the Port of Port Angeles Marine Trades Area Site and included the K Ply property. In 2011, Ecology determined that the areas of soil and groundwater contamination and sources in the MTA and Pettit Oil properties were separate and distinct from the areas of soil and groundwater contamination and sources related to the K Ply property.

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. An Interim Action, as described in further detail in Section VII.A below, will be performed to demolish the mill structure and to implement environmental controls in preparation for a remedial investigation/feasibility study. This action is technically necessary to reduce a threat to human health or the environment, to correct a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, and is needed to provide for completion of a remedial investigation/feasibility study and design of a cleanup action. The remaining mill structures have also been deemed an extreme fire and safety hazard to the surrounding city. The Interim Action is warranted at the Site and will be conducted consistent with WAC 173-340-430.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the Port take the following remedial actions at the Site and that these actions be conducted in

accordance with Chapter 70.105D RCW and Chapter 173-340 WAC unless otherwise specifically provided for herein. Under this Order, the Port shall: A) complete the interim action described below; B) collect, develop, and evaluate sufficient information regarding the site to select a cleanup action through a remedial investigation/feasibility study; C) draft a cleanup action plan for the Site; and D) provide quarterly reports to Ecology. In fully defining the nature and extent of contamination and in evaluating cleanup action alternatives, the Port shall follow the requirements of WAC 173-340-350 through 370. For each draft of all deliverables, the Port shall incorporate all comments from Ecology into the next draft of that deliverable.

A. Interim Action

Task 1 – Implement the Interim Action Work Plan

Perform the Interim Action including the following elements as more fully described in the Interim Action Work Plan (Exhibit B):

1. Demolition of the mill structure.
2. Maintenance of erosion and stormwater controls during and following demolition to prevent or minimize migration of contaminants in soil during demolition to Port Angeles Harbor.
3. Removal/consolidation of hazardous materials in soil following demolition that is determined to be an immediate threat to human health or the environment.
4. Assessment of conditions following demolition.
5. Soil covering and stabilization controls to limit infiltration to protect groundwater to the extent practicable.
6. Groundwater and stormwater monitoring to assess the effectiveness of soil covering/stabilization controls.

7. The Port will also comply with Ecology's Construction Stormwater General Permit, City of Port Angeles permits, and other applicable requirements (listed in Exhibit D) during demolition of the mill facility.

8. Submit quarterly and annual monitoring reports as described in the Interim Action Work Plan (Exhibit B) until the Interim Action is complete.

Schedule: The Port shall begin the Interim Action within 60 calendar days of the effective date of this Order.

B. Remedial Investigation/Feasibility Study (RI/FS)

The work to be performed for the RI/FS includes two tasks: (1) the Port shall collect additional data needed to fully define the nature and extent of contamination pursuant to WAC 173-340-350; and (2) the Port shall develop a RI/FS for the Site by taking the steps described below. Completing these two tasks in accordance with the terms of this Order will create the deliverable to be entitled Remedial Investigation/Feasibility Study for the K Ply Site. This investigation should evaluate data gaps remaining and data collection necessary to fully define the nature and extent of contamination through the entire K Ply property and any off-property areas, upland or marine, where contamination has come to be located.

Task 2 – Conduct Supplemental Data Collection

The Port shall develop a RI/FS Work Plan, including schedule, detailing the additional sample collection necessary to fully define the nature and extent of contamination for Ecology's review and comment in accordance with the schedule in Exhibit C.

Task 2a - Draft RI/FS Work Plan

The Draft RI/FS Work Plan shall include a Sampling and Analysis Plan, Quality Assurance Project Plan, and Health and Safety Plan that collectively meet the requirements of WAC 173-340-810 through 840. The Draft RI/FS Work Plan shall also include a Conceptual

Site Model and a schedule of work to be preformed. The Conceptual Site Model shall describe the conceptual understanding of the Site, as set out in WAC 173-340-200, to identify potential or suspected sources of hazardous substances, types and concentrations of hazardous substances, potentially contaminated media, and actual and potential exposure pathways and receptors

In developing the Draft RI/FS Work Plan, the Port shall evaluate applicable federal, state, and local requirements, including any requirements to obtain necessary permits, except as provided in RCW 70.105D.090. The Port must meet the substantive requirements of any local permits or approvals Ecology determines are exempt under RCW 70.105D.090. In identifying these substantive requirements, the Port shall consult with federal, state, and local agencies, obtain written documentation from the consulted agencies regarding the substantive requirements of the exempt permits or approvals, and provide such written documentation to Ecology (WAC 173-340-710(0)(d)(i)). To the extent possible, the written documentation from the consulted agencies shall be included in the Draft RI/FS Work Plan.

The Draft RI/FS Work Plan shall also include cultural resource protocols for the sampling, which shall comply with federal, state, and local laws and regulations in accordance with Section VIII.P (Compliance with Applicable Laws).

The supplemental sampling data must be submitted to Ecology in both printed form and an electronic form capable of being transferred into Ecology's data management system as provided in WAC 173-340-840(5). Proper submission of data through EIM meets Ecology's requirement of submitting such data in an electronic format. The Draft RI/FS Work Plan shall note this requirement.

Schedule: The Port shall submit the RI/FS Work Plan 60 days following substantial completion of the demolition of K Ply Mill as defined in the Interim Action Work Plan. Ecology will endeavor to provide review and comments within 60 days of receipt of the Draft RI/FS Work Plan.

Task 2b - Draft Final RI/FS Work Plan

The Port shall revise the Draft RI/FS Work Plan incorporating Ecology's comments. The Port shall submit the revised document as the Draft Final RI/FS Work Plan. The Port shall not commence the supplemental data collection prior to Ecology's approval of the Draft Final RI/FS Work Plan.

Schedule: The Port shall submit the Draft Final RI/FS Work Plan within 30 days following Ecology's comments on the Draft RI/FS Work Plan. Ecology will endeavor to provide review and approval within 30 days of receipt of the Draft Final RI/FS Work Plan.

Task 2c – Implement Final RI/FS Work Plan

Upon Ecology's approval of the Draft Final RI/FS Work Plan, the Port shall conduct field sampling in accordance with the Final RI/FS Work Plan.

Schedule: The Port shall implement the work plan 30 days following Ecology's approval of the Draft Final RI/FS Work Plan.

Task 2d – Draft Supplemental Data Collection Technical Memorandum

The Port shall summarize the supplemental data collected in a Draft Supplemental Data Collection Technical Memorandum for Ecology review and comment. The Technical Memorandum shall describe the work conducted to collect the supplemental data including a summary of the sampling design, sampling method, and sampling results.

Schedule: The Port shall submit the Draft Supplemental Data Collection Technical Memorandum within 60 days following receipt of final data report from laboratories

Task 3 – Prepare and Submit a Remedial Investigation/Feasibility Study Report

The Port shall prepare and submit a RI/FS by: (1) using the portions of the *Draft Marine Trades Area Site Remedial Investigation/Feasibility Study*, Floyd|Snider, June 2011, applicable to the K Ply Site; (2) addressing and incorporating previous comments from Ecology related to K Ply on the *Draft Marine Trades Area Site Remedial Investigation/Feasibility Study*; (3)

integrating additional data collected during implementation of the Supplemental Work Plan in Task 2, including incorporation of Ecology comments on the Draft Supplemental Data collection Technical Memorandum; and (4) including any additional information and data from portions of the K Ply property beyond the areas previously considered in the *Draft Marine Trades Area Site Remedial Investigation/Feasibility Study*. Since portions of the Site may not have been fully considered during the previous work done as part of the Marine Trades Area RI/FS, this investigation should reconsider Site history, areas of concern, and potential contaminants of concern.

Task 3a – Agency Review Draft RI/FS

The Port shall submit an Agency Review Draft RI/FS. The Draft RI/FS shall fully define the nature and extent of contamination pursuant to WAC 173-340-350 for the purpose of developing and evaluating cleanup actions for the Site. In evaluating cleanup action alternatives, the Port shall follow the requirements of WAC 173-340-350 through 370.

Schedule: The Port shall submit the Agency Review Draft RI/FS within 180 days following receipt of final data report from laboratories. Ecology will endeavor to provide review and comment within 60 days of submittal of the Agency Review Draft RI/FS.

Task 3b – EIM Data submittal

The Port shall submit all data collected for the RI/FS in both printed form and an electronic form capable of being transferred into Ecology’s data management system as provided in WAC 173-340-840(5). This requirement for electronic submittal shall be complete when Ecology confirms all data are properly submitted into EIM.

Schedule: Submit 180 days following receipt of final data report from laboratories.

Task 3c – Public Review Draft RI/FS

The Port shall revise the Agency Review Draft RI/FS incorporating Ecology’s comments. The Port shall submit the revised document as the Public Review Draft RI/FS for Ecology’s

review and comment, and for Ecology's determination that the document is ready for public review.

Schedule: The Port will submit the Public Review Draft RI/FS within 60 days following receipt of Ecology's comments on Agency Review Draft RI/FS Report. Ecology will endeavor to provide review and approval within 30 days following the receipt of the Public Review Draft RI/FS.

C. Draft Cleanup Action Plan

The purpose of the draft Cleanup Action Plan is to document the proposed cleanup action for the Site and specify preliminary cleanup standards and other requirements for the cleanup action. The Port shall produce the preliminary draft of the Draft Cleanup Action Plan.

Task 4 – Develop Draft Cleanup Action Plan (DCAP)

The Port shall produce a preliminary DCAP for the Site in accordance with WAC 173-340-380. The preliminary DCAP shall at a minimum include: (1) a description of the proposed cleanup action; (2) a summary of the rationale for selecting the proposed cleanup action; (3) a summary of other alternatives evaluated; (4) the Preliminary Cleanup Standards proposed for the Site; (5) the proposed schedule for implementing the Proposed Cleanup Action; (6) any required institutional controls required as part of the Proposed Cleanup Action; (7) any applicable state and federal laws for the Proposed Cleanup Action; and (8) a description of the types, levels, and amounts of hazardous substances that will remain in the Site if the Proposed Cleanup Action involves containment and the measures that will be used to prevent migration and contact with those substances.

Preparation of a Final Draft Cleanup Action Plan (DCAP) is not a part of this Order. Ecology intends to draft the Final DCAP. The Final DCAP will be taken out for public

comment. Ecology will then issue a Final CAP to be implemented in a subsequent agreed order, enforcement order, or consent decree.

Schedule: The Port shall submit the preliminary DCAP within 60 days following Ecology's approval of Public Review Draft RI/FS. Ecology will prepare the Final DCAP. Ecology anticipates holding a public comment period on the Public Review Draft RI/FS and draft Final DCAP at the same time.

D. Draft Final RI/FS

Task 5 – Draft Final RI/FS

The Port shall revise the Public Review Draft RI/FS incorporating revisions deemed necessary by Ecology after public comment. The Port and Ecology will coordinate the revisions to the Public Review Draft RI/FS and Draft Cleanup Action Plan to ensure that the final versions are consistent. The Port shall submit the revised document as the Draft Final RI/FS for Ecology's review and approval.

Schedule: The Port shall submit the Draft final RI/FS within 30 days following receipt of revisions Ecology deems necessary after public comment.

E. Quarterly Progress Reports

During performance of this Order, the Port shall submit quarterly progress reports to Ecology. Email submittals are sufficient. Progress reports shall discuss all work required under this Order. The progress reports shall include the following information regarding the preceding reporting period:

1. A description of the actions which have been taken to comply with the Agreed Order.
2. Summaries of sampling and testing reports and all other data reports received by the Port.

3. Summaries of deviation from the approved work plans and an explanation of the Port's position on whether the deviations constitute minor or substantial changes to the work, in accordance with Section VIII.L (Amendment of Order).
4. Summaries of contacts with representatives of the local community, public interest groups, press, and federal, state, or tribal governments related to the Site cleanup.
5. Summaries of problems or anticipated problems in meeting the schedule or objectives set forth in the Work to Be Performed and Work Plans.
6. Summaries of solutions developed and implemented or planned to address any actual or anticipated problems or delays.
7. Changes in key personnel.
8. A description of work planned for the next reporting period.

Agreed Order quarterly progress reports may be combined with or submitted together with quarterly or annual interim action reports when they are due at the same time. Interim Action reporting requirements are described in the Interim Action Work Plan.

F. Progress

If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this Section, Ecology reserves its right to take action under WAC 173-340-510(4) to complete and issue the final deliverable.

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notice

RCW 70.105D.030(2)(a) requires that, at a minimum, this Order be subject to concurrent public notice. Ecology shall be responsible for providing such public notice and reserves the right to modify or withdraw any provisions of this Order should public comment disclose facts or considerations which indicate to Ecology that this Order is inadequate or improper in any respect.

B. Remedial Action Costs

The Port 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 Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Ecology has accumulated \$3,098.67 in remedial action costs related to this facility as of **August 31, 2012**. Payment for this amount shall be submitted within thirty (30) days of the effective date of this Order. For all costs incurred subsequent to **August 31, 2012**, the Port 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.

C. Implementation of Remedial Action

If Ecology determines that the Port has failed without good cause to implement the remedial action, in whole or in part, Ecology may, after notice to the Port, perform any or all portions of the remedial action that remain incomplete. If Ecology performs all or portions of the remedial action because of the Port's failure to comply with its obligations under this Order, the Port shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.B (Remedial Action Costs), provided that the Port is not obligated under this Section to reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of this Order.

Except where necessary to abate an emergency situation, the Port shall not perform any remedial actions at the Site outside those remedial actions required by this Order, unless Ecology concurs, in writing, with such additional remedial actions.

D. Designated Project Coordinators

The project coordinator for Ecology is:

Connie Groven
Site Manager/Environmental Engineer
Department of Ecology
Southwest Regional Office/Toxic Cleanup Department
(360) 407-6254
cgro461@ecy.wa.gov

The project coordinator for the Port is:

Tom Colligan

Floyd|Snider

601 Union Street, Suite 600

Seattle, WA 98101

206.292.2078

Tom.Colligan@floydsnider.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 Port, 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.

E. Performance

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

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered in 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 in 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 Chapter 18.220 RCW or RCW 18.43.130.

The Port 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.

F. Access

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property at the Site that the Port either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the Port'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 the Port. The Port shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the Port where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by the Port 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.

G. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the Port 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 Port shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the Port pursuant to implementation of this Order. The Port shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the Port 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. (Access), Ecology shall notify the Port 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 Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

H. Public Participation

A Public Participation Plan is required for this Site. Ecology shall review any existing Public Participation Plan to determine its continued appropriateness and whether it requires amendment, or if no plan exists, Ecology shall develop a Public Participation Plan alone or in conjunction with the Port.

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

1. If agreed to by Ecology, develop appropriate mailing list, 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 major meetings with the interested public and local governments. Likewise, Ecology shall notify the Port prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the Port that do not receive prior Ecology approval, the Port 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. **Port Angeles Public Library**
2210 South Peabody Street
Port Angeles, WA 98362
- b. **Peninsula College**
1502 E. Lauridsen Blvd.
Port Angeles, WA 98362
- c. **Ecology's SWRO Regional Office**
300 Desmond Drive SE
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 Southwest Regional Office in Lacey, Washington.

I. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, the Port 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 Port shall make all records available to Ecology and allow access for review within a reasonable time. Nothing in this Order is intended by the Port to waive any right it may have under applicable law to limit disclosure of documents protected by the attorney work-product and/or the attorney client privilege. If the Port withholds any requested records based on an assertion of privilege, it shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No actual data collected on Site pursuant to this Order shall be considered privileged.

J. Resolution of Disputes

1. In the event a dispute arises as to an approval, disapproval, proposed change, or other decision or action by Ecology's project coordinator, or an itemized billing statement under Section VIII.B (Remedial Action Costs), the Parties shall utilize the dispute resolution procedure set forth below.

a. Upon receipt of Ecology's project coordinator's written decision or the itemized billing statement, the Port has fourteen (14) days within which to notify

Ecology's project coordinator in writing of its objection to the decision or itemized statement.

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

c. The Port may then request regional management review of the decision. This request shall be submitted in writing to the Southwest Region Toxics Cleanup Section Manager within seven (7) days of receipt of Ecology's project coordinator's written decision.

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of the Port's request for review. The Section Manager's decision 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.

K. Extension of Schedule

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

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

- a. Circumstances beyond the reasonable control and despite the due diligence of the Port 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 Port;
- b. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty; or
- c. Endangerment as described in Section VIII.M (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 Port.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give the Port 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.L (Amendment of Order) when a schedule extension is granted.

4. 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:

- 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; or
- c. Endangerment as described in Section VIII.M (Endangerment).

L. 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.N (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 the Port. The Port shall submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J (Resolution of Disputes).

M. Endangerment

In the event Ecology determines that any activity being performed at the Site 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 Port to cease such activities for such period of time as it deems necessary to abate the danger. The Port shall immediately comply with such direction.

In the event the Port determines that any activity being performed at the Site is creating or has the potential to create a danger to human health or the environment, the Port may cease such activities. The Port 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 Port shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with the Port's cessation of activities, it may direct the Port to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to Section VIII.M (Endangerment), the Port's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be extended in accordance with Section VIII.K (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.

N. Reservation of Rights

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

Ecology nevertheless reserves its rights under Chapter 70.105D RCW, including the right to require additional or different remedial actions at the Site should it deem such actions

necessary to protect human health and the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

O. Transfer of Interest in Property

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

Prior to the Port's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the Port shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, the Port shall notify Ecology of said transfer. Upon transfer of any interest, the Port shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

P. Compliance with Applicable Laws

1. All actions carried out by the Port 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 entry of this Order have been identified in Exhibit D.

2. Pursuant to RCW 70.105D.090(1), the Port is exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws

requiring or authorizing local government permits or approvals. However, the Port shall comply with the substantive requirements of such permits or approvals. The exempt permits or approvals and the applicable substantive requirements of those permits or approvals, as they are known at the time of entry of this Order, have been identified in Exhibit D.

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

3. 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 Port 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.

Q. Indemnification

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

IX. SATISFACTION OF ORDER

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

X. ENFORCEMENT

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

- A. The Attorney General may bring an action to enforce this Order in a state or federal court.
- B. The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.
- C. In the event the Port refuses, without sufficient cause, to comply with any term of this Order, the Port will be liable for:

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

b. 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.

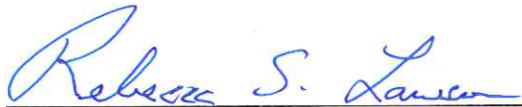
This Order may be reviewed only as provided under RCW 70.105D.060.

Effective date of this Order: October 15, 2012

PORT OF PORT ANGELES

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY

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Executive Director
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Section Manager
Toxics Cleanup Program
Southwest Regional Office
360.407.6241

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

b. 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.

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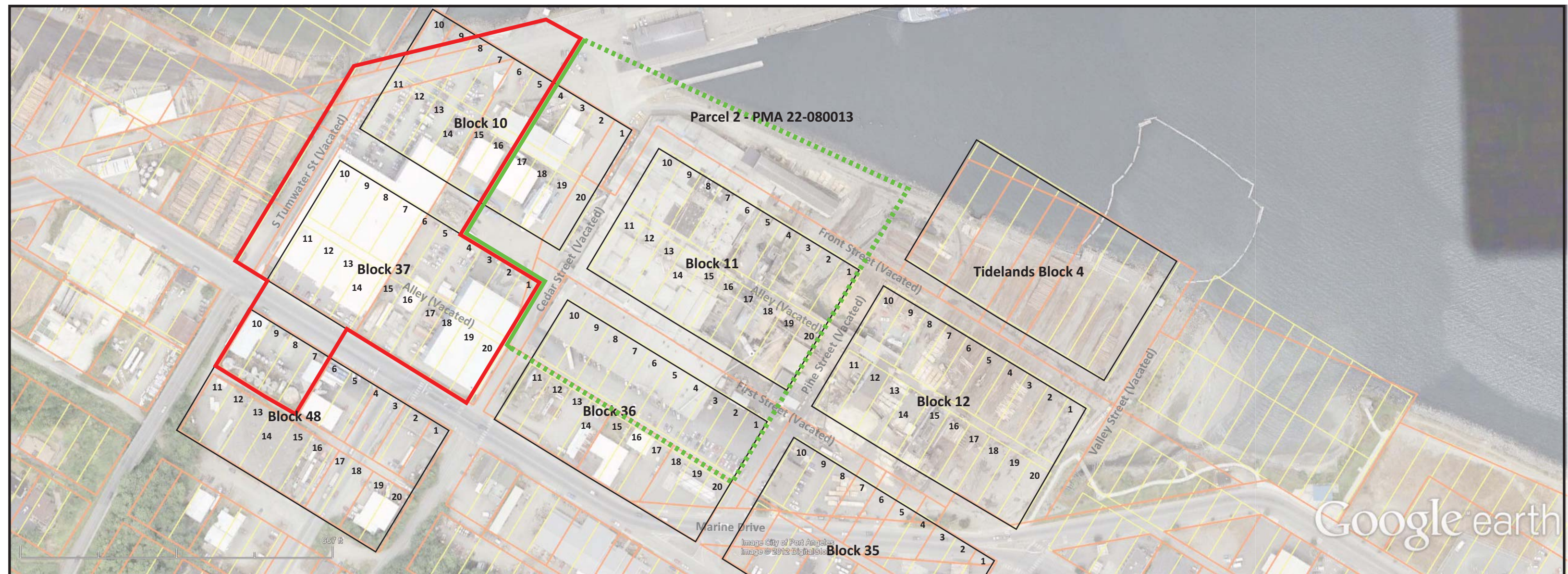
PORT OF PORT ANGELES

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Google earth



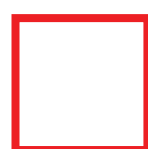
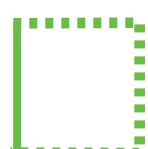
-  MTA Site Boundary
-  Initial K-Ply Site Boundary
- Solid line = Defined Site boundary
- Dotted line = Estimated Site Boundary

EXHIBIT A: SITE DIAGRAM

Agreed Order No. DE 9546

Date: 10-5-2012

EXHIBIT B: Interim Action Work Plan for the K Ply Site

Note: See separate electronic file for the interim action work plan.

EXHIBIT C: Schedule to the Agreed Order for the K Ply Site

The project schedule is as follows:

AO Section	Task	ITEM	Days from Schedule	Anticipated Calendar Date Schedule (1)
VII.A	1	Implement Interim Action Work Plan	Begin within sixty days following effective date of the Agreed Order	October 2012 until beginning of the final cleanup action
VII.B	2a	Draft RI/FS Work Plan, including Sampling and Analysis Plan, Quality Assurance Project Plan, Health and Safety Plan, and Cultural Resource Protocol	Submit 60 days following substantial completion of demolition of K Ply Mill	August 2013
VII.B	2b	Draft Final RI/FS Work Plan, including Sampling and Analysis Plan, Quality Assurance Project Plan, Health and Safety Plan, and Cultural Resource Protocol	Submit 30 days following Ecology's comments on drafts	October 2013
VII.B	2c	Implement Final RI/FS Work Plan	Begin 30 days following Ecology approval of the Work Plan	November 2013–February 2014
VII.B	2d	Draft Supplemental Data Collection Technical Memorandum	Submit 60 days following receipt of final data reports from laboratories	May 2014
VII.B	3a	Agency Review Draft RI/FS Report	Submit 180 days following receipt of final data reports from laboratories	October 2014
VII.B	3b	EIM Data Submittal	Submit 180 days following receipt of final data reports from laboratories	October 2014
VII.B	3c	Public Review Draft RI/FS Report	Submit 60 days following receipt of Ecology's comments on Agency Review Draft RI/FS Report	February 2015
VII.C	4	Preliminary Draft Cleanup Action Plan	Within 60 days for Ecology's approval of Public Review Draft RI/FS report.	May 2015
			Ecology prepares the Final Draft Cleanup Action Plan.	May-July 2015
Ecology anticipated public comment period on Public Review Draft RI/FS and Final Draft Cleanup Action Plan				July 2015
VII.D	5	Draft Final RI/FS Report	Within 30 days of receipt of revision deemed necessary by Ecology on the Public Review Draft RI/FS.	August 2015

VII.E		Agreed Order Quarterly Reports	Submit first report beginning 30 days following the first demolition monitoring event and continue reporting through Agreed Order	Quarterly beginning December 2012 until end of Agreed Order.
Exhibit B		Quarterly/Annual Interim Action Reports	Submit first report within 30 days of the first demolition monitoring event. Quarterly reports will follow until Site is considered stable. Annual reports continue until cleanup of the Site commences and/or the Site is no longer managed under this Interim Action Work Plan.	Winter 2012, Spring, Summer, and Fall 2013. Annually thereafter.

(1) The anticipated calendar dates shown are subject to change based on the actual demolition schedule, supplemental data collection timeframe, Ecology review cycles, and other unanticipated factors, such as field findings that results in unanticipated additional data collection needs.

EXHIBIT D: List of Applicable Permits and Applicable or Relevant and Appropriate Requirements (ARARs) to the Agreed Order for the K Ply Site

The known permits and rules that are pertinent are listed below:

- State Environmental Policy Act (SEPA; RCW 43.21C, WAC 197-11)
- Clean Water Act – The National Pollutant Discharge Elimination System (NPDES; 40 CFR 122). Mill demolition will be covered under the NPDES Construction Stormwater General Permit.
- Washington Solid Waste Handling Standards (Chapter 173-350 WAC). Establishes minimum standards for handling and disposal of solid waste. Solid waste includes wastes that are likely to be generated as a result of mill demolition such as construction and demolition wastes, and garbage.
- Washington Hazardous Waste Management Act and the implementing regulations, Dangerous Waste Regulations (Chapter 173-303 WAC) and the federal Resource Conservation and Recovery Act (RCRA; 42 USC 6921-6949a; 40 CFR Part 268, Subtitles C and D). Established regulations for the identification, handling, and disposal of hazardous and non-hazardous wastes during the mill demolition.
- Building Permit – The City of Port Angeles
- Demolition Permit – Olympic Region Clean Air Agency
- Contractor Asbestos Permit - Olympic Region Clean Air Agency
- Occupational Safety and Health Act (OSHA; 29 CFR Subpart 1910.120)
- Washington Industrial Safety and Health Act (WISHA; Chapter 49.17 RCW).
- Notice of Intent to Install Wells, Minimum Standards for Construction and Maintenance of Wells, and Notice of Intent to Decommission Wells (Chapter 173-160 WAC; Washington Department of Ecology). The property owner, owner's agent, or water operator shall notify the department of their intent to begin well construction, reconstruction-alteration, or decommissioning procedures at least seventy-two hours before starting work. The investigation shall use the minimum standards established to construct and decommission wells.