

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

The Boeing Company
Boeing Commercial Airplane Group – Everett
Plant – BOMARC Property
2600 94th Street Southwest
Everett, Washington

AGREED ORDER

No. DE _____

TO: The Potentially Liable Person (PLP)
The Boeing Company
c/o Mr. Steven Shestak
Environment, Health & Safety
PO Box 3707, M/C 9U4-08
Seattle, WA 98124-2207

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EXHIBIT A: BOMARC Property Diagram
EXHIBIT B: Cleanup Action Plan (CAP)

I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and The Boeing Company (Boeing) 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 Boeing to implement a cleanup action plan at a portion of that Facility, the BOMARC Property, where there has been a release or threatened release of hazardous substances. Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

This Agreed Order is issued pursuant to the authority of the Model Toxics Control Act (MTCA), RCW 70A.305.050(1). This Order also satisfies the requirements of WAC 173-303-646 through -64630.

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 the Order. Boeing agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Boeing's responsibility under this Order. Boeing 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 70A.305 and WAC 173-340 shall control the meanings of the terms used in this Order.

A. 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.

B. Area of Concern (AOC): Refers to any area of the Facility where a release of dangerous constituents (including dangerous waste and hazardous substances) has occurred, is occurring, is suspected to have occurred, or threatens to occur.

C. Cleanup Action Plan (CAP): Refers to the document issued by Ecology under WAC 173-340-380 which selects Facility-specific corrective measures and specifies cleanup standards (cleanup levels, points of compliance, and other requirements for the corrective measures).

D. Corrective Action: Refers to any activities including investigations, studies, characterizations, and corrective measures, including actions taken pursuant to RCW 70.105D and WAC 173-340, undertaken in whole or in part to fulfill the requirements of WAC 173-303-64620.

E. Dangerous Constituent or Dangerous Waste Constituent: Refers to any constituent identified in WAC 173-303-9905 or 40 C.F.R. part 264, appendix IX; any constituent that caused a waste to be listed or designated as dangerous under the provisions of WAC 173-303; and any constituent defined as a hazardous substance under RCW 70A.305.020(13).

F. Dangerous Waste: Refers to any solid waste designated in WAC 173-303-070 through -100 as dangerous or extremely hazardous or mixed waste. Dangerous wastes are considered hazardous substances under RCW 70A.305.020(13).

G. Facility or Site: Refers to the Boeing Commercial Airplane Group – Everett facility (Exhibit A), controlled by Boeing located at 3003 West Casino Road Everett, Washington; all property contiguous to the Facility also controlled by Boeing; and all property, regardless of control, affected by release(s) or threatened release(s) of hazardous substances, including dangerous wastes and dangerous constituents, at and from these areas. “Facility” also includes the definition found in RCW 70A.305.020(8).

H. BOMARC Property: Refers to the property located at 2600 94th Street Southwest in Everett, Washington that is located within the Facility and is the subject of this Agreed Order. The BOMARC Property is depicted in Exhibit B to this Agreed Order.

I. Feasibility Study (FS): Refers to the investigation and evaluation of potential corrective action performed in accordance with the FS requirements of WAC 173-340-350 , which includes the substantive requirements for a Resource Conservation and Recovery Act Corrective Measures Study, and which is undertaken in whole or in part to fulfill the corrective action requirements of WAC 173-303-64620.

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

K. Potentially Liable Person (PLP): Refers to Boeing.

L. RCRA: Refers to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901–6992k.

M. RCRA Facility Assessment (RFA): Refers to the EPA conducted investigation of release(s) and potential release(s) at the Dangerous Waste Management Facility and the information contained in the report entitled *RCRA Facility Assessment, Final RCRA Facility Assessment Report for Boeing Everett, Everett, Washington, December 2, 1993*. (RFA Report). The RFA Report is incorporated into this Order by this reference as if fully set forth herein.

N. Remedial Investigation (RI): Refers to a facility-wide investigation and characterization performed in accordance with the requirements of WAC 173-340 , which includes the substantive requirements for a RCRA facility investigation, undertaken in whole or in part to fulfill the corrective action requirements of WAC 173-303-64620.

O. Solid Waste Management Unit (SWMU): Refers to any discernible location at the Dangerous Waste Management Facility where solid wastes have been placed at any time, irrespective of whether the location was intended for the management of solid or dangerous waste. Such locations include any area at the Dangerous Waste Management Facility at which solid wastes, including spills, have been routinely and systematically released, and include regulated units as defined by WAC 173-303.

V. FINDINGS OF FACT

Ecology makes the following Findings of Fact, without any express or implied admissions of such facts by Boeing.

1. Boeing is, and has been, the owner and operator of the BCAG - Everett Plant since at least November 17, 1980, when Boeing filed its original RCRA Part A permit application for the storage of dangerous wastes in a container storage area and in dangerous waste tanks (RCRA 3005).
2. Ecology and Boeing entered into Agreed Order DE 96HS-N274 (1997 AO) in January 1997. The 1997 AO required Boeing to complete a remedial investigation of the uplands portion of the Facility including BOMARC, complete a Remedial Investigation Report (RI Report) and Feasibility Study (FS) and Interim Actions for the Facility, or portions of the Facility, and to submit a draft cleanup action plan (dCAP) for the Facility, or portions of the Facility.
3. The 1997 AO has been amended seven times since January 1997, with the last amendment finalized on April 30, 2014. Each amendment includes additional facts and discussion of the scopes of those amendments.
4. Since the parties finalized the 1997 AO, Boeing has submitted a revised remedial investigation (RI) report, dated December 17, 2010, and a public review draft final RI report, dated November 4, 2011. Ecology contingently approved the public review draft final RI report by its letter dated, November 21, 2011. Boeing submitted its BOMARC Building 45-70 Property FS report, dated March 31, 2014. Boeing submitted its upland FS report, dated November 16, 2015. Boeing submitted a supplemental feasibility study (SFS) report dated November 29, 2018. Ecology selected the final upland site cleanup actions, based on its letters dated August 18, 2016 and July 20, 2017, as modified by Ecology letters dated May 2, 2019 and September 5, 2019.

5. Ecology established contingent approval of the public review draft final BOMARC Building 45-70 Property FS on October 3, 2014.

6. The RI Report and FS for the Facility demonstrate that the following hazardous substance has been released to soils at the BOMARC Property: carcinogenic polycyclic hydrocarbons (cPAH).

7. The BOMARC Property was undeveloped until the late 1940s/early 1950s. During approximately the late 1950s/early 1960s, the BOMARC Property was owned by Snohomish County and used by the U.S. Air Force (USAF). In approximately 1990, the property was developed by Snohomish County (property owner) and Boeing (lessee) into its current configuration. From 1990 to 1999, Boeing occupied the BOMARC Property through a lease agreement with Snohomish County.

8. Boeing operations at the BOMARC Property (1990 to approximately 1999) included sub-assembly of commercial aircraft interiors. At the BOMARC Property, Boeing used glosses, putties, enamels, adhesives, solvents, methyl ethyl ketone, primers, epoxies, acrylics, inks, grease, lube oil, paints, and lacquers. These materials were stored in containers ranging in size from 2 ounces to 55 gallons. Drawings of the BOMARC Property during Boeing's operation show one exterior covered and contained chemical storage area, five interior chemical storage rooms, and six paint or glue rooms. The interior areas of the building had paint spray booth rooms and chemical storage rooms for the manufacturing process of aircraft interiors of Boeing aircraft. The exterior areas included the underground storage tanks (USTs) used for capturing any potential spilled chemical waste, a hazardous chemical storage area, and the facility's oil/water separators. From 1999 through 2003, the BOMARC Property's primary use was for storage.

9. Since 2003, Boeing has leased the building it owns (Building 45-70) located on the BOMARC Property to several tenants, while continuing to lease the underlying property from Snohomish County. The three tenants at the BOMARC Property have been Fibres,

Giddens, and XPO Logistics (formerly New Breed). Fibres was a recycling facility, which operated at the BOMARC Property from approximately 2003 through 2020. Their on-site operations included recycling of paper, cardboard, plastic, aluminum cans, and other scrap metals. These materials were brought to the BOMARC Property “loose” and were compacted and bundled on-site by a large bailing machine (bailer) located in the central portion of the facility. Once compacted and bundled, the material was transported off-site. Giddens is an aerospace components and assemblies manufacturer, which has operated at the BOMARC Property since late 2004. Their on-site operations include the use of presses, laser cutters, and a heat treatment machine. An overhead coolant distribution/recycling system provides coolant to certain machinery. XPO Logistics (formerly New Breed) has operated at the BOMARC Property since approximately October 2006. Their on-site operations include warehousing and distribution of Boeing 787 parts.

VI. ECOLOGY DETERMINATIONS

A. Boeing is the owner and operator of a Dangerous Waste Management Facility that has operated, is operating, or should have been operating under interim status or a final facility permit, subject to RCRA, 42 U.S.C. §§ 6924 and 6925, and regulations promulgated thereunder, including authorized state regulations in WAC 173-303. Boeing is also an “owner or operator” as defined by RCW 70A.305.020(22) of a “facility” as defined by RCW 70A.305.020(8).

B. Boeing is the current lessee of the BOMARC Property, which is a portion of the Facility, and Boeing currently owns the building on the property. If the buildings are sold, Boeing will end the associated lease with Snohomish County and the new building owner would enter into a new lease with Snohomish County (or owner of the property). In any sale, Boeing will retain access rights to carry out the provisions on this order.

C. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70A.305.020(32) and (13), respectively, has occurred at the Site.

D. By letter dated October 11, 1995, Ecology notified Boeing of its status as a "potentially liable person" (PLP) under RCW 70.105D.040. By letter dated November 10, 1995, Boeing made no objection to being named a ‘potentially liable person’. Ecology issued a determination that Boeing is a PLP under RCW 70A.305.040 and notified Boeing of this determination by letter dated November 27, 1995.

E. Pursuant to RCW 70A.305.030(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 at the BOMARC Property are in the public interest.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that Boeing take the following remedial action(s) and that this (these) action(s) be conducted in accordance with WAC 173-340 unless otherwise specifically provided for herein.

A. Boeing shall perform a final cleanup action for the BOMARC Property by implementing the remedial actions set forth in the upland cleanup action plan (CAP) and included as Exhibit C. Specifically, Sections 5.11.1, 5.11.5, and 5.11.6 of the CAP describe the cleanup actions, compliance monitoring, and institutional controls for the BOMARC Property. Additional sections of the CAP, Sections 5.11.2 through 5.11.4 describe the cleanup standards, points of compliance, restoration timeframes, and applicable, relevant and appropriate state and federal requirements. Compliance monitoring frequency for indoor air for the BOMARC Property is outlined in Section 4.4 subsection Indoor Air Monitoring.

B. If Boeing learns of a significant change in conditions at the BOMARC Property, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in soil, groundwater, soil vapor, or air, Boeing shall notify Ecology in writing of said change within seven (7) days of learning of the change in condition, and provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.

C. Boeing shall submit written Progress Reports to Ecology-NWRO quarterly, starting from the effective date of this Agreed Order until all of the requirements of this Agreed Order are completed to Ecology's satisfaction. The submittal shall be due on the 15th day of the month following the quarterly activity period. Boeing shall describe the following in each Progress Report:

- a. all work conducted pursuant to this Agreed Order during the last quarter period;
- b. occurrence of any problems, how problems were rectified, deviations from the work plans and an explanation for all deviations;
- c. for any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule;
- d. projected work to occur and list of deliverables in the upcoming quarter;
- e. summaries of significant findings, changes in personnel, summaries of contacts with all federal, state, local community, public interest groups and other entities with an interest in the cleanup; and
- f. all laboratory analyses (as copies of the original laboratory reporting data sheets, in tabulated data format) for which quality assurance procedures were completed during the quarter.

Unless otherwise specified by Ecology, Progress Reports submitted pursuant to this Order shall be sent by the Boeing project coordinator to Ecology's project coordinator under Boeing cover

letter. The frequency of Progress Report submittals may be revised if both Ecology and Boeing agree that such a change is necessary.

D. All plans or other deliverables submitted by Boeing for Ecology's review and approval under the Cleanup Action Plan (Exhibit B) shall, upon Ecology's approval, become integral and enforceable parts of this Order.

E. Boeing shall notify Ecology's project coordinator in writing of any newly-identified SWMU(s), newly-discovered release(s) from known SWMU(s), and newly-discovered AOCs at the BOMARC Property no later than 15 calendar days after discovery, and shall investigate and report on these areas as directed by Ecology's project coordinator.

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

G. Except where necessary to abate an emergency situation or where required by law, Boeing shall not perform any remedial actions at the BOMARC Property 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, Boeing 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

Boeing 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 Facility under RCW 70A.305, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). For all costs incurred subsequent to the effective date of this Agreed Order, Boeing 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. Ecology will endeavor to send itemized statements quarterly to Boeing within 30 days of the end of the quarter. 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 70A.305.055, 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:

Mr. Paul Bianco
Washington State Department of Ecology-Northwest Regional Office
3190 160th Avenue S.E.
Bellevue, WA 98008-5452
(425)649-7264

The project coordinator for Boeing is:

Ms. Debbie Taege
Boeing
EHS Remediation Group
PO Box 3707 Mail Code 9U4-26
Seattle, WA 98124-2207
(818) 720-5575

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 Facility. To the maximum extent possible, communications between Ecology and Boeing, 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.

Boeing 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 Facility.

D. Access

Ecology or any Ecology authorized representative shall have access to enter and freely move about the BOMARC property which Boeing 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 Boeing'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 Boeing. If Ecology takes photographs or recordings at the facility, upon request Ecology will provide Boeing electronic copies within 7 days of the request. Boeing will seek the cooperation of any subsequent purchaser for the same. Ecology or any Ecology authorized representative shall give reasonable notice before entering the BOMARC Property owned or controlled by Boeing unless an emergency prevents such notice.

Boeing shall make all reasonable efforts to secure access rights for those properties within the BOMARC Property not owned or controlled by Boeing where remedial activities or investigations will be performed pursuant to this Order. For those properties, at Ecology's request, Boeing's Project Coordinator or other representative shall accompany Ecology's representative(s) at all times for purposes of coordination with the current lessee and/or property owner and any specific access or safety requirements they may have.

All persons who access the BOMARC Property 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 Facility property access.

E. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, Boeing 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, Boeing shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by Boeing pursuant to implementation of this Order. Boeing shall notify Ecology seven (7) days in advance of any sample collection or work activity conducted under this Order at the Facility. Ecology shall, upon request, allow Boeing 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 Boeing 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

A Public Participation Plan has been completed by Ecology for the Facility. All public participation regarding the BOMARC Property shall follow the Facility Public Participation Plan

Ecology shall maintain the responsibility for public participation at the BOMARC Property. However, Boeing 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, 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 BOMARC Property with the interested public and/or local governments. Likewise, Ecology shall notify Boeing prior to the issuance of all press releases and fact sheets related to the BOMARC Property, and before meetings related to the BOMARC Property with the interested public and/or local governments. For all press releases, fact sheets, meetings, and other outreach efforts by Boeing that do not receive prior Ecology approval, Boeing 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 BOMARC Property. 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) Everett Public Library
Information Services
2702 Hoyt Street
Everett, WA 98201-3556
(425) 257-8022

- (b) Ecology Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452
Phone: (425) 649-7190

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 Facility shall be maintained in the repository at Ecology's Northwest Regional Office in Bellevue, Washington.

G. Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of work performed pursuant to this Order, Boeing 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, Boeing 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 Boeing may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If Boeing withholds any requested records based on an assertion of privilege, Boeing shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Facility-related data collected pursuant to this Order shall be considered privileged.

H. Resolution of Disputes

1. In the event that Boeing elects to invoke dispute resolution, Boeing 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), Boeing has fourteen (14) calendar days

within which to notify Ecology's project coordinator in writing of its dispute ("Informal Dispute Notice").

b. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice, unless an extension is requested by Boeing and approved by Ecology. If the project coordinators cannot resolve the dispute within those 14 calendar days or the agreed upon time period, then within seven (7) calendar days of the end of that period, Ecology's project coordinator shall issue a written decision ("Informal Dispute Decision") stating: the nature of the dispute; Boeing's position with regards to the dispute; Ecology's position with regard to the dispute; and the extent of resolution reached by informal discussion.

c. Boeing may then request regional management review of the dispute. This request ("Formal Dispute Notice") must be submitted in writing to the Northwest Region Hazardous Waste and Toxics Reduction Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision unless an extension is requested by Boeing and approved by Ecology. 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 Northwest Regional Hazardous Waste and Toxics Reduction 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 unless the parties agree on a different timeframe for Section Manager review. The Decision on Dispute shall be Ecology's final decision on the disputed matter.

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

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

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

I. Extension of Schedule

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

2. The burden shall be on Boeing 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 Boeing 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 Boeing;

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

c. Endangerment as described in Section VIII.L (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 Boeing.

3. Ecology shall act upon any written request for extension in a timely fashion. Ecology shall give Boeing 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 Boeing's request, an extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of one of the following:

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

b. Other circumstances deemed exceptional or extraordinary by Ecology; or

c. Endangerment as described in Section VIII.L (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.M (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 Boeing. Ecology will provided 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, Boeing 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 BOMARC Property under this Order is creating or has the potential to create a danger to human health or the environment on or surrounding the BOMARC Property, Ecology may direct Boeing to cease such activities for such period of time as it deems necessary to abate the danger. Boeing shall immediately comply with such direction.

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

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

(Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

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

L. Reservation of Rights

This Order is not a settlement under RCW 70A.305. 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 Boeing to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against Boeing regarding remedial actions required by this Order, provided Boeing complies with this Order.

Ecology nevertheless reserves its rights under RCW 70A.305, including the right to require additional or different remedial actions at the BOMARC Property 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 Facility.

By entering into this Order, Boeing does not admit to any liability for the BOMARC Property. Although Boeing is committing to conducting the work required by this Order under the terms of this Order, Boeing expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

M. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the BOMARC Property shall be consummated by Boeing 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 Boeing's transfer of any interest in all or any portion of the BOMARC Property, and during the effective period of this Order, Boeing 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, Boeing shall notify Ecology of said transfer. Upon transfer of any interest, Boeing 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.

O. Compliance with Applicable Laws

1. *Applicable Laws.* All actions carried out by Boeing 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 70A.305.090. 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 B-Cleanup Action Plan. Boeing has a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or Boeing, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and Boeing must implement those requirements.

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

2. Pursuant to RCW 70A.305.090(1), Boeing 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, Boeing shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70A.305.090(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.

Boeing has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or Boeing determines that additional permits or approvals addressed in RCW 70A.305.090(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 Boeing shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Boeing 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 Boeing and on how Boeing must meet those requirements. Ecology shall inform Boeing in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Boeing shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

3. Pursuant to RCW 70A.305.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70A.305.090(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 Boeing shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70A.305.090(1), including any requirements to obtain permits or approvals.

P. Land Use Restrictions

A. As detailed in the Cleanup Action Plan, institutional controls are required at the BOMARC Property. Environmental (Restrictive) Covenants will be used to implement the institutional controls.

1. In consultation with Boeing, Ecology will prepare the Environmental (Restrictive) Covenant consistent with WAC 173-340-440, RCW 64.70, and any policies or procedures specified by Ecology. The Environmental (Restrictive) Covenant shall restrict future activities and uses of the Site as agreed to by Ecology, Boeing, and the property and building owners.
2. After approval by Ecology, Boeing shall make all reasonable efforts to coordinate with the property and building owners to record the Environmental (Restrictive) Covenant for the affected properties it owns, with the office of the Snohomish County Auditor as detailed in the Schedule (CAP, Exhibit B). Boeing shall provide Ecology with the original recorded Environmental (Restrictive) Covenant within thirty (30) days of the recording date.
3. As detailed in the Cleanup Action Plan, as part of the remedial action for the Site institutional controls are required on the BOMARC property. Since the property is not owned by Boeing, it will make a good faith effort to ensure that the owner of the affected property records an Ecology-approved Environmental (Restrictive) Covenant as detailed in the Schedule (CAP, Exhibit B). Upon a showing that Boeing has made a good faith effort to secure an Environmental (Restrictive) Covenant for the BOMARC property and failed to do so, Ecology may provide assistance to Boeing. Boeing shall provide Ecology with the original recorded Environmental (Restrictive) Covenants within thirty (30) days of the recording date.

Q. Financial Assurance

1. Financial assurance for corrective action is required by WAC 173-303-64620. Ecology's Financial Assurance Officer shall determine when Boeing's actions and submissions meet the requirements of WAC 173-303-64620.

2. Ecology's Financial Assurance Officer is:

Joanna Richards
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
Phone: (360) 407-6754
Fax: (360) 407-6715
Email: joar461@ecy.wa.gov

R. Periodic Review

So long as remedial action, including groundwater monitoring, continues at the BOMARC Property, the Parties agree to review the progress of remedial action at the BOMARC Property, and to review the data accumulated as a result of monitoring the Facility as often as is necessary and appropriate under the circumstances. Unless otherwise agreed to by Ecology, at least every five (5) years after the initiation of cleanup action at the BOMARC Property, the Parties shall meet to confer regarding the status of the BOMARC Property and the need, if any, for further remedial action at the BOMARC Property. At least ninety (90) days prior to each periodic review, Boeing shall submit a report to Ecology that documents whether human health and the environment are being protected based on the factors set forth in WAC 173-340-420(4). Ecology reserves the right to require further remedial action at the BOMARC Property under appropriate circumstances. This provision shall remain in effect for the duration of this Order.

S. Indemnification

Boeing agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property to the extent arising from or on account of acts or omissions of Boeing, its officers, employees, agents, or contractors in entering into and implementing this

Order. However, Boeing 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 Boeing's receipt of written notification from Ecology that Boeing has completed the corrective actions required by this Order, as amended by any modifications, and that Boeing has complied with all other provisions of this 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 BOMARC Property.

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; and

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 70A.305.060.

Effective date of this Order: _____

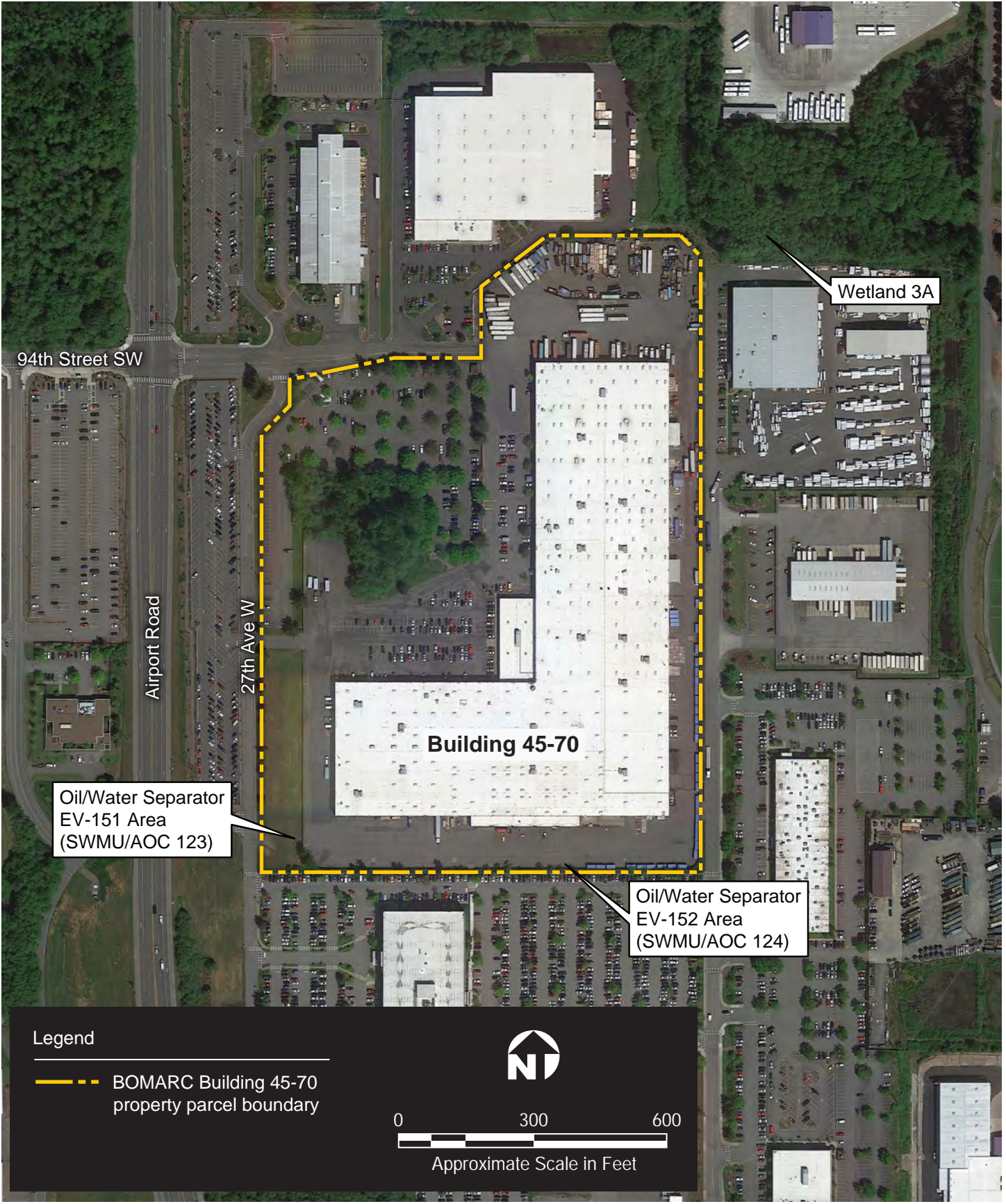
The Boeing Company

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Steve Shestak, Senior Director
Global Enterprise Sustainability
The Boeing Company
425-237-0214

Raman Iyer, Section Manager
Hazardous Waste and Toxics
Reduction Program
Northwest Regional Office
425-649-7053

EXHIBIT A: BOMARC Property Diagram



Source: Google Earth Pro, imagery dated 5/13/18

Figure 1-4
Site Plan – BOMARC Building 45-70

EXHIBIT B: Ecology Cleanup Action Plan (CAP)

