

Site: Boeing Auburn
Site: M1233
Project Manager: Robin Harrover

STATE OF WASHINGTON
DANGEROUS WASTE MANAGEMENT PERMIT
FOR CORRECTIVE ACTION

Department of Ecology
Northwest Regional Office
3190 160th Ave. SE
Bellevue, WA 98008-5452

Issued in accordance with the applicable provisions of the Hazardous Waste Management Act of 1976 in Chapter 70.105 Revised Code of Washington (RCW), and the Dangerous Waste Regulations promulgated thereunder in Chapter 173-303 Washington Administrative Code (WAC).

ISSUED TO:

The Boeing Company
P.O. Box 3707, MS 7A-XE
Seattle, WA 98124-2207

And

AMB Property Corporation
Pier 1, Bay 1
San Francisco, CA 94501

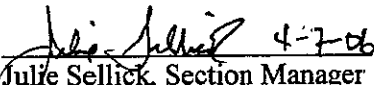
FOR:

The Boeing Commercial Airplanes Group,
Fabrication Division - Auburn Plant
700 15th Street S.W.
Auburn, Washington 98002

This Permit is effective as of the effective date of First Amended Agreed Order No. 01HWTRNR-3345 (Boeing/AMB Agreed Order), and shall remain in effect until ten years thereafter unless revoked and reissued, modified, or terminated under WAC 173-303-830(3) and (5) or continued in accordance with WAC 173-303-806(7). Upon becoming effective, this Permit replaces Original Permit No. 87-1, jointly issued by the Department of Ecology and the United States Environmental Protection Agency (EPA) in

August 1987, under which The Boeing Company has been continuing to operate pursuant to WAC 173-303-806(7).

ISSUED BY: WASHINGTON STATE DEPARTMENT OF ECOLOGY

 4-7-06
Julie Sellick, Section Manager
Department of Ecology
Hazardous Waste & Toxics Reduction Program
Northwest Regional Office

INTRODUCTION

PERMITTEE: The Boeing Company and AMB Property Corporation, Inc.
I.D. Number: WAD 041337130

Pursuant to Chapter 70.105 RCW, the Hazardous Waste Management Act of 1976, as amended, and regulations codified in Chapter 173-303 WAC, the Dangerous Waste Regulations, a permit is issued to The Boeing Company and AMB Property Corporation to conduct the remedial action work set forth in the Boeing/AMB Agreed Order at the Site, as that term is defined in the Boeing/AMB Agreed Order (Order). The Boeing Company and AMB Property Corporation must comply with all conditions of this Permit. AMB initially became a permittee as a result of its purchase of the Area 1 Property on December 16, 2005.

Pursuant to RCW 70.105D.030(1)(d) of the Model Toxics Control Act (MTCA), the Washington State Department of Ecology (Ecology) is designated by the Washington State Legislature to carry out all State programs authorized by EPA pursuant to the federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Sec. 6901 et. seq., as amended. Ecology has authority to issue this Permit in accordance with RCW 70.105.130 and is responsible for enforcement of all conditions of this Permit. Anyone may appeal these permit conditions or decisions by Ecology to the Pollution Control Hearings Board in accordance with WAC 173-303-845.

PART I - GENERAL CONDITIONS

- I.1 The Boeing Company and AMB Property Corporation shall comply with all requirements of WAC 173-303-810, which are hereby incorporated by reference into this Permit.
- I.2. Modifications to the Order shall not require a permit modification, except when required by WAC 173-303-830, Appendix I(N)(5) to incorporate a substantial change requiring public comment under WAC 173-340-600. The Order is not appealable to the Pollution Control Hearings Board. The Order may be reviewed only as provided under MICA RCW 70.105D 060.
- I.3. Compliance with the terms of this Permit does not constitute a defense to any order issued or any action brought under any other state or federal laws governing protection of public health or the environment not related to this Permit. However, compliance with the terms of this Permit does constitute a defense to any action alleging failure to comply with the applicable standards upon which this Permit is based.
- I.4. Pursuant to WAC 173-303-806(6), the Boeing Company and AMB Property Corporation shall submit a new application for a final permit 180 days prior to the expiration date of this permit, unless Ecology grants a later date provided that such date is not later than the expiration date of the Permit. This Permit and all its conditions will remain in effect beyond the Permit's expiration date until Ecology has made a final permit determination if: (1) The Boeing Company and AMB Property Corporation have submitted a timely application for a final status permit; (2) Ecology determines that the final permit application is complete as set forth in WAC 173-303-840(1)(b); and (3) Ecology has not made a final permit determination as set forth in WAC 173-303-840.
- I. 5. If The Boeing Company and/or AMB Property Corporation fails to comply with the terms and conditions of the expiring or expired permit, then Ecology may take action consistent with WAC 173-303-806(7)(b). If The Boeing Company and/or AMB Property Corporation fails to submit a timely, complete application as required herein, then those permit conditions necessary to protect human health and the environment will remain in effect beyond the Permit's expiration date in accordance with WAC 173-303-815(2)(b)(ii), until Ecology terminates the conditions.

PART II – CORRECTIVE ACTION

II. 1. Ecology is requiring that the Boeing Company and AMB Property Corporation fulfill corrective action responsibilities for the Site, using MICA, (Chapter RCW 70.105D RCW), as amended, and its implementing regulations (Chapter 173-340 WAC), as provided by WAC 173-303-64630. See Section III.1, *infra*. The actions taken will meet or exceed all substantive corrective action requirements of RCRA, the state Hazardous Waste Management Act, and the Dangerous Waste Regulations.

II. 2 The Boeing Company and AMB Property Corporation's corrective action obligations with respect to the Site under the Order, are enforceable conditions of this Permit under the authority of Chapter 70.105 RCW, and its implementing regulations, Chapter 173-303 WAC.

PART III - CORRECTIVE ACTION CONDITIONS

III.1. The Order is issued pursuant to MICA, Chapter 70.105D RCW, as amended, its implementing regulations, Chapter 173-340 WAC, and the Dangerous Waste Regulations, WAC 173-303-64610 through 173-303-646306. The Order and its attachments are incorporated by reference as fully enforceable under this Permit.

III.2. When Ecology selects final cleanup remedies for the Site, this Permit will be modified as needed to include the Ecology selected remedies.

1 AO-04/07/06

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STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

4 In the Matter of Remedial Action by:)
5)

6 The Boeing Company and AMB Property Corporation) First Amended
7) AGREED ORDER
8) No. 01HWTRNR-3345

9 IO: The Potentially Liable Person (PLP(s)): 16
10 The Boeing Company 18 The AMB Property Corporation
11 C/o Mr. Kirk Thomson 19 C/o Mr. Steven Campbell
12 Director of Environmental Affairs 20 Senior Vice President
13 P.O. Box 3707, MS 7A-XE 21 Pier 1, Bay 1
14 Seattle, WA 98124-2207 22 San Francisco, CA 94501
15

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I. JURISDICTION

This First Amended Agreed Order is issued pursuant to the authority of RCW 70.105D.050 (I).

II. DEFINITIONS

Unless otherwise specified, the definitions set forth in Chapter 70.105D RCW and Chapter 173-340 WAC shall control the meanings of the terms used in this Order.

Additional definitions are as follows:

1. Area 1 Property means the property at the north end of the BCA- Auburn Plant, south of the YMCA/Junior Achievement property, and north of Building 17-06, as shown in the diagram in Attachment 1.

2. Agreed Order or Order means this Order issued under RCW 70.105D.050(1) and WAC 173-340-530. The term includes the text of this Order, all Attachments to this Order, and Ecology-approved submittals required pursuant to this Order. Order Attachments and Ecology-approved submittals are incorporated into this Order by this reference and are enforceable parts of this Order as if fully set forth herein.

3. Area of Concern (AOC) means any area of the Site where a release or threatened release of dangerous constituents (including dangerous waste and hazardous substances) has occurred, is occurring, is suspected to have occurred, or threatens to occur.

4. Boeing Auburn facility (BA facility) means the Boeing Commercial Airplanes, Fabrication Division- Auburn Plant property at 700 15th Street SW and all contiguous land, and structures, other appurtenances, and improvements on the land that Boeing used for recycling, reusing, reclaiming, transferring, storing, treating, or disposing of dangerous waste since 1966. This includes the property

1 described in Attachment A to the original permit which was jointly issued by Ecology and EPA in
2 August, 1987.

3 5. Boeing Commercial Airplanes, Fabrication Division- Auburn Plant (BCA- Auburn Plant)
4 means the property at 700 15th Street SW and all contiguous land, and structures, other appurtenances,
5 and improvements on the land that Boeing used for recycling, reusing, reclaiming, transferring, storing,
6 treating, or disposing of dangerous waste since 1966. However, the BCA-Auburn Plant no longer
7 includes the Safeway, YMCA/Junior Achievement, or Puget Sound Energy (PSE) properties in light of
8 modifications previously made to Part A of Boeing's RCRA Permit No. 87-1. Ecology approved the
9 modifications to Part A of the permit on September 6, 2002 for the Safeway Property, on February 27,
10 2003 for the YMCA Property, and on June 30, 2004 for the PSE Property (See Diagram, Attachment 1,
11 for the locations of the Safeway, YMCA, and PSE properties).

12 6. Cleanup Action Plan (CAP) means the document issued by Ecology under WAC 173-340-
13 360 which selects Site specific corrective measures and specifies cleanup standards.

14 7. Cleanup Standards means the standards promulgated under RCW 70.105D.030 (2)(e) and
15 developed for the Site under WAC 173-340-700(3). These include (1) hazardous substance
16 concentrations (cleanup levels) that protect human health and the environment, (2) the location at the Site
17 where those cleanup levels must be attained (points of compliance), and (3) additional regulatory
18 requirements that apply to a cleanup because of the type of action and/or the location of the Site
19 (applicable state and federal laws).

20 8. Corrective Action means any activities including investigations, studies, characterizations
21 and corrective measures, including actions taken pursuant to Chapter 70.105D RCW and Chapter 173-
22 340 WAC, undertaken in whole or in part to fulfill the requirements of WAC 173-303-64610 through
23 173-303-646920.

24 9. Corrective Measure means any measure or action to control, prevent, or mitigate releases
25 and/or potential releases of dangerous constituents (including dangerous waste and hazardous

1 substances) at or from the Site, which action has been reviewed and approved by Ecology for the Site and
2 set forth in a Site specific Cleanup Action Plan (CAP) prepared in compliance with the requirements of
3 Chapter 173-340 WAC. Corrective measures may include interim actions as defined by Chapter 173-340
4 WAC. Interim actions will not necessarily be set forth in a Site-specific CAP.

5 10. Dangerous Constituent means any constituent identified in WAC 173-303-9905 or 40 CFR
6 Part 264 Appendix IX, any constituent that caused a waste to be listed or designated as dangerous under
7 the provisions of Chapter 173-303 WAC, and any constituent defined as a hazardous substance by RCW
8 70.105D.020(7).

9 11. Dangerous Waste means any solid waste designated in WAC 173-303-070 through 173-
10 303-100 as dangerous or extremely hazardous or mixed waste. Dangerous wastes are considered
11 hazardous substances under RCW 70.105D.020 (7).

12 12. Dangerous Waste Constituent means any constituent listed in WAC 173-303-9905 and any
13 other constituent that has caused a waste to be a dangerous waste pursuant to Chapter 173-303 WAC.

14 13. Dangerous Waste Management Unit (DWMU) is a contiguous area on or in which
15 dangerous waste is placed or has otherwise come to be located, or the largest area in which there is a
16 significant likelihood of mixing dangerous waste constituents in the same area, as defined in WAC 173-
17 303-040.

18 14. Day shall always mean a calendar day unless otherwise specified. In computing any period
19 of time under this Order, if the last day falls on a Saturday, Sunday, or a state or federal holiday, the
20 period shall run until the end of the next day which is not a Saturday, Sunday, or a state or federal
21 holiday. Any time period scheduled to begin on the occurrence of an act or event shall begin on the day
22 after the act or event.

23 15. Ecology or Ecology- NWRO means the State of Washington Department of Ecology or
24 the State of Washington Department of Ecology Northwest Regional Office.

1 16. Facility or Site means the BCA - Auburn Plant, as defined above. For the purposes of
2 implementing corrective action under WAC 173-303-64620 or 173-303-64630, Facility or Site also
3 means all contiguous property under the control of Boeing Auburn and AMB Corporation and includes
4 the definition of Facility at RCW 70.105D.020(4).

5 17. Feasibility Study (FS) means the investigation and evaluation of potential corrective
6 measures performed in accordance with the Feasibility Study (FS) requirements of WAC 173-340-350
7 [and the RI/FS Scope of Work attached to this Order], which includes the substantive requirements for a
8 RCRA Corrective Measures Study, and undertaken in whole or in part to fulfill the corrective action
9 requirements of WAC 173-303-64610 through 173-303-646920.

10 18. Hazardous Substances means the definition of hazardous substance at RCW
11 70.105D.020(7).

12 19. Independent Remedial Actions means remedial actions conducted without department
13 oversight or approval and not under an order, agreed order, or consent decree as defined in WAC 173-
14 340-200 and WAC 173-340-515.

15 20. Permit or Permitting Requirement, unless otherwise specified, means the requirements of
16 Chapter 173-303 WAC for applying for, obtaining, maintaining, modifying, and terminating dangerous
17 waste management permits.

18 21. Potentially Liable Person (PLP) means any person whom the Department of Ecology finds,
19 based on credible evidence, to be liable under RCW 70.105D 040. The term PLP or PLPs in this Order
20 refers jointly to the AMB Property Corporation and The Boeing Company. AMB Property Corporation
21 initially became a PLP as a result of its purchase of the Area 1 Property on December 16, 2005.

22 22. RCRA Facility Assessment (RFA) means the investigation conducted under the direction
23 of the U.S. Environmental Protection Agency – Region Ten (U.S. EPA Region X) for releases and
24 potential releases at or from the BA facility and the information contained in the report entitled "*The
25 Boeing Company, Auburn Fabrication Division, Resource Conservation and Recovery Act Facility*

1 *Assessment, Final Report, June 19, 1998, Prepared by Tetra Tech EM Inc* ("RFA Report"). The RFA
2 Report is incorporated into this Order by this reference as if fully set forth herein.

3 23. Release means any intentional or unintentional spilling, leaking, pouring, emitting,
4 emptying, discharging, injecting, pumping, escaping, leaching, dumping, or disposing of dangerous waste
5 or dangerous constituents into the environment. It also includes the abandonment of or the discarding of
6 barrels, containers, and other receptacles containing dangerous waste or dangerous constituents and
7 includes the definition of release in RCW 70.105D.020 (20).

8 24. Remedial Investigation (RI) means a Site wide investigation and characterization
9 performed in accordance with the requirements of Chapter 173-340 WAC and the remedial
10 investigation/feasibility study ("RI/FS") Scope of Work described in Section VI of this Order. The
11 Ecology approved RI will be deemed to be equivalent to a RCRA Facility Investigation, fulfilling the
12 corrective action requirements of WAC 173-303-64610 through 173-303-646920.

13 25. Solid Waste Management Unit (SWMU) means the definition of Solid Waste Management
14 Unit at WAC 173-303-040, including any discernible location at the Site, where solid wastes have been
15 placed at any time, irrespective of whether the location was intended for the management of solid or
16 dangerous waste. These SWMUs include any area at the Site at which solid wastes, including spills, have
17 been routinely and systematically released and include regulated units as defined by Chapter 173-303
18 WAC. Pursuant to the RFA Report and information provided by The Boeing Company, Ecology has
19 identified (in attachment 2) the SWMUs and Areas of Concern (AOCs) at the Site.

20 26. Submittal shall include any work plan, report, status report, or any other written document
21 required to be submitted to Ecology pursuant to this Order.

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23

1 IV. FINDINGS OF FACT

2 Ecology makes the following Findings of Fact.

3 1. The Boeing Company is and has been the owner and operator of the BA facility since
4 1966. In 1974, the Boeing Company purchased GSA warehouses, adding to the overall facility's size.
5 The BCA-Auburn Plant no longer includes the Safeway, YMCA/Junior Achievement, or PSE properties
6 as described in Section II.5.

7 2. The Boeing Company owned and operated the BA facility as a dangerous waste
8 management facility on or after November 19, 1980, the date which subjects facilities to the permitting
9 requirements of the Resource Conservation and Recovery Act, 42 U.S.C. § 6921 *et. seq.* (RCRA),
10 including interim status requirements pursuant to Section 3005 of RCRA and implementing regulations
11 thereunder, and including authorized state regulations promulgated in Chapter 173-303 WAC.

12 3. On August 11, 1980, the Boeing Company notified the U.S.E.P.A. Region 10 of its
13 dangerous waste management activities. In the notification, the Boeing Company identified itself as
14 managing the following dangerous wastes under WAC 173-303-082 and WAC 173-303-9904 at the BA
15 facility: F001, F002, F003, F005, F006, F007, F008, F009, F010, F011, F017, and F018.

16 4. Pursuant to the August 11, 1980 notification, the Boeing Company was issued
17 identification number WAD041337130 by U.S. EPA Region X.

18 5. On November 17, 1980, the Boeing Company submitted Part A of the RCRA permit
19 application to the U.S.E.P.A. Region X. In the Part A Application, the Boeing Company identified itself
20 as managing the following dangerous wastes under WAC 173-303-082 and WAC 173-303-9904 at the
21 BA facility: F001, F002, F003, F005, F006, F007, F008, F009, F010, F011, F017, F018, D001, D002,
22 D003, D006, D007, and K054.

23 6. On July 13, 1987, Ecology issued a final status RCRA Permit to the Boeing Company for
24 the BA facility.

1 7. On September 24th and 25th, 1997, Tetra Tech EM Inc., contractor to the U.S.E.P.A
2 Region X performed a RCRA Facility Assessment (RFA) for releases and potential releases at or from
3 the BA facility. The purpose of an RFA is to identify those areas where releases of hazardous
4 substances, as defined in RCW 70.105D.020 (7), may have occurred or may be occurring.

5 8. Pursuant to the RFA Report and information provided by the Boeing Company, Ecology
6 has identified (in Attachment 2) the Solid Waste Management Units (SWMUs) and Areas of Concern
7 (AOCs) at the Site. SWMUs and AOCs at the Site have been documented in the RCRA Facility
8 Assessment Final Report, prepared for the EPA by Tetra Tech EM Inc., June 19, 1998, and filed at the
9 Department of Ecology, Northwest Regional Office (Ecology –NWRO). Hazardous constituents which
10 have been detected from releases/or potential releases of hazardous substances found in either soil or
11 groundwater include, but are not limited to: methyl ethyl ketone, 4-methyl 2-pentanone, xylenes, ethyl
12 benzene, toluene, styrene, chlorobenzene, 1,2-dichlorobenzene, 1,4-dichlorobenzene, acetone, arsenic,
13 cadmium, barium, mercury, selenium, silver, lead, nickel, zinc, benzene, chromates, cadmium, copper,
14 alodine, 1,1,1-trichloroethane, 1,2- Dichoroethylene, trichloroethylene, perchloroethylene, ethylene
15 glycol ether, lubricant oils, diesel, gasoline, hydraulic fluids, gear oils, sulfuric acid, hydrochloric acid,
16 hydroflouric acid, chromic acid, nitric acid, sodium hydroxide, sodium cyanide, potassium cyanide,
17 polychlorobiphenyls, and polycyclic aromatic hydrocarbons. Some of the releases of these hazardous
18 constituents are recorded in the following documents:

19 (A) Hart Crowser, Inc., May 15, 1986, *Auburn Hazardous Waste Storage Facility*
20 *Potential Contamination Assessment*. (156)

21 (B) Hart Crowser, Inc., July 11, 1986, *Sump and Contaminated Soil Removal,*
22 *Hazardous Waste Storage Facility, Boeing Auburn*. (155)

23 (C) Boeing Corporate SHEA, Quadrant, Kennedy-Jenks, 1994, *Volatile Organics in*
24 *Groundwater at Auburn Facility*. (1467)

- 1 (D) Kennedy-Jenks, November 1991, *Technical Report-Preliminary Subsurface*
2 *Investigation Rinsewater Treatment Plant, Boeing Auburn.* ((2121)
- 3 (E) Kennedy-Jenks, January 1994, *Technical Report-Hydrogeologic Investigation,*
4 *Rinsewater Treatment Plant Area, Boeing Auburn.* (123)
- 5 (F) PSAPCA and Auburn Fabrication Division, March 1990, *NOC (#3191) and*
6 *Application for Approval.* (762)
- 7 (G) SECOR International Incorporated (SECOR), July 1996, Preliminary Subsurface
8 Assessment Investigation, 17-10 Building, G&L Post Mill, Boeing Commercial
9 Airplane, Auburn, Washington. (1542)
- 10 (H) SECOR International Incorporated (SECOR), September 1996, *Preliminary*
11 *Subsurface Assessment Investigation, 17-06 Building, Briquetting Machine Boeing*
12 *Commercial Airplane Group.* (1324)
- 13 (I) Geoengineers, May 1991, *Report of Geoenvironmental Services, Subsurface*
14 *Assessment, Two Underground Storage Tanks Near Building 17-06, Boeing*
15 *Fabrication Division, Auburn, Washington.* (72)
- 16 (J) Geoengineers, April 1992, *Report of Geoenvironmental Services, Drilling*
17 *Additional Borings, Building 17-06, Boeing Fabrication Division, Auburn,*
18 *Washington.* (147)
- 19 (K) Kennedy-Jenks, May 1996, *Technical Report-1995-Hydrogeologic Investigation*
20 *and Summary Report, Boeing Auburn.* (96)
- 21 (L) Dames and Moore, 1987-1992, *UST Groundwater Monitoring Report.* (91)
- 22 (M) Boeing Auburn, July 1997, *Letter Regarding Report of Release Pursuant to WAC*
23 *173-340-300(2), 17-05 Building, Boeing -Auburn Plant*
- 24 (N) Kennedy-Jenks, February 1995, *Technical Report-Hydrogeologic Investigation,*
25 *Building 17-05, Boeing Auburn.* (2119)

- 1 (O) Kennedy-Jenks, May 1996, *Technical Report, 1995-Hydrogeologic Investigation*
2 *and Summary Report, Boeing Auburn.* (96)
- 3 (P) Kennedy-Jenks, April 1997, *Final Report-Building 17-05 Vapor Degreaser*
4 *Removal, Boeing Auburn.* (2169)
- 5 (Q) Geoengineers, June 1997, *Site Characterization Report, 17-29 Titanium Bailing*
6 *Area, Auburn, Washington.* <<ne>>
- 7 (R) Geoengineers, May 1991, *Report-Sump Tank Removal and Replacement, Building*
8 *17-29, The Boeing Company, Auburn, Washington.* (82)
- 9 (S) Kennedy-Jenks, May 1994, *Environmental Services Decontamination and*
10 *Demolition Projects, 17-02 and 17-05 Building.* (133)
- 11 (T) Kennedy-Jenks, May 1997, *Technical Report-Building 17-05 Area Hydrogeologic*
12 *Characterization.* <<ne>>
- 13 (U) AGI Technologies, November 1996, *Final Closure Report, Resource Conservation*
14 *and Recovery Act (RCRA) Acid and Cyanide Tank Closures, 17-07 Building, Boeing*
15 *Commercial Airplane Group-Fabrication Division, Auburn, Washington.* (2046)
- 16 (V) Kennedy/Jenks; October, 1993, *Independent Remedial Action, 17-66 Building East*
17 *Construction Site, Boeing Auburn.* (154)
- 18 (W) Kennedy/Jenks; February 22, 1994, *Building 17-08, Environmental Response*
19 *Action.* (157)

20 9. Hazardous substances have been and may continue to be released at the Site into the
21 environment including: surface water drainage areas; groundwater; air; human work areas; and floral and
22 faunal habitats.

23 10. The Boeing Company submitted a Part B renewal application dated September 30, 1998
24 for storage of 220 gallons of dangerous waste within the 17-66 building.

1 11. The Department of Ecology did not issue a RCRA Permit to cover storage of the 220
2 gallons of dangerous waste within the 17-66 building. Boeing withdrew its application.

3 12. The BA facility has been operating under conditions of its Dangerous Waste Permit
4 signed by Ecology and the U.S.E.P.A. Region X in August 1987. However, the BCA-Auburn Plant no
5 longer includes the Safeway, YMCA/Junior Achievement, or PSE properties as described in Section II.5.
6 Other than dangerous wastes treated by its wastewater treatment unit under permit-by-rule, the BCA-
7 Auburn Plant will not store, treat, or land-dispose of dangerous wastes under the State of Washington
8 Dangerous Waste Management Permit No. WAD041337130.

9 13. On August 14, 2002, the Boeing Company and Ecology entered into Agreed Order No.
10 01HWTRNR-3345, wherein the Boeing Company agreed to complete a remedial investigation, a
11 feasibility study, draft a CAP, and perform interim actions as necessary to remediate the Site. This First
12 Amended Agreed Order No. 01HWTRNR-3345 fully supersedes the 2002 Agreed Order.

13 14. On December 16, 2005, the AMB Property Corporation purchased the Area 1 Property
14 [parcels 8, 9 and 12, Attachment 1] from the Boeing Company. The Diagram in Attachment 1 represents
15 the current BCA-Auburn Plant boundaries, including the Area 1 Property.

16 15. On July 14, 2004, the Boeing Company began implementation of an interim remedial
17 action in accordance with Section III (5) of Agreed Order No. 01HWTRNR-3345. A public comment
18 period was held from May 24, 2004 through June 23, 2004 prior to Ecology approval of the Interim
19 Action Work Plan. Ecology approved the Interim Action Work Plan by letter dated July 13, 2004. See
20 Attachment 9, [the work plan]. This interim remedial action is intended to slow the migration and to
21 remediate trichloroethene in groundwater underneath Solid Waste Management Unit, S-12b, and Area of
22 Concern, A-08 [see Attachment 2]. Three injections of a non-toxic media have been completed in
23 accordance with the approved interim remedial action work plan: Final Interim Remedial Action Work
24 Plan, Boeing Auburn Area 1 (Landau Associates, May 7, 2004). By creating conditions favorable to
25 reductive dechlorination these injections have, at this time, reduced the levels of hazardous constituents

1 in groundwater. Currently, the PLPs are completing compliance monitoring for the interim remedial
2 action as required by WAC 173-340-410.

3 16. The continuation of the interim action and completion of compliance monitoring for the
4 interim remedial action is set forth in Attachment 11 of this Agreed Order.

5 **V. ECOLOGY DETERMINATIONS**

6 1. The Boeing Company and AMB Property Corporation are persons within the meaning of
7 RCW 70.105D.020 (14).

8 2. The Boeing Company and AMB Property Corporation are the owners and operators of a
9 dangerous waste management Facility that has operated, and is operating, under final status subject to
10 Section 3005(e) of RCRA and regulations promulgated thereunder, including authorized state regulations
11 in Chapter 173-303 WAC.

12 3. Certain waste and constituents found at the Site are dangerous wastes and/or dangerous
13 constituents as defined in WAC 173-303-040, and shown in Section II of this Order.

14 4. These dangerous wastes and dangerous constituents are considered hazardous substances
15 within the meaning of RCW 70.105D.020 (7).

16 5. Based on the Findings of Fact and the administrative record, Ecology has determined that
17 releases and potential releases of hazardous substances at and/or from the Site that originated at the BA
18 facility present a threat to human health and the environment. Ecology has further determined that this
19 Agreed Order should be issued in order to achieve the objectives stated in Section III hereof.

20 6. First Amended Agreed Order No. 01HWTRNR-3345 fully supersedes Agreed Order No.
21 01HWTRNR-3345.

22 7. By a letter dated April 7, 1999, the Boeing Company voluntarily waived its rights to
23 notice and comment and accepted Ecology's determination that the Boeing Company is a "potentially
24 liable person" under RCW 70.105D.040

1 2. Pursuant to Agreed Order No. 01HWTRNR-3345 Section VI. 2, the Boeing Company
2 submitted to Ecology-NWRO reports and data generated with respect to the independent remedial
3 investigation and remediation activities at SWMUs and AOCs listed in Attachment 2, column III:
4 Independent Remediation Work Conducted and/or Additional Work Not Needed to Meet Standards at the
5 Site. These reports and data are listed in Attachment 6.

6 3. The PLPs shall provide for the continued implementation, including monitoring, of the
7 Area 1 Property interim action as set forth in Attachment 11.

8 4. If Ecology identifies any additional remedial investigation beyond those activities
9 conducted independently as being necessary to meet the objectives of this Agreed Order, Ecology will
10 notify the PLPs of its requirements for Additional Work as provided in Section VII.7.

11 5. Upon completion of the remedial investigation work described in the final Ecology-
12 approved RI work plan, the PLPs shall submit to Ecology-NWRO a draft RI report as provided in the
13 approved RI work plan schedule. Within 60 days of receipt of Ecology comments on the RI Report, the
14 PLPs shall submit a revised RI report incorporating Ecology's comments.

15 6. Within sixty (60) calendar days after receiving written Ecology approval of the final RI
16 report, the PLPs shall submit to Ecology-NWRO a draft FS work plan. The draft FS work plan shall be
17 written in accordance with WAC 173-340-350 and shall contain, at minimum, methods for evaluating the
18 technical, environmental health, human health, and financial costs associated with each cleanup action
19 alternative. The FS work plan shall contain a time schedule for completing the FS activities and, at a
20 minimum, the methods for evaluating the following:

21 (A) Current Conditions: the PLPs shall update Ecology on the current nature and extent of
22 dangerous constituents released into the environment at or from the SWMUs and AOCs
23 addressed in the RI, if different from the results of the RI report.

24 (B) Technical: the PLPs shall develop a set of cleanup action alternatives to address those
25 SWMUs and AOCs to be evaluated in the FS. The initial set of cleanup action alternatives shall

1 include options that meet the requirements of WAC 173-340-360 and the expectations of WAC
2 173-340-370. The FS work plan may incorporate prescreening of cleanup action alternatives in
3 order to streamline the FS process, and may propose a focused analysis to support the use of
4 presumptive remedies recognized in U.S. Environmental Protection Agency cleanup guidelines.
5 The PLPs shall, at a minimum, evaluate the following for each pre-screened cleanup action
6 alternative:

- 7 (i) the permanence and practicability of the option, based upon factors of overall
8 protectiveness of human health and the environment, long-term effectiveness,
9 manageability of short-term risks, permanent reduction of toxicity, mobility and volume
10 of dangerous constituents, cost, implementability, and community concerns as specified
11 in WAC 173-340-360(3)(f);
- 12 (ii) chemical and physical characteristics and estimated quantity of remediation
13 wastes generated;
- 14 (iii) compliance with all applicable Federal and State applicable, relevant, and
15 appropriate regulations (“ARARs”), including but not limited to standards in RCRA, the
16 Clean Water Act, 33 U.S.C. § 1251 *et seq.*, the Clean Air Act, 42 U.S.C. § 7401 *et seq.*,
17 the Model Toxics Control Act (“MICA”), RCW 70.105D, the Toxic Substances Control
18 Act, 15 U.S.C. § 2601 *et seq.* (“TSCA”), and the Safe Drinking Water Act, 42 U.S.C. §
19 1401 *et seq.* (“SDWA”);
- 20 (iv) limitations of Site use as a result of implementing each cleanup action
21 alternative, including but not limited to deed restrictions, access control mechanisms to
22 prevent unauthorized entry, surface covers, and prohibition on use of groundwater for
23 drinking, agricultural, or industrial purposes;

- 1 (v) if required by Ecology, examples of Sites using the same cleanup action
2 alternatives for similar dangerous constituents, and a discussion of the results achieved;
3 and
4 (vi) discussion of laboratory or bench-scale tests necessary to evaluate the
5 effectiveness of any cleanup action alternative.

6 (C) Environmental: Evaluate the future long and short term adverse effects on the
7 environment of each remedial option, and measures necessary to mitigate any adverse effects.
8 Evaluate both the positive and negative environmental consequences of implementing each
9 remedial option.

10 (D) Human Health and the Environment: Evaluate the future long and short term potential
11 exposure to human and environmental receptors of residual contamination during and after
12 remedy implementation, based on potential exposure routes and toxicity of dangerous
13 constituents.

14 (E) Cost Estimate: Evaluate the capital costs (mobilization, design, construction, permits,
15 licenses, and taxes) for each cleanup action alternative. Include, at a minimum, quantities, unit
16 costs, and total costs, annual operating costs (labor, expendable goods, utilities, and laboratory
17 analysis), and present worth analysis of each remedial option. Further, the cost of removing new
18 structures can not be a factor in favor of a less permanent clean up action under WAC 173-340-
19 360(3). "New structures" mean structures not in existence as of the effective date of this Agreed
20 Order.

21 (F) Restoration Timeframe: Submit an estimate of the time required to meet the remediation
22 goals for each cleanup action alternative in the draft FS work plan.

23 (G) Recommendation: Provide a recommendation for one or more cleanup action
24 alternatives based on the factors described above

1 7. Upon completion of the feasibility study work described in the final Ecology approved
2 FS work plan, the PLPs shall submit to Ecology-NWRO a draft FS report as provided in the approved FS
3 work plan schedule. Within 60 days of receipt of Ecology comments on the FS, the PLPs shall submit a
4 revised FS incorporating Ecology's comments.

5 8. After Ecology concurrence and approval of the final FS report, and if required by
6 Ecology, the PLPs shall submit a draft cleanup action plan ("DCAP") to Ecology - NWRO within forty
7 five (45) calendar days of receipt of formal notification of such requirement by letter. The notification
8 shall identify the required scope of the DCAP. The DCAP shall meet the requirements of WAC 173-
9 340-360, -400(1) through (9), -410 as well as WAC 173-303-64610 through 173-303-646920. The PLPs
10 acknowledge that monitoring wells or other remediation technology may need to be placed within the
11 new building structures or offices as part of a final cleanup action plan ("CAP").

12 9. The scope of any DCAP required by Ecology shall be subject to the Additional Work
13 provisions in Section VII. 7.

14 10. After the parties agree upon the terms of a DCAP, the PLPs shall enter into negotiations
15 with Ecology regarding a consent decree or agreed order to design, construct, operate, and monitor the
16 chosen remedial option(s) described in the DCAP. Existence of new structures, as defined in paragraph
17 VI. 6 (E), on the Site can not frustrate remedial actions Ecology determines to be necessary as part of
18 final clean up. After public review and comment on the DCAP document and agreed order or consent
19 decree, Ecology may modify the DCAP and agreed order or consent decree. Then Ecology shall approve
20 a final CAP.

21 11. Notwithstanding the foregoing, if the Remedial Investigation identifies releases of
22 dangerous constituents at the Site from both the PLPs and non-PLP third party sources which, due to
23 source(s), nature and/or location, render it impracticable for the PLPs to remediate the releases from the
24 PLPs sources without involving third parties (the "Commingled Releases"), Ecology may allow the PLPs
25 to conduct an additional Remedial Investigation and/or a Feasibility Study, and prepare a Cleanup Action

1 Plan addressing Commingled Releases pursuant to a separate agreed order or consent decree, as
2 appropriate. In such event, the PLPs and Ecology may proceed as follows under this Agreed Order:

3 (A) Prepare a DCAP and issue an Interim CAP under this Agreed Order addressing non-
4 Commingled Releases and, as appropriate, any sources of Commingled Releases at the Site,
5 pending issuance of a CAP addressing Commingled Releases under separate order or decree;

6 (B) Proceed with negotiation of a consent decree or agreed order to implement the Interim
7 CAP; and

8 (C) Issue a final CAP under this Agreed Order incorporating the CAP for the Commingled
9 Releases once it is finalized under separate order or decree.

10 In lieu of or in addition to the foregoing, the PLPs and Ecology may agree to take such other
11 actions as may be appropriate to provide for remediation of non-Commingled Releases and Commingled
12 Releases under separate orders or decrees.

13 12. The PLPs shall follow the reporting guidelines in WAC 173-340-840 for all parts of this
14 order unless otherwise agreed to by both Ecology and the PLPs. All data generated pursuant to this order
15 shall be submitted to Ecology-NWRO, including all outlier and duplicate data. In addition, all
16 groundwater, sediment, surface water, and soil data generated shall be submitted to Ecology-NWRO as
17 copies of the original reported laboratory data sheets, in tabulated data format, and in electronic format
18 using the most recent compatible software to which Ecology and the PLPs agree, for the constituent
19 concentrations detected above method detection limits in the above referenced environmental media.
20 Pursuant to WAC 173-340-840(5), the PLPs shall submit all soil and groundwater sampling data to
21 Ecology according to the requirements of Ecology Policy 840 Data Submittal Requirements. Laboratory
22 detection limits and practical quantitation limits shall be reported for each chemical constituent
23 concentration detected.

24 13. The PLPs shall submit quarterly status reports to Ecology-NWRO, starting from the
25 effective date of this Agreed Order until all of the requirements of this Agreed Order are completed to

1 Ecology's satisfaction. The submittal shall be due on the 15th day of the month following the three-
2 month activity period. The PLPs shall describe the following in each status report:

- 3 (A) all work conducted pursuant to this Agreed Order during the last quarter, including interim
4 action work;
- 5 (B) occurrence of any problems, how problems were rectified, deviations from the work plans
6 and an explanation for all deviations;
- 7 (C) projected work to occur in the upcoming quarter;
- 8 (D) summaries of significant findings, changes in personnel, summaries of contacts with all
9 federal, state, local community, and public interest groups; and
- 10 (E) all laboratory analyses (as copies of the original laboratory reporting data sheets, in
11 tabulated data format) for which quality assurance procedures were completed during the
12 quarter.

13 If both Ecology and the PLPs agree that such a change is necessary, the frequency of progress report
14 submittals shall be revised. This would be an example of a minor modification that may be agreed to by
15 Ecology and the PLPs without public comment.

16 14. The PLPs shall notify Ecology's Project Coordinator in writing of any newly-identified
17 SWMU(s) or AOCs, newly-discovered releases from known SWMU(s) or AOCs, and newly-discovered
18 significant releases of dangerous waste or dangerous constituents, as defined in WAC 173-303-
19 806(4)(a)(xxiv)(A), at or from the Site no later than fifteen (15) calendar days after discovery.
20 Additional activities to address new discoveries are subject to the Additional Work provisions of Section
21 VII.7.

22
23
24

1 Please indicate on the check that it is for cost recovery at the BCA – Auburn Plant so it is properly
2 credited. Enclosing the bottom portion of our invoice will accomplish this.

3 3. Financial Assurance: The PLPs shall establish and maintain financial assurance for
4 corrective action in the amount necessary to implement the Cleanup Action Plan (CAP) and the
5 Compliance Monitoring Plan (CMP), as provided in WAC 173-340-380 and WAC 173-340-410,
6 respectively, and required by WAC 173-303-64620. Except as modified below and in the absence of
7 detailed regulations, Federal Register/Vol. 51, No. 206/Friday, October 24, 1986/Proposed rules and
8 Federal Register/Vol. 61, No. 85/Wednesday, May1, 1996/Proposed Rules, shall be used as guidance for
9 providing financial assurance for corrective action. In a manner consistent with this guidance, the
10 Permittees shall make satisfactory demonstration to the Department that all financial assurance
11 documents include appropriate provision for the Department to gain access to the funds to implement
12 corrective action in the event the Department determines that corrective action is not being conducted in
13 accordance with the provisions of this permit. Upon evidence of the failure of the Permittees to
14 demonstrate continuous financial assurance for corrective action, the Department may direct the payment
15 or use of funds to assure that the approved corrective action plan is carried out. Acceptable mechanisms
16 include letters of credit, surety bonds guaranteeing performance, liability insurance, trust funds, or
17 equivalent mechanisms as approved by the Department. The PLPs shall provide Ecology's project
18 manager with documentation of this financial assurance within sixty (60) days of Ecology's first issuance
19 of the final CAP/CMP. The PLPs shall adjust the financial assurance coverage and provide Ecology's
20 project manager with documentation of the updated financial assurance for:

21 (A) Inflation, annually, within 30 days of the anniversary date of the first issuance of the final
22 CAP/CMP; or if applicable, the modified anniversary date, that has been set in (2), below,
23 and

24 (B) Changes in cost estimates, within 30 days of Ecology's issuance of the modified CAP/CMP,
25 which modifies the anniversary date.

1 Each PLP shall notify Ecology's project manager by certified mail of the commencement of a voluntary
2 or involuntary bankruptcy proceeding under Title 11, United States Code, naming that PLP, within ten
3 (10) days after commencement of the proceeding. A guarantor of a corporate guarantee must make such
4 a notification if he is named as debtor as required under the terms of the corporate guarantee. A PLP who
5 has established financial assurance for corrective action with an acceptable mechanism, mentioned
6 above, will be deemed to be without the required financial assurance or liability coverage:

- 7 (A) in the event of bankruptcy of the trustee or issuing institution; or
- 8 (B) the authority of the trustee institution to act as trustee has been suspended or revoked; or
- 9 (C) the authority of the institution issuing the surety bond, letter of credit or insurance policy
10 has been suspended or revoked.

11 The PLP in bankruptcy must establish other financial assurance within sixty (60) days of bankruptcy, or
12 suspension/revocation of authority.

13 4. Designated Project Coordinators:

14 The Project Coordinator for Ecology is:

15 Name: Ms. Robin Harrover
16 Address: Department of Ecology - Northwest Regional Office
17 3190 160th Avenue S.E.
18 Bellevue, WA 98008-5452
19 Telephone: (425)-649-7232
20 FAX: (425)-649-7098
21 E-mail: rhar461@ecy.wa.gov

22 The Project Coordinator for the Site is:

23 Name: Mr. James Bet
24 Address: Boeing Environmental Affairs
25 P.O. Box 3707, MC 1W-12
26 Seattle, WA 98124-2207
27 Telephone: (206) 679-0433
28 FAX: (206) 766-5343

29 The Project Coordinator(s) shall be responsible for overseeing the implementation of this Order. To the
30 maximum extent possible, communications between Ecology and the PLPs, and all documents, including
31 reports, approvals, and other correspondence concerning the activities performed pursuant to the terms
32 and conditions of this Order shall be directed through the Project Coordinator(s). Notification

1 requirements in this Order may be satisfied by electronic mail with agreement between the Project
2 Coordinators. Should Ecology or the PLPs change Project Coordinator(s), written notification shall be
3 provided to Ecology or the PLPs at least ten (10) calendar days prior to the change.

4 5. Ecology Approvals and Short-form Dispute Resolution Process: The PLPs shall submit
5 draft Submittals pursuant to the schedules required by this Agreed Order or as otherwise approved
6 hereunder. With the exception of periodic status reports, Ecology will review all Submittals required by
7 this Order, and will provide written approval, or disapproval with comments and/or modifications to be
8 made by the PLPs. A Submittal shall become final when it is approved by Ecology in writing. Once
9 approved in writing by Ecology, all submittals to Ecology are incorporated by reference and become
10 enforceable parts of this Agreed Order, as if fully set forth herein. Following approval of any Submittal,
11 the PLPs shall commence all Work required thereby within fifteen (15) days after receipt of Ecology
12 approval, unless a longer time is specified by Ecology.

13 During the performance of work under an approved submittal, the Project Coordinators may
14 verbally agree to minor field modifications to the submittal. In such case, the PLPs shall submit a
15 description of the modification to Ecology's Project Coordinator in writing within seven (7) days of the
16 verbal agreement, and Ecology's Project Coordinator shall provide written confirmation of the agreed
17 modification.

18 When Ecology provides comments or proposed modifications to the PLPs on any Submittal, and
19 if the PLPs agree with Ecology's comments and/or proposed modifications, the PLPs shall submit a
20 revised Submittal incorporating all of Ecology's comments and/or proposed modifications within thirty
21 (30) days of the PLPs' receipt of Ecology's comments and/or proposed modifications, unless a longer
22 time is approved by Ecology. If following submission of a draft Submittal, the PLPs disagree or have
23 questions concerning Ecology's comments and/or required modifications, the PLPs, within seven (7) days
24 after receipt of Ecology's comments or required modifications, may request a meeting or telephone
25 conference, with the Ecology Project Coordinator. Such request shall be in writing and will establish a
26 twenty (20) day informal resolution period, unless a longer period is approved by Ecology, beginning

1 with the date of the written request. The written request shall include a statement of the issues the PLPs
2 wish to address.

3 The informal resolution period shall extend the due date for resubmittal. If agreement is reached
4 within the informal resolution period, the PLPs shall incorporate into a revised Submittal the agreed-upon
5 comments and/or modifications within thirty (30) days after reaching agreement, unless a longer time is
6 specified by Ecology. If agreement is not reached within the informal resolution period, Ecology shall
7 send a written letter of disapproval to the PLPs. The PLPs shall then either submit a revised, final draft
8 Submittal which incorporates all Ecology comments or required modifications within 30 days of receipt
9 of such written letter of disapproval, unless a longer time is approved by Ecology, or the PLPs may
10 invoke the dispute resolution procedures in Section VII.11 (B) of this Agreed Order for all comments or
11 required modifications the PLPs wish to challenge.

12 6. Performance: The PLPs shall notify Ecology as to the company(s) or firm name(s) of
13 any consulting engineer(s), geologist(s), hydrogeologist(s), or similar expert(s), and of any contractors
14 and/or subcontractors to be used in carrying out the terms of this Order, at least seven (7) calendar days
15 in advance of their involvement at the Site, if possible. The PLPs shall provide a copy of this Order to all
16 consultants and contractors retained to perform work required by this Order and shall ensure that all work
17 undertaken by such consultants, contractors and subcontractors will be in compliance with this Order.
18 Upon request, the PLPs shall provide the names of such engineers, hydrogeologists, toxicologists, or
19 similar experts, and of any contractors or subcontractors used in carrying out the terms of this Order.

20 WAC 173-340-400(6)(b)(i) requires that "construction" performed on the Site must be under the
21 supervision of a professional engineer registered in Washington. In addition, all work performed by the
22 PLPs pursuant to this Order shall be under the direction and supervision, as necessary, of a professional
23 engineer or hydrogeologist, or similar expert, with appropriate training, experience and expertise in
24 hazardous waste Site investigation and cleanup.

25 Unless manufacturing schedule needs interfere, the PLPs shall provide seven (7) working days
26 notice to Ecology's Project Coordinator prior to commencing any major work activities pursuant to this
27 Agreed Order. Major work activities that require a seven (7) day notice will be described in the Ecology

1 approved RI/FS and interim action work plans. If manufacturing schedules require that major work
2 activities be taken pursuant to this Agreed Order in less than seven days, the PLPs will give twenty-four
3 (24) hours notice to Ecology's Project Coordinator prior to commencing this major work. Except as
4 allowed by WAC 173-340-515(2) or where necessary to abate an emergency situation, the PLPs shall not
5 perform any remedial actions at the Site, outside that required by this Order, unless Ecology approves the
6 independent remedial action in writing prior to the additional remedial action.

7 7. Additional Work: Ecology may determine or the PLPs may propose that additional work
8 is or may be necessary to implement this Agreed Order (henceforward "Additional Work"). If the PLPs
9 propose the Additional Work, Ecology will respond to the proposal in writing within an appropriate time
10 period, not to exceed 30 days. If the Additional Work is required by Ecology, then Ecology will specify
11 in writing the basis for its determination that the Additional Work is necessary. Within fifteen (15) days
12 after the receipt of such written determination, the PLPs shall notify Ecology-NWRO of its willingness to
13 perform the Additional Work or may request a meeting with the Ecology Project Coordinator to discuss
14 the Additional Work as specified in the informal dispute resolution procedures set forth in Section VII.5.
15 If, after such meeting, the PLPs disagree with Ecology's request for Additional Work, the PLPs may
16 invoke dispute resolution procedures set forth in Section VII.11B below. If dispute resolution is not
17 invoked on Ecology's written request for Additional Work, the PLPs shall submit a work plan for
18 Ecology review incorporating the Additional Work within thirty (30) days (or more, if approved by
19 Ecology) after either submitting notice of its willingness to perform or the date of the meeting with
20 Ecology, as applicable. Ecology's review and approval of such work plan shall be subject to the
21 procedures set forth in Section VII.5. Upon written approval of the work plan, the PLPs shall implement
22 the work plan in accordance with the schedule contained therein.

23 8. Access: Except as provided below regarding safety and security precautions, Ecology or
24 any Ecology authorized representative shall have the authority to enter and freely move about the Site
25 that the PLPs own, control, or have access rights to (to the extent that the PLPs have such rights) at all
26 reasonable times for the purposes of, among other things, inspecting records, operation logs, and
27 contracts related to the work being performed pursuant to this Order; reviewing the progress in carrying

1 out the terms of this Order; conducting such tests or collecting samples as Ecology or the Project
2 Coordinator may deem necessary; using a camera; sound recording; or using other documentary type
3 equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by
4 the PLPs. By signing this Agreed Order, the PLPs agree that this Order constitutes reasonable notice of
5 access, and the PLPs agree to allow Ecology and all Ecology agents access to the Site that the PLPs
6 either own, control, or have access rights to (to the extent that the PLPs have such rights) at all
7 reasonable times, with reasonable notice from Ecology, for purposes of overseeing work performed under
8 this Order. Ecology shall allow split or replicate samples to be taken by PLPs during an inspection unless
9 doing so interferes with Ecology's sampling. The PLPs shall allow split or replicate samples to be taken
10 by Ecology and shall provide seven (7) days notice before any sampling activity.

11 If photographs are to be taken in a U.S. Department of Defense (DOD) area that contains items
12 important to national security, then the PLPs shall provide a competent photographer to take photographs
13 under the instruction of Ecology staff on Site subject to limitations required for protection of DOD
14 secrets, including any required DOD security clearance. All such photographs will be developed and
15 previewed by the PLPs, to enable the PLPs to assure compliance with security requirements for
16 protection of DOD secrets. The PLPs shall provide two copies to Ecology-NWRO of all photographs
17 taken within seven (7) days excepting any photographs for which additional precautions must be
18 followed to protect DOD secrets. The PLPs shall provide Ecology with a log of the photographs taken,
19 and shall identify photographs withheld for protection of DOD secrets.

20 The PLPs' Project Coordinator or other representative may accompany Ecology's
21 representative(s) at all times for purposes of plant security, and compliance with plant and work area
22 health and safety precautions. If Ecology or its representatives seek to perform their duties at the Site in
23 a manner which is not in compliance with any written plant or work area health and safety requirement or
24 rule, or any applicable federal or state law or promulgated regulation, the PLPs' Project Coordinator or
25 other representative may verbally notify such Ecology representative(s) of the non-compliance. Ecology
26 shall ensure that its employees, contractors, and other representatives comply with all applicable health

1 and safety laws, and with all plant and work area health and safety plans of which Ecology or its
2 representatives have notice.

3 If Ecology desires to obtain access to any manufacturing or process areas at which PLPs conduct
4 activities utilizing information which is proprietary, the PLPs may request in writing, pursuant to RCW
5 43.21A.160, that documentation of such areas be designated as confidential business information to
6 protect against Ecology disclosure of information collected. If Ecology desires to obtain access to any
7 manufacturing or process areas at which the PLPs conduct activities utilizing secrets associated with U.S.
8 Department of Defense (DOD) projects, the PLPs may request a reasonable delay to providing such
9 access so that PLPs' and Ecology's representatives may further confer regarding the purpose of the
10 inspection in the area and appropriate precautions for protecting DOD secrets. Ecology shall be
11 responsible for obtaining any DOD required security clearance prior to entering secured areas.

12 If access to areas not owned by the PLPs is necessary for performance of work under this Order,
13 the PLPs shall use reasonable best efforts to obtain such access and shall include Ecology representatives
14 among those persons authorized to enter and inspect property under any access agreements obtained for
15 performance of work under the Order. The PLPs shall promptly notify Ecology in writing if it is unable
16 to obtain necessary access agreement(s) from owners of properties not owned by the PLPs and shall
17 provide a written description of how the PLPs have used reasonable best efforts to obtain access.

18 9. Public Participation: The PLPs shall update the Public Participation Plan for the Site,
19 Attachment 4, as needed. Ecology will review and approve updates to the plan and will maintain the
20 responsibility for public participation at the Site. The PLPs shall help coordinate and implement public
21 participation for the Site as specified in the Ecology-approved Public Participation Plan.

22 10. Retention of Records: The PLPs shall preserve in a readily retrievable fashion, during
23 the pendency of this Order and for ten (10) years from the date of issuance by Ecology of written
24 notification that all requirements of this Order have been satisfactorily completed, all submittals to
25 Ecology, QA/QC memoranda and audits, final work plans, final reports, field notes and laboratory
26 analytical and testing reports in its possession relevant to this Order. Should any portion of the work
27 performed thereunder be undertaken through contractors or agents, the PLPs agree to include in their

1 contract(s) with all such contractors or agents a record retention requirement meeting the terms of this
2 paragraph.

3 11. Dispute Resolution: In the event a dispute arises as to a decision by Ecology's Project
4 Coordinator, the parties shall utilize the dispute resolution procedure set forth below.

5 (A) The PLPs shall utilize the informal dispute resolution processes provided in Section
6 VII.5 prior to proceeding with the formal dispute resolution processes described in
7 Section VII.11.(B).

8 (B) The PLPs may then request Ecology management review of the Ecology Project
9 Coordinator's letter of disapproval issued at the completion of the informal dispute
10 resolution process set forth in Section VII.5. This request shall be submitted in writing
11 to the Program Manager within seven (7) days of receipt of the Ecology Project
12 Coordinator's letter of disapproval. In such case, the PLPs shall provide the Program
13 Manager with a written statement of their position. The PLPs may also request an
14 extension of the due date for any Submittal, or other activity required hereunder, affected
15 by the dispute. Ecology's Program Manager shall conduct a review of the dispute, and
16 shall issue a written decision regarding the dispute within thirty (30) days of the PLPs'
17 request for review. The Program Manager's decision shall be Ecology's final decision on
18 the disputed matter. If a Submittal is affected by the dispute, then within thirty (30) days
19 after receipt of the Program Manager's final decision, unless a longer time is approved
20 by Ecology, the PLPs shall submit a revised Submittal which conforms to the Program
21 Manager's final decision.

22 The parties agree to utilize the dispute resolution process only in good faith and agree to
23 expedite, to the extent possible, the dispute resolution process whenever it is used. Implementation of
24 the formal dispute resolution procedures in Section VII.11 (B) shall not provide a basis for delay of any
25 activities required in the Order, unless Ecology agrees in writing to a schedule extension.

26 12. Reservation of Rights/No Settlement: This Agreed Order is not a settlement under
27 Chapter 70.105D RCW. Ecology's signature on this Order in no way constitutes a covenant not to sue or

1 a compromise of any Ecology rights or authority. Ecology will not, however, bring an action against the
2 PLPs to recover remedial action costs paid to and received by Ecology under this Agreed Order. In
3 addition, Ecology will not take additional enforcement actions against the PLPs to require those remedial
4 actions required by this Agreed Order, provided the PLPs comply with this Agreed Order.

5 Ecology reserves the right to require additional remedial actions at the Site should it deem such
6 actions necessary.

7 Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources
8 resulting from the releases or threatened releases of dangerous constituents from the Site.

9 In the event Ecology determines that conditions at the Site are creating or have the potential to
10 create a threat to the health or welfare of the people on the Site or in the surrounding area or to the
11 environment, Ecology may order the PLPs to stop further implementation of this Order for such period of
12 time or take other action as needed to abate the threat.

13 13. Transference of Property: The PLPs shall notify Ecology-NWRO of the intent to
14 transfer ownership by submitting the form in Attachment 12 to this Order with any changes proposed for
15 the BCA-Auburn Plant noted on the form. Prior to any voluntary conveyance or relinquishment of title,
16 easement, leasehold, or other interest by the PLPs in any portion of the Site, the PLPs shall provide for
17 continued implementation of all applicable requirements of this Order and implementation of any
18 remedial actions found to be necessary as a result of this Order. Nothing in the preceding sentence shall
19 alter or restrict the PLPs obligations under this Order for implementation of the actions described therein.

20 Prior to any involuntary conveyance or relinquishment of an interest in any portion of the Site,
21 the PLPs shall use reasonable best efforts to provide for continued implementation of this Order and of
22 necessary remedial actions, and shall notify Ecology if such efforts are unsuccessful. If Ecology utilizes
23 its authority to provide for continued implementation of the Order or the remedy on the portion of the
24 Site involuntarily conveyed or relinquished (e.g., if Ecology obtains access for the PLPs) the PLPs shall
25 be responsible for such continued implementation as directed by Ecology in writing.

26 Prior to transfer of any legal or equitable interest by the PLPs in the Site or any portions thereof,
27 the PLPs shall serve a copy of this Order upon any prospective purchaser, lessee, transferee, assignee, or

1 other successor in such interest. At least ninety (90) days prior to finalization of any transfer, the PLPs
2 shall notify Ecology of the contemplated transfer and of the available information, for the portion of the
3 Site to be transferred, concerning SWMUs and AOCs, the likelihood of releases of hazardous
4 constituents at or from that portion of the Site, the likelihood of releases of hazardous constituents from
5 other portions of the Site onto the portion to be transferred, and the remedial actions completed or
6 underway. Ecology shall use best reasonable efforts to review the information submitted by the PLPs on
7 the portion of the Site to be transferred, and issue a written determination within 30 days after receiving
8 same that either (a) Ecology will not require additional remedial investigation work or remedial action at
9 this time on the property to be transferred, or (b) the property to be transferred continues to require
10 additional remedial actions due to known or suspected releases of hazardous constituents on that portion
11 of the Site.

12 14. Compliance with Other Applicable Laws:

13 (A) All actions carried out by the PLPs pursuant to this Order shall be done in
14 accordance with all applicable federal, state, and local requirements, including requirements to
15 obtain necessary permits.

16 (B) The PLPs have a continuing obligation to determine whether permits or
17 approvals exempted under RCW 70.105D.090(1) would otherwise be required for actions under
18 this Order. In the event the PLPs determine that permits or approvals applicable to the action
19 under this Order are exempted under RCW 70.105D.090(1), they shall promptly notify Ecology
20 of this determination. Ecology shall determine whether Ecology or the PLPs shall be responsible
21 to contact the appropriate state and/or local agencies regarding such permits or approvals. If
22 Ecology so requires, the PLPs shall promptly consult with the appropriate state and/or local
23 agencies, and provide Ecology with written documentation from those agencies regarding the
24 substantive requirements those agencies believe are applicable to the remedial action. Ecology
25 shall make the final determination on the additional substantive requirements that must be met by
26 the PLPs and on how the PLPs must meet those requirements. Ecology shall inform the PLPs in
27 writing of these requirements. Once established by Ecology, these substantive requirements shall

1 be made enforceable requirements of this Order. The PLPs shall not begin or continue the action
2 subject to the substantive requirements until Ecology makes its final determination that the
3 appropriate substantive requirements of those agencies have been identified. Ecology shall
4 ensure that notice and opportunity for comment is provided to the public and appropriate
5 agencies prior to establishing the substantive requirements under this section.

6 (C) Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the
7 exemption from the procedural requirements pursuant to RCW 70.105D.090(1) would result in
8 the loss of approval from a federal agency which is necessary for the State to administer any
9 federal law, the exemption shall not apply and the PLPs shall comply with both the procedural
10 and substantive requirements of the laws referenced in RCW 70.105D.090(1), including any
11 requirements to obtain permits.

12 15. Extension of Schedule: The PLPs may request an extension of any deadline or schedule
13 set forth in this Order or an approved Submittal. Any such request shall be submitted in writing to
14 Ecology's Project Coordinator at least twenty (20) days in advance of the pending deadline, if possible
15 The request shall specify the reason(s) the extension is needed.

16 An extension shall only be granted for such period of time as Ecology determines is reasonable
17 under the circumstances. A requested extension shall not be effective until approved by Ecology.
18 Ecology shall act upon any written request for extension in a timely fashion. It shall not be necessary to
19 formally amend this Order when a schedule extension is granted.

20 The burden shall be on the PLPs to demonstrate that the extension has been submitted in a timely
21 fashion and that good cause exists for granting the extension. Good cause includes, but is not limited to,
22 the following:

23 (A) Unforeseeable circumstances beyond the reasonable control of the PLPs or any
24 person or entity controlled by the PLPs that delay or prevent the timely performance of any
25 obligation under this Order despite the PLPs' best efforts to fulfill the obligation; or

26 (B) Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or
27 other unavoidable event or casualty.

1 Neither increased costs of performance nor changed economic circumstances shall be considered
2 circumstances beyond the reasonable control of the PLPs.

3 Ecology shall give the PLPs written notification in a timely fashion of any extensions granted
4 pursuant to this section. The period of delay approved by an extension under this section shall be an
5 "excused delay" which is not subject to Stipulated Penalties under Section VIII.
6

7 VIII. STIPULATED PENALTIES

8 Except for excused delays described in Subsections 5, 11 & 15 of Section VII, for each day the
9 PLPs fail to comply with any time schedules contained in this Agreed Order, or any other time schedules
10 approved or modified in writing by Ecology, the PLPs stipulate and agree that Ecology may, at its
11 discretion, assess a civil penalty. The penalties to be assessed are as follows:

12 1. For failure to commence or complete field work by the time required by this Order; and
13 for failure to submit any work plans or reports by the time required by this Order: \$500.00 per day for
14 each of the first seven (7) days of delay; \$1,000.00 per day for the eighth (8th) through fourteenth (14th)
15 days of delay; \$5,000.00 per day for the fifteenth (15th) through thirtieth (30th) days of delay; and
16 \$10,000 for the thirty-first (31st) through ninetieth (90th) days of delay.

17 2. For failure to submit other required written Submittals not described above by the time
18 required pursuant to this Order: \$250.00 per day for each of the first seven (7) days of delay; \$500.00
19 per day for the eighth (8th) through fourteenth (14th) days of delay; \$2,500.00 per day for the fifteenth
20 (15th) through thirtieth (30th) days of delay; and \$5,000.00 for the thirty-first (31st) through ninetieth
21 (90th) days of delay. Ecology retains its entire rights to issue penalties or orders for damages or for any
22 other actions that are not covered by this section. Issuance of penalties under this section shall preclude
23 Ecology from issuing any other penalties for that violation.

24 Should a penalty be assessed under this section, the penalty shall begin to accrue from the date
25 on which the work was to have been performed, or the submittal was to have been made, and shall cease

1 to accrue on the date the PLPs perform the required work or deliver the required submittal to Ecology.
2 The assessment of penalties shall be subject to the Dispute Resolution procedures specified in Section
3 VII.11, except that the amount of a stipulated penalty is not subject to challenge. Penalties shall accrue
4 but not become payable until after dispute resolution procedures are completed. All penalties will be
5 payable within forty-five (45) days of assessment or the completion of Dispute resolution procedures if
6 applicable, to the Department of Ecology, Cashiering Section, PO Box 5128, Lacey, WA 98503-0210.

7 3. The PLPs shall not be liable for payment of penalties if the PLPs have submitted to
8 Ecology a timely request for an extension of schedule, and if Ecology has received the written request
9 and has not denied the request in writing.

10 IX. SATISFACTION OF THIS ORDER

11 The provisions of this Order shall be deemed satisfied upon the PLPs' receipt of written
12 notification from Ecology that the PLPs have completed the corrective actions required by this Order, as
13 amended by any modifications, and that the PLPs have complied with all other provisions of this Agreed
14 Order.

15 X. AMENDMENTS

16 Ecology and the PLPs may modify this Agreed Order by mutual written agreement. Substantial
17 modification may require additional public notice and opportunity to comment. Ecology will determine
18 if the Agreed Order modifications are substantial, thus requiring additional public notice and opportunity
19 to comment.

20 XI. ENFORCEMENT

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

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

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

5 (C) In the event the PLPs refuse, without sufficient cause, to comply with any term
6 of this Order, pursuant to RCW 70.105D.050, the PLPs will be liable for:

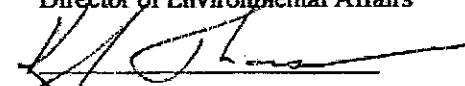
7 (i) up to three times the amount of any costs incurred by the state of
8 Washington as a result of its refusal to comply; and

9 (ii) civil penalties of up to \$25,000 per day for each day it refuses to comply.

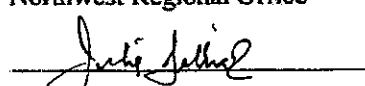
10 (D) This Order is not appealable to the Washington Pollution Control Hearings
11 Board. This Order may be reviewed only as provided under RCW 70.105D.060.

12 Effective date of this Order: _____

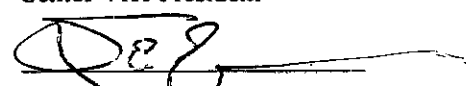
13
14 THE BOEING COMPANY
15 by, through and for its COMPANY SAFETY, HEALTH,
16 and ENVIRONMENTAL AFFAIRS
17 By: Mr. Kirk Thomson
18 Director of Environmental Affairs

19 
20 Date 3-30-06

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
By: Julie Sellick, Section Manager
Hazardous Waste and Toxics Reduction
Northwest Regional Office


Date 4-7-06

21
22 THE AMB PROPERTY CORPORATION
23 By: Steven Campbell
24 Senior Vice President

25 
26
27 Date 3-31-06

28 _____
29

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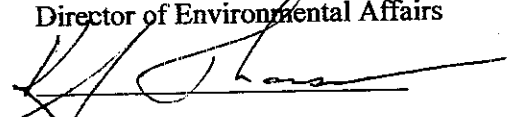
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