

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

In the Matter of Remedial Action by:

AGREED ORDER

Port of Port Angeles
338 W. First Street
Port Angeles, WA 98362

No. DE 9781

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133 Peachtree Street NE
Atlanta, GA 30303

Nippon Paper Industries USA Co., Ltd.
P. O. Box 271
Port Angeles, WA 98362

City of Port Angeles
P.O. Box 1150
Port Angeles, WA 98362

Merrill & Ring
813 E. 8th Street
Port Angeles, WA 98362

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I. INTRODUCTION

The mutual objective of the State of Washington, Department of Ecology (Ecology) and potentially liable persons (PLPs) Port of Port Angeles, Georgia-Pacific LLC, Nippon Paper Industries USA Co., Ltd., City of Port Angeles, and Merrill & Ring 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. Ecology and the PLPs have the further mutual objective of completing remedial action called for under this Order by January 2015. This Order requires the PLPs to complete a Remedial Investigation/Feasibility Study (RI/FS) for the Western Port Angeles Harbor Site in accordance with the provisions specified in the Remedial Investigation/Feasibility Study Work Plan, attached to and incorporated in this Order as Exhibit B (Work Plan). Ecology believes the actions required by this Order are in the public interest.

II. JURISDICTION

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

III. PARTIES BOUND

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such party to comply with this Order. The PLPs agree to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter the PLPs' responsibility under this Order. The PLPs shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

IV. DEFINITIONS

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

A. Site: The Site is referred to as Western Port Angeles Harbor Site (Site), is generally located in the western part of Port Angeles Harbor, is defined by the extent of contamination caused by the release of hazardous substances at the Site, and will be further identified and delineated as described in the Work Plan. Based upon factors currently known to Ecology, the Site is more particularly described in the Site Diagram (Exhibit A). The Site constitutes a Facility under RCW 70.105D.020(5).

B. Parties: Refers to the State of Washington Department of Ecology (Ecology), the Port of Port Angeles (Port), Georgia-Pacific LLC (G-P), Nippon Paper Industries USA Co., Ltd. (NPIUSA), City of Port Angeles (City), and Merrill & Ring (M&R).

C. Potentially Liable Person (PLP or collectively, PLPs): Refers to the Port, G-P, NPIUSA, the City, and M&R.

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

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

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

V. FINDINGS OF FACT

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

A. Beginning in 2008, Ecology conducted an investigation at Port Angeles Harbor. This investigation included sampling of marine sediment. The investigation reports, titled *Port Angeles Harbor Sediment Characterization Study, Sediment Investigation Report*, December 2012; and *Port Angeles Harbor Supplemental Data Evaluation to the Sediment Investigation Report, Summary Report*, December 2012, confirm that releases of hazardous substances have occurred in western Port Angeles Harbor, including the lagoon area.

B. The Port is a municipal corporation under the laws of the state of Washington and owns or formerly owned properties where Fibreboard Corporation and M&R operated facilities and released hazardous substances that have become sources of contamination of western Port Angeles Harbor. In addition, the Port owns and operates the Boat Haven marina where hazardous substances have been identified. The Port also leases or has leased, and manages or has managed under a Port Management Agreement, state-owned aquatic lands at the Site to facilitate Port operations. The Port's lease agreements, and the terms of the Port Management Agreement are documented in DNR Port Management Agreement No. 22-080013 and Leases No. HA-1878, HA-2047, and amendments, thereto.

C. Through a series of merger or acquisition transactions, G-P is successor-in-interest to the owner or operator of the paper mill facility located at 1805 Marine Drive, at the time of the release or disposal of hazardous substances, as defined under MTCA. In 2000, G-P acquired the Fort James Corporation. The Fort James Corporation was a successor corporation to Crown Zellerbach and James River Corporation of Nevada. Crown Zellerbach or James River Corporation owned or operated the facility from 1928 through 1988. Crown Zellerbach and James River Corporation also leased aquatic lands to facilitate operations as documented in DNR Leases HA-1406, H.A 1692, H.A. 2057, and H.A. 2434.

Documentation reviewed by Ecology shows that a zinc hydrosulfite process was used in G-P's predecessor's paper mill facility prior to 1977. The mechanical pulping process required the use of biocides for slime control. Fiber-bearing waste and other process effluent from G-P's predecessor's paper mill facilities were discharged and disposed through multiple outfalls directly into the harbor and the lagoon until the late 1960s when the process effluent outfall was moved outside of Ediz Hook. Other outfalls continued to discharge stormwater to the harbor and the lagoon through the 1980s. These operations resulted in the release or disposal of hazardous substances at the Site.

D. NPIUSA is the owner and operator of a paper mill facility located at 1805 Marine Drive at the base of Ediz Hook in Port Angeles. NPIUSA's real property at this location includes the lagoon which is connected by a channel to western Port Angeles Harbor. NPIUSA also leases aquatic lands within western Port Angeles Harbor from the Washington State Department of Natural Resources for its operations. DNR's lease agreements are documented in DNR Leases No. 51-032481, 20-012614, 20-012019, 22-002615, 22-002697, and 22-077766.

E. Merrill & Ring was the owner and operator of a lumber mill facility located at 1608 Marine Drive near the base of Ediz Hook in Port Angeles from 1958 through 1988 on property leased from the Port of Port Angeles. Merrill & Ring also owned and conducted operations on the adjoining property formerly owned by Fibreboard from 1972 through 1988. In addition, Merrill & Ring leased aquatic lands for its operations from the Washington State Department of Natural Resource in Port Angeles Harbor adjacent to the former Merrill & Ring mill from 1980 to 1990 and adjacent to the former Fibreboard property from 1974 to 1988. Lease numbers include H.A. 2301.

Documentation reviewed by Ecology shows that M&R released stormwater from its operations at the former Merrill & Ring facility directly to the harbor through four outfalls. In addition, release of wood preservatives, including pentachlorophenol (PCP) has been documented in the area of the former planer mill and dip tank at the former facility. These operations resulted in the release or disposal of hazardous substances at the Site.

F. The City at times has operated eleven combined sewer overflow (CSO) discharge points that discharged untreated wastewater and stormwater directly into Port Angeles Harbor during periods of heavy rainfall. Through these CSO discharge points, the City conveyed hazardous substances into Port Angeles Harbor. Four of these continue to operate.

Sampling conducted during stormwater permit applications in 1996, 2003, and 2010 detected metals and organic contaminants above Sediment Management Standards in some sediment results near some of the CSO discharge points.

G. Fibreboard Corporation was the owner or operator of a paperboard plant located at or near 1313 Marine Drive from 1927 through 1970. In addition, between 1937 and 1972, Fibreboard leased and operated in harbor areas both contiguous with the Fibreboard plant site and along Ediz Hook from the Washington State Department of Natural Resources. Owens

Corning acquired Fibreboard Corporation in 1997. Ecology is investigating whether Owens Corning is the successor-in-interest to the Fibreboard Corporation.

Documentation reviewed by Ecology shows that the Fibreboard plant used both a ground wood and sulfite pulping process and discharged wastes directly into the Harbor waters via five outfalls. These operations resulted in the release or disposal of hazardous substances at the Site.

H. Historically, a number of mills in the area, including but not limited to Crown Zellerbach and Fibreboard, operated hog fuel boilers that burned salt-laden wood as a portion of the fuel source. Other mills, including earlier mills that predated the Merrill & Ring mill but were located on the same property, operated hog fuel boilers or wood debris burners, which also burned salt-laden wood as a portion of the fuel source. These operations resulted in the release or disposal of hazardous substances at the Site.

I. Wood debris identified in Port Angeles Harbor includes logs, large wood pieces, small wood pieces or chips, very fine wood particles and/or fibers, and pulp-like material. Historically, various mills and timber-related industries have operated along the shoreline of Port Angeles Harbor. These facilities have at one time or another transported and stored logs, wood chips, and/or sawdust in nearshore areas or on barges in the harbor. Releases of wood debris occurred during these operations. The western portion of Port Angeles Harbor was historically utilized for extensive log rafting by a variety of entities, resulting in the release of wood debris in the rafting areas. Additionally, releases of wood debris resulted from the operation of log dumps by a variety of entities. Wood debris, in the form of very fine wood particles and/or fibers, was released to the harbor in the process effluent from mills, including the Crown Zellerbach and Fibreboard mills, resulting in wood debris layers at the Site.

J. Industrial facilities and properties along the western harbor shoreline, including the locations of the former M&R mill (1608 Marine Drive), and Fiberboard mill (1313 Marine Drive), the current location of the NPIUSA paper mill (1805 Marine Drive), as well as the current and former locations of city CSO outfalls, appear to be, or to have been, suppliers of contaminants, including metals and dioxin, to the western harbor. Areas of sediment contamination in the nearshore create chemical plumes spreading throughout the western harbor.

K. The investigative reports listed in Section V.A identified areas of marine surface and subsurface sediment that exceed applicable state criteria for protection of the environment and preliminary levels estimated to be protective of human health on lands: 1) owned by the PLPs or on which the PLPs conducted operations, or 2) on which hazardous substances possessed or generated by the PLPs have come to be located or were disposed. Based on the studies performed at the Site to date, this Site poses a threat to human health and/or the environment.

VI. ECOLOGY DETERMINATIONS

A. Each PLP is potentially liable pursuant to RCW 70.105D.040 for the release of hazardous substances at the Site, a “facility” as defined in RCW 70.105D.020(5). The PLPs are or were “owners or operators”, as defined in RCW 70.105D.020(17), of a facility and/or arranged for the disposal of hazardous substances at the facility.

B. The facility, known as the Western Port Angeles Harbor Site (Site), is defined by the extent of contamination caused by the release of hazardous substances at the Site and will be further identified and delineated as described in the Work Plan (Exhibit B). This Order requires investigation of sediments and identification of ongoing upland sources of contamination that have the potential to result in sediment recontamination at levels greater than prospective

sediment cleanup standards. Any such upland sources identified under this Order will be addressed under separate actions, agreements, permits or orders. Based upon all factors known to Ecology, a “release” or “threatened release” of “hazardous substance(s)” as defined in RCW 70.105D.020(25) and RCW 70.105D.020(10), respectively, has occurred at the Site.

C. Based upon credible evidence, Ecology issued a PLP status letter to the Port dated July 18, 2012, pursuant to RCW 70.105D.040, -.020(21) and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that the Port is a PLP under RCW 70.105D.040 and notified the Port of this determination by letter dated September 18, 2012.

D. Based upon credible evidence, Ecology issued a PLP status letter to G-P dated August 6, 2012, pursuant to RCW 70.105D.040, -.020(21) and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that G-P is a PLP under RCW 70.105D.040 and notified G-P of this determination by letter dated September 18, 2012.

E. Based upon credible evidence, Ecology issued a PLP status letter to NPIUSA dated August 6, 2012, pursuant to RCW 70.105D.040, -.020(21) and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that NPIUSA is a PLP under RCW 70.105D.040 and notified NPIUSA of this determination by letter dated September 18, 2012.

F. Based upon credible evidence, Ecology issued a PLP status letter to the City dated August 6, 2012, pursuant to RCW 70.105D.040, -.020(21) and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that the City is a PLP under RCW 70.105D.040 and notified the City of this determination by letter dated September 18, 2012.

G. Based upon credible evidence, Ecology issued a PLP status letter to M&R dated August 6, 2012, pursuant to RCW 70.105D.040, -.020(21) and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that M&R is a PLP under RCW 70.105D.040 and notified M&R of this determination by letter dated September 18, 2012.

H. Pursuant to RCW 70.105D.030(1) and -.050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

VII. WORK TO BE PERFORMED

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that the PLPs take the following remedial actions at the Site and that these actions be conducted in accordance with Chapter 173-340 and 173-204 WAC unless otherwise specifically provided for herein. Under this Order, the PLPs shall: A) implement the Remedial Investigation/Feasibility Study Work Plan as described below and in Exhibit B of this Order; B) follow the schedule

described in the Work Plan and in Exhibit C; and C) provide quarterly reports to Ecology. For each draft of all deliverables, the PLPs shall incorporate all comments from Ecology into the next draft of that deliverable. Each deliverable, once approved in writing by Ecology, becomes an integral and enforceable part of this Order.

A. Remedial Investigation/Feasibility Study

Implement the Remedial Investigation/Feasibility Study Work Plan according to the schedule attached as Exhibit C to this Order, including the following elements as more fully described in the Remedial Investigation/Feasibility Study Work Plan (Exhibit B) and summarized here:

Task 1 - Prepare and submit a Remedial Investigation Sampling and Analysis Plan (SAP)

Develop a draft Remedial Investigation Sampling and Analysis Plan (SAP) including procedures for Quality Assurance Project Plan (QAPP) and a Health and Safety Plan (HSP) following the design outlined in the Remedial Investigation/Feasibility Study Work Plan (Exhibit B) and meeting the requirements of WAC 173-340-350(7)(c)(iv), WAC 173-340-810 and WAC 173-340-820. Submit the draft SAP for Ecology's review and approval. Revise and incorporate Ecology's comments into the plan if requested by Ecology.

Task 2 – Conduct the Supplemental Data Collection

Perform the supplemental data collection outlined in the Remedial Investigation Work Plan (Exhibit B) and further detailed in the SAP and HSP.

Task 3 – Prepare the Supplemental Data Collection Technical Memorandum

Prepare and submit a draft Supplemental Data Collection Technical Memorandum summarizing the field work conducted, any deviations from the sampling design outlined in the SAP and HSP, and the sampling results. Submit the draft Supplemental Data Collection Technical Memorandum for Ecology's review and approval.

Task 4 - Prepare and submit a Remedial Investigation/Feasibility Study Report

The PLPs shall prepare and submit a RI/FS: (1) using the investigation framework in the Remedial Investigation/Feasibility Study Work Plan attached (Exhibit B); (2) following the SAP and HSP outlined in Task 1 and 2 above; (3) integrating additional data collected during the implementation of the Remedial Investigation/Feasibility Study Work Plan Supplemental Data Collection in Task 3; (4) incorporation of Ecology comments on the Draft Supplemental Data Collection Technical Memorandum prepared in Task 4; and (5) including available data and information from previous studies in Port Angeles Harbor.

Task 4a – Agency Review Draft RI/FS

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

Task 4b – EIM Data submittal

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

Task 4c – Public Review Draft RI/FS

The PLPs shall revise the Agency Review Draft RI/FS incorporating Ecology's comments. The PLPs shall submit the revised document as the Public Review Draft RI/FS for Ecology's review and approval, and for Ecology's determination that the document is ready for public review.

Task 4d – Draft Final RI/FS

The PLPs shall revise the Public Review Draft RI/FS incorporating revisions deemed necessary by Ecology after public comment. The PLPs shall submit the revised document as the Draft Final RI/FS for Ecology's review and approval.

B. Quarterly Progress Reports

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

1. A description of the actions which have been taken to comply with the Agreed Order.
2. Summaries of sampling and testing reports and all other data reports received by the PLPs.
3. Summaries of deviation from the approved work plans and an explanation of the PLPs' position on whether the deviations constitute minor or substantial changes to the work, in accordance with Section VIII.L (Amendment of Order).
4. Summaries of problems or anticipated problems in meeting the schedule or objectives set forth in the Work to Be Performed and Work Plans.
5. Summaries of solutions developed and implemented or planned to address any actual or anticipated problems or delays.
6. Changes in key personnel.
7. A description of work planned for the next reporting period.

C. Progress

If, at any time after the first exchange of comments on drafts, Ecology determines that insufficient progress is being made in the preparation of any of the deliverables required by this

Section, Ecology reserves its right to take action under WAC 173-340-510(4) to complete and issue the final deliverable.

VIII. TERMS AND CONDITIONS OF ORDER

A. Public Notice

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

B. Remedial Action Costs

The PLPs shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under Chapter 70.105D RCW, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). Ecology has accumulated \$76,571.38 in remedial action costs related to preparing this Order and its exhibits for this facility as of January 31, 2013. Payment for this amount shall be submitted within thirty (30) days of the effective date of this Order. For all costs incurred subsequent to January 31, 2013, the PLPs shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to

pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly. Ecology reserves the right to seek recovery of all remedial costs relating to the site for which the PLPs may be liable.

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

C. Implementation of Remedial Action

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

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

D. Designated Project Coordinators

The project coordinator for Ecology is:

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

The project coordinator for the PLPs is:

Allison Geiselbrecht

Floyd/Snider

(206) 292-2078

allison.geiselbrecht@floydsnider.com

Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and the PLPs, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

E. Performance

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

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered in the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrologic or engineering work shall be under the seal of an appropriately licensed professional as required by Chapter 18.220 RCW or RCW 18.43.130.

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

F. Access

Ecology or any Ecology authorized representative shall have the full authority to enter and freely move about all property within the Site that the PLPs either own, control, or have access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing the PLPs' progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by the PLPs. The PLPs shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by the PLPs where remedial activities or investigations will be performed pursuant to this Order. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by a PLP unless an emergency prevents such notice. All persons, including Ecology or Ecology authorized representatives, who access the Site pursuant to this Section shall comply with any applicable Health and Safety Plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access, but shall comply with workplace safety rules.

G. Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, the PLPs shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, the PLPs shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by the PLPs pursuant to implementation of this Order. The PLPs shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow the PLPs' 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.F (Access), Ecology shall notify the PLPs prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under Chapter 173-50 WAC for the specific analyses to be conducted, unless otherwise approved by Ecology.

H. Public Participation

A Public Participation Plan is required for this Site. Ecology shall develop a Public Participation Plan alone or in conjunction with the PLPs.

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

1. If agreed to by Ecology, develop an appropriate mailing list, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

2. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before major meetings with the interested public and local governments. Likewise, Ecology shall notify the PLPs prior to the issuance of all press releases and fact sheets, and before major meetings with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by the PLPs that do not receive prior Ecology approval, the PLPs shall clearly indicate to their audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

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

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

- a. Port Angeles Public Library
2210 South Peabody Street
Port Angeles, WA 98362
- b. Ecology's Southwest Regional Office
300 Desmond Drive SE
Lacey, WA 98503

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this site shall be maintained in the repository at Ecology's Southwest Regional Office in Lacey, Washington.

I. Retention of Records

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

J. Resolution of Disputes

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

a. Upon receipt of Ecology's project coordinator's written decision or the itemized billing statement, the PLPs have fourteen (14) days within which to notify Ecology's project coordinator in writing of its objection to the decision or itemized statement.

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

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

d. The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute within thirty (30) days of the PLPs' request for review. The Section Manager's decision shall be Ecology's final decision on the disputed matter.

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

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

K. Extension of Schedule

1. An extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- a. The deadline that is sought to be extended;
- b. The length of the extension sought;
- c. The reason(s) for the extension; and
- d. Any related deadline or schedule that would be affected if the extension were granted.

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

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

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

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

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

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

4. An extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of:

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

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

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

L. Amendment of Order

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

Except as provided in Section VIII.N (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of Ecology and each PLP. The PLPs may submit a written request for amendment to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request for amendment is received. If the amendment to this Order represents a substantial change, Ecology will provide public notice and opportunity to comment. Reasons for the disapproval of a proposed amendment to this Order shall be stated in writing. If Ecology does not agree to a proposed amendment, the disagreement may be addressed through the dispute resolution procedures described in Section VIII.J (Resolution of Disputes).

M. Endangerment

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

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

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

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

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

N. Reservation of Rights

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

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

O. Transfer of Interest in Property

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by a PLP 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 a Party's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, the Party shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, the Party shall notify Ecology of said transfer. Upon transfer of any interest, the Party shall restrict uses and activities to those consistent with this Order and notify all transferees of the restrictions on the use of the property.

P. Compliance with Applicable Laws

1. All actions carried out by the PLPs pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70.105D.090. At this time, no federal, state or local requirements have been identified as being applicable to the actions required by this Order.

2. Pursuant to RCW 70.105D.090(1), the PLPs are exempt from the procedural requirements of Chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW and of any laws requiring or authorizing local government permits or approvals. However, the PLPs shall comply with the substantive requirements of such permits or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this Section.

The PLPs have a continuing obligation to determine whether additional permits or approvals addressed in RCW 70.105D.090(1) would otherwise be required for the remedial

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

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

Q. Indemnification

To the extent authorized by law, each PLP agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action for death or injuries to persons or for loss or damage to property to the extent arising from or on account of acts or omissions of that PLP its officers, employees, agents, or contractors in entering into and implementing this Order. However, the PLPs shall not indemnify the State of

Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

IX. SATISFACTION OF ORDER

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

X. ENFORCEMENT

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

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

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

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

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

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

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

Effective date of this Order: May 28, 2013

PORT OF PORT ANGELES

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 5-22-13

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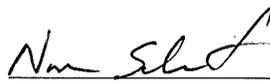

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Exhibit A: General location of Western Port Angeles Harbor Site

EXHIBIT C: Schedule to the Agreed Order for the Western Port Angeles Harbor Site

The project schedule is as follows:

AO Section	Task	Draft Deliverable/Action ¹	Schedule ^{1,2}	Anticipated Calendar Date Schedule ⁵
VII.A	1	Prepare and submit draft SAP/QAPP/HSP including list of applicable permits and applicable or relevant and appropriate requirements ³	Submit on the day the Agreed Order becomes effective.	May 2013
		Ecology reviews SAP/QAPP/HSP	Ecology will endeavor to review and approve within twenty days after Agreed Order effective date.	May 2013
VII.A	2	Fieldwork	Begin in June 2013.	June/July 2013
		Ecology reviews validated data and approves for use in RI/FS.	Ecology will endeavor to review and approve data for use in RI/FS within 30 days of receipt of final data validation package.	September 2013
VII.A	3	Prepare the draft RI/FS Supplemental Data Report	Submit seventy-five days after receipt of final data validation package.	October 2013
VII.A	4b	EIM data submittal	Submit seventy-five days after receipt of final data validation package.	October 2013
		Ecology reviews RI/FS Supplemental Data Report	Ecology comments will be incorporated into RI/FS. Ecology will endeavor to review and comment on the RI/FS Supplemental Data Report within thirty days of receipt.	November 2013
VII.A	4a	Agency Review Draft RI/FS Report	Submit 180 days following receipt of final data validation package or 150 days following Ecology approval of data for use in the RI/FS (whichever is later).	January 2014
		Ecology reviews Agency Review Draft RI/FS Report	Ecology will endeavor to review and comment within sixty days of receipt.	April 2014
VII.A	4c	Public Review Draft RI/FS Report	Submit ninety days following receipt of Ecology's final comments on Agency Review Draft RI/FS Report.	June 2014
		Ecology reviews Public Review Draft RI/FS Report	Ecology will endeavor to review and approve within thirty days of receipt.	July 2014

Ecology anticipated public comment period on Public Review Draft RI/FS (estimated thirty days)			August/September 2014	
		Ecology review of comments and decision on any revisions necessary to the Public Review Draft RI/FS Report	Ecology will endeavor to review comments and provide revisions within thirty days of receipt of final public comments.	October 2014
VII.A	4d	Draft Final RI/FS Report ⁴	Within sixty days of receipt of revisions deemed necessary by Ecology on the Public Review Draft RI/FS.	December 2014
		Ecology reviews and approves the Final RI/FS Report	Ecology will endeavor to provide approval within fourteen days of receipt of draft Final RI/FS Report.	December 2014
VII.B		Agreed Order Quarterly Reports	Submit first report beginning ninety days following the Agreed Order effective date and continue reporting through Agreed Order.	Quarterly beginning July 2013 until end of Agreed Order.

Notes:

- (1) Following the submittal of each deliverable, with the exception of quarterly reports and EIM submittals, the PLPs and Ecology will endeavor to meet within 14 days to discuss the contents of the deliverable. Following Ecology's submittal of comments or revisions necessary on any deliverable, the PLPs and Ecology will endeavor to meet within 14 days to discuss the comments or revisions.
- (2) Ecology review periods are presented as goals. Ecology will endeavor to make these review periods to achieve the overall goal of completing the Final RI/FS by the end of 2014. All days are calendar days, not business days.
- (3) Draft RI/FS SAP/QAPP will be provided during the Agreed Order public review period, prior to execution of the Agreed Order, to accelerate Ecology's review and approval process.
- (4) As established during the pre-Agreed Order process, the PLP group will work closely with Ecology during the comment period to resolve issues and streamline report production. This may result in the submittal of draft comments and responses and meetings between the PLP group and Ecology.
- (5) The anticipated calendar dates shown are subject to change based on the actual supplemental data collection timeframe. Unanticipated factors may result in modified dates and will be mutually agreed upon by Ecology and the PLPs, and documented in writing.

Abbreviations:

Ecology	Washington State Department of Ecology
EIM	Environmental Information Management
HSP	Health and Safety Plan
PLP	Potentially Liable Parties
RI/FS	Remedial Investigation/Feasibility Study
SAP	Sampling and Analysis Plan
QAPP	Quality Assurance Project Plan